

<p align="center">STATE OF NORTH CAROLINA</p> <p align="center">North Carolina Department of Information Technology</p>	<p>INVITATION FOR BIDS OR REQUEST FOR QUOTE NO. DIT- 1990633294 -SHAREGATE MIGRATION</p>	
	<p>Issue Date: 6/17/26</p>	
<p>Refer <u>ALL</u> inquiries regarding this IFB to:</p> <p>Kelley Fore, Procurement Specialist II Kelley.fore@nc.gov 919-754-6665</p>	<p>Commodity Number: 43231513 – Office Suite Software</p>	
	<p>Description: ShareGate's migration engine with 25 machine activations</p>	
	<p>Using Agency: NCDIT</p>	
<p>See page 2 for mailing instructions.</p>	<p>Requisition No.: N/A</p>	

OFFER AND ACCEPTANCE

The State seeks offers for the software and software support described in this solicitation. The State's acceptance of any offer must be demonstrated by execution of the acceptance found below and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence as follows: In cases of conflict between documents comprising the contract, the order of precedence shall be (1) Best and Final Offers, if any, (2) special terms and conditions specific to this solicitation, (3) specifications, (4) Department of Information Technology Terms and Conditions of this solicitation, and (5) the agreed portions of the awarded Vendor's offer. **No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.**

EXECUTION

In compliance with this solicitation and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all Services or goods upon which prices are offered, at the price(s) offered herein, within the time specified herein. By executing this offer, I certify that this offer is submitted competitively and without collusion.

Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.

OFFEROR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY, STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

Offer valid for sixty (60) days from date of offer opening unless otherwise stated here: ____ days

ACCEPTANCE OF OFFER

If any or all parts of this solicitation are accepted, an authorized representative of North Carolina Department of Information Technology shall affix their signature hereto. A copy of this acceptance will be forwarded to the successful vendor(s).

<p><u>FOR STATE USE ONLY</u></p> <p>Offer accepted and contract awarded _____, as indicated on attached certification,</p> <p>by _____ (Authorized representative of North Carolina Department of Information Technology).</p>

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1.0 INTENT, USE, DURATION AND SCOPE

The purpose of this Solicitation is to obtain pricing for and procure the ShareGate migration tool for Microsoft 365 for the North Carolina Department of Information Technology (NCDIT). NCDIT is requesting 25 machine activations applied to NCDIT for the ShareGate tool. This purchase addresses the challenge of efficiently migrating and managing large volumes of data across multiple platforms, which can otherwise lead to delays, data integrity issues, and increased operational costs. ShareGate's features are designed to streamline migration, optimize data, and strengthen governance for Microsoft 365 environments, including services such as SharePoint, Exchange Online, Google Workspace, Teams, and OneDrive.

The benefits to NCDIT and the public we serve include improved reliability and security of data transfers, reduced downtime during migrations, and enhanced compliance with data governance standards. By leveraging ShareGate, NCDIT can ensure faster, more accurate migrations, minimizing disruptions to critical services that citizens rely on.

Expected outcomes include:

- Successful migration of data with minimal errors and reduced manual intervention.
- Improved operational efficiency and cost savings through automation and optimization tools.
- Enhanced data governance and compliance, ensuring secure handling of sensitive information.
- Better continuity of services for state agencies and the public during technology transitions.

2.0 GENERAL INFORMATION

2.1 VENDOR QUESTIONS

All inquiries regarding the solicitation specifications or requirements are to be addressed to the contact person listed on Page One of this solicitation. Vendor contact regarding this Solicitation with anyone other than the contact person listed on Page One of this Solicitation may be grounds for rejection of said Vendor's offer.

Written questions concerning this Solicitation will be received **until June 24, 2026 at 2:00pm** Eastern Time. They must be submitted to the contact person listed on Page One of this Solicitation. Please enter "Questions Solicitation XXXX" as the subject for the message.

2.2. OFFER SUBMITTAL

Due Date:	July 7, 2026
Time:	2:00pm Eastern Time

IMPORTANT NOTE: It is the Vendor's sole responsibility to upload their offer to the Ariba Sourcing Module by the specified time and date of opening. Vendor shall bear the risk for late electronic submission due to unintended or unanticipated delay, including but not limited to internet

issues, network issues, local power outages, or application issues. Vendor must include all the pages of this solicitation in their response.

Sealed offers, subject to the conditions made a part hereof, will be received until 2:00pm Eastern Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Offers must be submitted via the Ariba Sourcing Module with the Execution page signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed offer shall result in disqualification.

Attempts to submit a proposal via facsimile (FAX) machine, telephone, email, email attachments, or in any hardcopy format in response to this Bid SHALL NOT be accepted and will automatically be deemed Non-Responsive.

- a) Submit **one (1) signed, original electronic offer** via e-mail.
- b) All File names should start with the Vendor name first, in order to easily determine all the files to be included as part of the vendor's response. For example, files should be named as follows: Vendor Name-your file name.
- c) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .JPEG, .DOC or .XLS format, and shall be capable of being copied to other sources. Inability by the State to open the Vendor's files may result in the Vendor's offer(s) being rejected as Non-Responsive.
- d) If the vendor's proposal contains any confidential information (as defined in Attachment B, Section 2, Paragraph #17), then the vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

Questions or issues related to using the Ariba Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM EST to 5:00 PM EST.

2.3. BASIS FOR REJECTION

Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State. Vendor contact regarding this RFQ with anyone other than **Kelley Fore, Procurement Specialist** may be grounds for rejection of said Vendor's offer.

2.4. LATE OFFERS

Regardless of cause, late offers will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. Late offers will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

2.5. NON-RESPONSIVE OFFERS

Vendor offers will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:

- "This offer does not constitute a binding offer",
- "This offer will be valid only if this offer is selected as a finalist or in the competitive range",
- "Vendor does not commit or bind itself to any terms and conditions by this submission",

- “This document and all associated documents are non-binding and shall be used for discussion purposes only”,
- “This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties”, or
- A statement of similar intent.

2.6. NOTICE TO VENDOR(S)

The State objects to and will not be required to evaluate or consider any additional terms and conditions not previously agreed to by the State and submitted with an Offeror’s response. This applies to any language appearing in or attached to the document as part of the Offeror’s response. By execution and delivery of this RFQ and response(s), the Offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

2.7. E-PROCUREMENT SOLICITATION

This is an E-Procurement solicitation. See Paragraph #31 of the attached Department of Information Technology Terms and Conditions.

- a) General information on the E-Procurement service can be found at <http://eprocurement.nc.gov/>
- b) Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service at the following web site: <https://vendor.ncgov.com/vendor/login>
- c) As of the RFQ submittal date, the Vendor must be current on all E-Procurement fees. If the Vendor is not current on all E-Procurement fees, the State may disqualify the Vendor from participation in this RFQ.

2.8. DISTRIBUTORS AND RESELLERS

“Resellers” as used herein, refers to businesses that routinely sell or distribute Vendor’s Products, and may include “Distributors”, “Value Added Resellers” (VARs), “Original Equipment Manufacturers” (OEMs), Channel Partners, or such other designations. These businesses must be approved by the State prior to placement of any orders. Any contract established will be subject to this solicitation and any resulting Agreement(s), and to the terms and conditions of the State’s competitive bidding process.

The Agency acknowledges that the Reseller has merely purchased the Third-Party Items for resale or license to the Agency, and that the proprietary and intellectual property rights to the Third-Party Items are owned by parties other than the Reseller (“Third Parties”). The Agency further acknowledges that except for the payment to the Reseller for the Third-Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third-Party Items which are provided to the Reseller. The Reseller shall assign all applicable third-party warranties for Deliverables to the Agency.

2.9. POSSESSION AND REVIEW

During the evaluation period and prior to award, possession of the bids and accompanying information is limited to personnel of the issuing agency, and to the committee responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e. assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

After award of contract the complete bid file will be available to any interested persons with the exception of trade secrets, test information or similar proprietary information as provided by statute and rule. Any proprietary or confidential information which conforms to exclusions from public

records as provided by N.C.G.S. §132-1.2 **must be clearly marked as such in the offer when submitted.**

2.10. BEST AND FINAL OFFERS (BAFO)

The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendor(s) within this range, e.g. "Finalist Vendor(s)". If negotiations or subsequent offers are solicited, the Vendor(s) shall provide BAFO(s) in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State will evaluate BAFO(s), oral presentations, and product demonstrations as part of the Vendors' respective offers to determine the final rankings.

2.11. AWARD

It is the general intent to award this contract to one (1) Vendor. As provided by statute, award will be based on Best Value Analysis, Lowest Price Technically Acceptable Source Selection Method in accordance with 09 NCAC 06B. 0302 Information Technology Procurement.

2.12. POINTS OF CONTACT

Contact by the Offeror with the persons shown below for contractual and technical matters related to this RFQ is only permitted if expressly agreed to by the purchasing lead named on page 4, or upon award of contract:

For Vendor completion:

Vendor Contractual Point of Contact	Vendor Technical Point of Contact
Name of Vendor:	Name of Vendor:
Street:	Street:
City, State, Zip:	City, State, Zip:
Attn:	Attn:
Email:	Email:
State Contractual Point of Contact	State Technical Point of Contact
Name of Vendor:	Name of Vendor:
Street:	Street:
City, State, Zip:	City, State, Zip:
Attn:	Attn:
Email:	Email:

3.0 SPECIFICATIONS

3.1. VENDOR STANDARD AGREEMENT(S)

Find attached the incorporated End User License Agreement negotiated with manufacturer ShareGate by WorkLeap contained within Exhibit 1 to designate the manufacturer and NCDIT agreement.

The terms and conditions of Vendor's standard license, maintenance or other agreement(s) applicable to Software and other Products acquired under this Agreement may apply to the extent such terms and conditions do not materially change the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the Vendor's standard agreement(s), the terms and conditions of this Agreement relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the Terms and Conditions herein shall apply in all cases and supersede any provisions contained in Vendor's relevant standard agreement or any other agreement. The State shall not be obligated under any standard license and/or maintenance or other Vendor agreement(s) to indemnify or hold harmless the Vendor, its licensors, successors or assigns; nor arbitrate any dispute, nor pay late fees, legal fees or other similar costs.

For Vendor Completion:

_____ The Vendor represents and warrants that the terms and conditions of Vendor's standard license, maintenance, or other agreement(s) do not apply to this procurement. No vendor agreement, standard or otherwise is incorporated into this IFB # DIT- 1990633294 -SHAREGATE MIGRATION

_____ The Vendor standard license, maintenance, or other agreement(s) is provided with the RFQ response and shall be incorporated into this IFB # DIT- 1990633294 -SHAREGATE MIGRATION based on the outcome of a legal review.

3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S. – DISCLOSURE STATEMENT

In accordance with the Statewide Information Security Manual (SISM), the State restricts the location of information systems that receive, process, store, or transmit State and Federal data to the United States which includes the following areas: US States, US Territories, US Embassies, and US Military installations (stateside or overseas). This restriction applies to the Vendor and to any subcontractors engaged to provide Services under this Agreement or with access to State Data. The Vendor must ensure that its subcontractor agreements contain the same restrictions and will be responsible for monitoring and enforcing subcontractor compliance at all times.

Pursuant to N.C.G.S. §143B-1361(b), the Vendor must complete and return this Disclosure Statement Attachment F with its solicitation response. The Vendor may attach additional pages to its response if needed. The State of North Carolina will evaluate Disclosure Statement Attachments for additional risks, costs, and other factors associated with its service prior to making an award for any such Vendor's offer. The Vendor must provide the following information in its bid response:

Vendor to complete a.to e. in their offer:

- a. The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.

Vendor to enter text here to answer this disclosure question:

- b. The corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other subcontractors.

Vendor to enter text here to answer this disclosure question:

- c. Vendor agrees to provide notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States in the event such relocation occurs during the contract term.

Does Vendor agree to provide notice as defined above? ☐ YES ☐ NO

- d. Vendor agrees that any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Does Vendor agree to provide disclosure as defined above? ☐ YES ☐ NO

- e. Will any work under this contract be performed outside the United States? ☐ YES ☐ NO

The use of resources or workers located outside the United States is a critical security exception that must be escalated to the State Chief Information Officer for review pursuant to N.C.G.S. §143B-1376(c) and §143B-1320(c). These critical security exceptions are approved only in rare and extenuating circumstances. Vendor should account for this when preparing its response.

3.3. E-VERIFY

Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

3.4 BRAND SPECIFIC PRODUCT

Manufacturer(s) name and product descriptions used in this solicitation are product specific. The items offered in response to this solicitation must be the manufacturer and type specified. Failure to comply with this requirement will result in rejection of offer.

3.5. SECURITY SPECIFICATIONS

3.5.1 SOLUTIONS HOSTED ON STATE INFRASTRUCTURE

Vendors must provide a completed Vendor Readiness Assessment Report State Hosted Solutions ("VRAR") at offer submission. This report is located at the following website:

<https://it.nc.gov/documents/vendor-readiness-assessment-report>

The ShareGate solution will be required to receive and securely manage data that is classified as low-risk or medium risk. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding this data classification. The policy is located at the following website:

<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>

To comply with the State's Security Standards and Policies, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls.

3.5.1 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE - RESERVED

3.6 ENTERPRISE ARCHITECTURE SPECIFICATIONS

3.6.1 ARCHITECTURE DIAGRAMS - RESERVED

3.6.2 SOLUTION ROADMAP

A Solution Roadmap defines the vision and strategic elements of the solution. The Solution Roadmap is a plan of action for how a Solution will evolve over time. The minimum content should include:

- Vision for the solution
- High-level functionality expected for each solution release into production environment
- High-level timeline
- Description of how customer feedback is collected and incorporated into solution enhancements

Describe the solution roadmap for your product. Include content on release strategies for functionality, roadmap for technical architecture, how scalability of solution is planned.

3.6.3 IDENTITY AND ACCESS MANAGEMENT - RESERVED

3.6.4 INTEGRATION APPROACH - RESERVERED

3.6.5 DISASTER RECOVERY AND BUSINESS CONTINUITY - RESERVED

3.6.6 DATA MIGRATION - RESERVED

3.6.7 APPLICATION MANAGEMENT - RESERVED

3.6.8 ACCESSIBILITY

Describe how the proposed solution complies with industry accessibility standards, including scope and intent for use.-

Provide product documentation that demonstrates how the proposed solution is digitally accessible or if not fully accessible, provide the roadmap with timeline for remediation.

Standards include:

- W3C Web Accessibility Initiative - Web Content Accessibility Guidelines (WCAG) 2.1:
<https://www.w3.org/TR/WCAG21/>
- Section 508: <https://www.section508.gov/>
- Voluntary Product Accessibility Template (VPAT®):
<https://www.itic.org/policy/accessibility/vpat>

ENTERPRISE, SERVICES, AND STANDARDS

Agencies and vendors should refer to the Vendor Resources Page for information on North Carolina Department of Information Technology regarding architecture, security, strategy, data, digital, identity and access management and other general information on doing business with state IT process.

The Vendor Resources Page found at the following link: <https://it.nc.gov/vendor-engagement-resources>. This site provides vendors with statewide information and links referenced throughout the RFP document. Agencies may request additional information.

3.7 SPECIFICATIONS- RESERVED

3.8. DELIVERY

Successful Vendor will complete supply of the scope of work immediately after receipt of purchase order either electronically or to the following location(s):

NCDIT's physical address at 3700 Wake Forest, Road, Raleigh, NC 27609

If circumstances beyond the control of the contractor result in a late delivery, it is the responsibility and obligation of the contractor to notify the Purchasing Agent listed on the purchase order, in writing, immediately upon determining delay of shipment. The written notification should indicate the anticipated delivery date.

The delivery of this product will be for a subscription-based product with immediate access granted to NCDIT.

3.9. **CONTRACT TERM**

A contract awarded pursuant to this IFB shall have an effective date as provided in the Notice of Award. The term shall be one (3) years and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier.

4.0 **FURNISH AND DELIVER**

YEAR 1:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	25	each	ShareGate migration engine for machine activations including essential workloads, migration planning and validation with data transfer and end to end migration		

Total Offer Cost _____

YEAR 2:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	25	each	ShareGate migration engine for machine activations including essential workloads, migration planning and validation with data transfer and end to end migration		

Total Offer Cost _____

YEAR 3:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	25	each	ShareGate migration engine for machine activations including essential workloads, migration planning and validation with data transfer and end to end migration		

Total Offer Cost _____

Grant Total Offer Cost Years 1-3: _____

5.0 HISTORICALLY UNDERUTILIZED BUSINESSES**For Vendor completion:**

“Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.” <http://ncadmin.nc.gov/businesses/hub>

Pursuant to N.C.G.S. §§143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this RFQ .

Is Vendor a Historically Underutilized Business? ☐ YES ☐ NO If “YES”, specify classification. _____

6.0 DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS

- 1) **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2) **DEFINITIONS:**
 - **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
 - **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
 - **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
 - **THE STATE:** Is the state of North Carolina and its agencies.
 - **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 4) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this RFQ can be altered only by written addendum and that verbal communications from whatever source are of no effect.
- 5) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 6) **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. §143-135.9. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.
- 7) **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 8) **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation that is over \$25,000 they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. IFB status and Award notices are posted on the Internet at <https://evp.nc.gov>. **All protests will be governed by NCAC Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**
- 9) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM** The electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification

of current procurement opportunities for goods and services available on the eVP at the following web site: <https://evp.nc.gov>.

- 10) **DIGITAL IMAGING**: The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

7.0 DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

- 1) **DEFINITIONS:** **Supplementing the Definitions appearing in the body of this solicitation, above:**
- a) "Agency" means the Agency purchasing the goods or Services.
 - b) "Computer" means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the Data.
 - c) "Computer Data Base" means a collection of data in a form capable of being processed and operated on a Computer.
 - d) "Computer Program" means a series of instructions or statements in a form acceptable to a Computer, processor or controller that is designed to cause the Computer, processor or controller to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and maintenance/diagnostics programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer Programs may be either machine dependent or machine-independent, and may be general purpose in nature or be designed to satisfy the requirements of a particular user.
 - e) "Computer Software" or "Software" means Computer Programs and Data Bases. Also, see, "Software" below.
 - f) "Computer Software Documentation" means technical data and information comprising Computer listings and printouts, in human readable form that:
 - i) Documents the design or details the Computer Software
 - ii) Explains the capabilities of the Software, or
 - iii) Provides operating instructions for using the Software to obtain desired results from a Computer.
 - g) "Custom or Modified Software" means Software that may be modified by the State, or by Vendor at the State's request or direction to perform in accordance with specifications.
 - h) "Data" means recorded information, regardless of form or method of recording.
 - i) "Deliverable"/"Product Warranties" shall mean and include the warranties provided for products or deliverables licensed to the State in Paragraph 2, and as included in Paragraph 7 c), of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
 - j) "Hardware" includes Computers, printers, attached equipment or peripherals or other equipment utilized for the State's intended purposes as expressed in the solicitation documents.
 - k) "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts.
 - l) "Services" means the obligations and duties undertaken by the Vendor to comply with the specifications and requirements in this solicitation.
 - m) "Software" is "Packaged Copyrighted Software Products" (unless otherwise identified) as used in 09 NCAC 06A.0102(13) and means Computer Software that is used regularly for other than governmental purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices, that is considered "shrink-wrap" or "clickwrap", that is or may be generally licensed by "shrink-wrap" or "clickwrap" licenses, or Computer Software that does not constitute Custom or Modified Software and is regularly sold, licensed or leased by the Vendor to governmental entities to meet governmental requirements.
 - n) "State" shall mean the State of North Carolina, NCDIT as an Agency, or an Agency in its capacity as the Award Authority.
 - o) "Support" includes Hardware maintenance and repair (outside any required by any applicable warranty), Software updates maintenance and support Services, consulting, training and other agreed support Services provided by or through Vendor.

- p) "Use", in the context of Computer Software execution and operation in Section 2 and 3 hereinbelow, means storing, loading, installing, executing or displaying Software on a Computer, processor or controller, or making a copy of Software for archival or backup purposes only.

2) SOFTWARE LICENSE

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use, in object code form only, all Software and related documentation furnished to the Agency under this Agreement. This license grant shall be limited to use with the Hardware (if any) or Products (if any) for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed in writing. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the Vendor's standard agreement.
- b) Software provided pursuant to this Solicitation may, in some circumstances, be accompanied by a clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the installation process for the Software. The sole purpose of any clickwrap agreement shall be to operate as the mechanism for the installation of the Software. All terms and conditions of any clickwrap agreement provided with any Software solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Software.
- c) The State agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set forth in this Agreement, and any Exhibits or Amendments hereto. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Software; or portion thereof.
- d) The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, and consistent with the security, records retainage or other policy of the Agency for archival or emergency purposes, or to replace a worn copy; but not for use in preparing derivative works unless expressly allowed by the Agreement or subsequent Statements of Work. Any copy of the Software or documentation must contain the same copyright notice and proprietary markings that are on the original Software.
- e) Use of Software on any Products other than that for which it was obtained, removal of Software from the United States or any other material breach shall automatically terminate this license.
- f) The State's license includes the right to upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's licensees without a separate maintenance or support agreement. Vendor's right to a new license for new version releases of the Software shall not be abridged by the foregoing.
- g) Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Vendor or subsequently upgraded by Vendor.
- h) The State's license neither transfers, vests nor infers any title or other ownership right in any intellectual property right of Vendor, or any third party. The State's license neither transfers, vests nor infers any title or other ownership right in any source code associated with the Software unless otherwise agreed by the parties, and will not be construed as a sale of any ownership rights in the Software, unless Custom or Modified Software is being developed as a Work For Hire in response to the State's solicitation documents.
- i) The State may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the State. The State may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

3) USE OF SOFTWARE AND INFORMATION

- a) The State agrees that any Software or technical and business information owned by Vendor ("Information") or its suppliers or licensors and furnished to the State under this Agreement shall be and remain the property of the Vendor, or other party, respectively.
- b) All Software and information furnished to the State under this Agreement
 - i) Shall be used by the State only to install, operate or maintain the Product for which they were originally furnished;
 - ii) Shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this agreement; and
 - iii) Shall, together with any copies except copies for the Agency's and State's archival purposes containing the State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and
- c) All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. §132-1, *et seq.*
- d) Transfer of Software or program license:
 - i) Software may be transferred within the United States to any location for the State's normal operations upon written notice to the Vendor without additional cost(s). Transfers for temporary uses arising as a result of a disaster or disaster recovery test may be effected without notice to the Vendor; provided, however, that the State will employ its best efforts to advise the Vendor of any disaster related transfer requiring more than ten (10) business days. All other transfers may be permitted only with Vendor's prior written consent, and such consent shall not be unreasonably withheld. Transfers requiring Vendor's consent may be subject to an additional license fee.
 - ii) The rights granted herein are restricted for use solely by the State. The State may not authorize or allow the use or marketing of the Software/Products by or to a third party, and may not assign or transfer the Software or Products to a third party without the prior written consent of Vendor. Any assignee or transferee must execute a separate agreement with Vendor. Any such assignment or transfer shall terminate the obligations of the State under this Agreement
- e) Custom or Modified Software, if solicited by the State, is being developed or modified exclusively for the State, and such Custom or Modified Software, all related data, all copyrights in the Custom or Modified Software and derivative works belong exclusively to the State and shall be transferred to the State upon creation.

4) WARRANTY

- a) Minimum warranties for Products shall include:
 - i) On the delivery date the Products and the associated Computer operating system Software will be in good working order (operating in conformance with Vendor's standard specifications and functions). Unless otherwise specified in the solicitation, the warranty for other suppliers' Software is included in the suppliers' Software package and is provided directly from the supplier.
 - ii) The warranty shall be as provided or specified in the state's solicitation documents and shall begin on the day of successful installation. If no warranty period is specified, the warranty period shall be Vendor's standard warranty period for the Products, commencing the day of successful installation.
 - iii) The state shall notify Vendor if any Product is not in good working order during the warranty period. Vendor shall, at its option, either repair or replace any Product reported as not in good working order during the warranty period without charge to the State. The repair or replacement Products must be new or equivalent to new in performance and fully warranted the same as new. All returned Products will become property of Vendor at the time the Product is either placed in shipment to Vendor, or picked up by Vendor.
 - iv) The service provided during the warranty period is dependent upon the acceptable warranty option selected by the State and indicated in the State's solicitation document. If no warranty

- option is indicated, Vendor will provide their standard warranty service for the Product, unless otherwise agreed by the parties.
- v) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates and terms set forth in such writing.
- b) Software warranties shall include the following:
- i) Vendor warrants the media (comprising diskettes, tapes or other media) to be free of defects in materials or workmanship under normal use for ninety (90) days from the date of acceptance unless otherwise agreed. Vendor shall replace any media reported as not in good working order during the warranty period without charge to the State. If Vendor is unable to replace the Software, Vendor shall refund the full amount of the Software purchase paid by the State.
 - ii) In addition to the warranty exclusions stated in Paragraph 5, Vendor does not warrant that the operation of the Software will be uninterrupted or error free, or that the Software functions will meet the State's requirements unless developed as Customized or Modified Software. The State assumes the risk of any damage or loss from its misuse or inability to use the Software.
 - iii) For any Customized or Modified Software provided pursuant to this Agreement, Vendor warrants that for a period of one (1) year after the State accepts said Software, it will operate and perform in accordance with the functions and specifications set forth in the solicitation and error free as the solution for the Agency. This express warranty applies only if the State specifically identifies the Hardware environment in which the Customized or Modified Software will be installed or operated, or if it is used in connection with Hardware acquired under this Agreement.
- c) Unless otherwise required by the State: Vendor warrants that its support and customer service and assistance will be performed in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from the date support is provided or performance of the service. For a period of ninety (90) days after delivery or ninety (90) days after successful installation, Vendor or its suppliers shall provide telephone assistance to the State during the State's normal business hours.
- d) Vendor warrants to the best of its knowledge that:
- i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
 - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
 - iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.
 - iv) The Software does not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the State's ability to use the Software for the term of this Agreement.

5) WARRANTY EXCLUSIONS

- a) Except as stated in Paragraph 4 (Warranty), Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, and specifically disclaim warranties of merchantability or fitness for a particular purpose as provided by N.C.G.S. §§25-2-316, 25-2-313 and 25-2-315; and as may be amended.
- b) The warranty provided in Paragraph 4) (Warranty) does not cover repair for damages, malfunctions or service failures caused by:
 - i) Actions of non-Vendor personnel;
 - ii) Failure to follow Vendor's installation, operation or maintenance instructions and/or Services provided to the State;
 - iii) Attachment to the Products of non-Vendor products or failure of Products not maintained by Vendor unless such installation or use is approved in writing by the Vendor; or
 - iv) Force Majeure conditions set forth hereinbelow.

6) INTELLECTUAL PROPERTY INDEMNITY

- a) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Software or Products supplied by the Vendor, their use or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in settlement against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
 - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
 - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- b) If any modifications to the Software applied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the Software, or to replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to take back any affected Software modifications, and refund any sums the State has paid Vendor for Services and the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge.
- c) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's alteration of any Vendor-branded Software, or from the continued use of the good(s) or Services after receiving notice they infringe on an intellectual property right of a third party.

7) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

- a) For purposes of the exclusive remedies and limitations of liability set forth in this Paragraph, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.
- d) For delays in the delivery or successful Product or Software installation, whichever is applicable, Vendor shall have no liability unless the delivery or successful installation date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:
 - i) To recover direct costs including replacement Products, if any, attributable to Vendor's delay, and
 - ii) To cancel the order without incurring cancellation charges.
 - iii) Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions

8) SUPPORT AND MAINTENANCE

- a) Except as specifically provided herein or in an approved attachment hereto, and unless otherwise consistently provided by Vendor's standard agreement for support, and except for the provisions

in the Vendor License Agreements paragraph above, an order for support will constitute the State's acceptance of the terms of the Vendor's standard agreement for Support in effect on the date of the order, subject to the order of precedence and the limitations in the Vendor's Standard Agreement(s) paragraph (above) as set forth in the Solicitation. Unless otherwise indicated herein, Support and Maintenance acquired herein will begin at the end of any applicable warranty period.

- b) To be eligible for support, Products or Software must be in good operating condition and at then current specified revision levels, having all enhancements, modifications, updates, or upgrades supplied by Vendor. Vendor may charge its standard rates in effect on the date support service is provided in addition to any other charges if the Product(s) or Software do not conform to the specified revision levels.

9) SOFTWARE RETIREMENT

- a) Unless otherwise provided in the Vendor's standard agreement, Vendor retains the right to retire a version of the Software and stop providing Maintenance, Updates or Services, upon providing one-hundred and eighty (180) days written notice to the State of its intent to do so. The decision to stop maintaining a version of the Software is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Software provided to the State and if the State has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the State shall be entitled to receive, at no additional charge, a newer version of the Software m that supports substantially the same functionality as the licensed version of the Software. Newer versions of the Software containing substantially increased functionality will be made available to the State for an additional fee.
- b) Vendor may, at no additional charge, modify Software to improve operation and reliability or to meet legal requirements.
- c) Relocation of Software is the State's responsibility and may result in additional support charges and modified service response times. Software moved to another State facility or Agency may continue to be serviced subject to availability of a Vendor authorized support provider.
- d) Vendor is not required to provide support for non-qualified Software, nor Software not supplied under this Agreement. "Non-Qualified Software" is Software not supplied or approved by Vendor, and Software for which the State does not allow Vendor to incorporate modifications. The State is responsible for removing non-qualified Software to allow Vendor to perform Support Services.
- e) Support does not cover any damage or failure cause by:
 - i) Media and supplies or use of items not designed or designated for use with Software; or
 - ii) Site conditions that do not conform to Vendor's previously established site specifications; or
 - iii) Neglect, improper use, fire or water damage, electrical disturbance, transportation by the State, work or modification by persons other than Vendor personnel, or other authorized parties.

The State is responsible for the security of its proprietary or confidential information, for its data, and for maintaining a procedure and process to reconstruct lost or altered files, data or programs.

- 10) TRANSPORTATION:** Transportation charges for software shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

- 11) TRAVEL EXPENSES: All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.

- 12) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 09 NCAC 06B.1207, or other provision of law.
- 13) AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Products and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 14) PAYMENT TERMS:** The total License Fee and the Support Service or Maintenance Fee (if applicable and provided the State subscribes or purchases such Services) for the first year shall be invoiced upon delivery of the Software. The Support Service or Maintenance Fee for subsequent contract years, if any, will be invoiced annually sixty (60) days prior to the anniversary date beginning each subsequent year. Increases in pricing for Support Services or Maintenance shall not exceed five percent (5%) per year following the first Contract year. Payment terms for software are Net 30 days after receipt of correct invoice or acceptance of software, whichever is later. Payment terms for Services are due and payable the month following the month for which charges accrue, or in accordance with the contract payment schedule. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card.
- 15) ACCEPTANCE CRITERIA:** Acceptance testing is required for all Vendor supplied software unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of software or Services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of Software or Services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within ten (10) days following installation of any software deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.
- 16) CONFIDENTIALITY:** The State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate information, Products, software or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL.**" By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State agrees to promptly notify the Vendor in writing of any action seeking to

compel the disclosure of Vendor's confidential information. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. G.S. §132-9 or other applicable law.

- 17) ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.
- 18) ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 19) NOTICES:** Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.
- 20) TITLES AND HEADINGS:** Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 21) AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.
- 22) TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
- 23) GOVERNING LAWS, JURISDICTION, AND VENUE**
 - a) This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
 - b) Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Agreement. To the extent the Agreement entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

- 24) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
 - b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- 25) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 26) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 27) TERMINATION:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.
- a) The parties may mutually terminate this Contract by written agreement at any time.
 - b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 24), (Default) or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following
 - i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 7) (Limitation of Liability). The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
 - ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.
- 28) DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator

for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

29) SEVERABILITY: In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

30) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT: The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

31) ELECTRONIC PROCUREMENT: (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document): Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

- a) **The successful vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the Services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.
- b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.
- c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for

the solicitation, offers received, evaluation of offers received, award of contract, and the payment for goods delivered.

- d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

EXHIBIT 1

END USER LICENSE AGREEMENT

See attached next page for the addendum

EXHIBIT 1

North Carolina State Addendum To the

ShareGate End User License, Maintenance and Support Agreement

This document ("Addendum") amends the ShareGate End User License, Maintenance and Support Agreement and all other applicable ShareGate agreements incorporated or referenced in those agreements (collectively referred to as "License Agreement"). This Addendum is entered into by and between the North Carolina Department of Information Technology ("Agency" or "State") and Workleap Platform Inc. ("Licensor" or "Vendor") as of the date of the last signature entered in the signature block below ("Effective Date"). This Addendum shall constitute the Agreement of the Parties, hereafter referred to as the "Agreement" or "Contract."

Certain terms and conditions are required by applicable North Carolina law and regulation, and are set forth below. Such terms supersede all conflicting terms in the License Agreement from the Effective Date.

The State acknowledges that the License Agreement may include terms and conditions, hyperlinks, or similar references to additional license agreements, and that such additional license agreements address the proprietary and intellectual property rights of third parties for software or software services owned by parties other than the Licensor ("Third Parties"). The Agency further acknowledges that the proprietary and intellectual property rights of the Third Party are subject to a software license agreement. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third Party software and related services offered.

- 1) The License Agreement is modified by this Addendum, and therefore, conflicts arising among the terms of the License Agreement and the terms of this Addendum shall be resolved by the following order of precedence:
 - a) This Addendum and Attachment A,
 - b) The License Agreement (Attachment B), and
 - c) Terms and other documents incorporated by reference in the License Agreement.
- 2) Notwithstanding terms and conditions, hyperlinks, or similar references to additional license agreements of Third Parties presented in the License Agreement, the State shall not be obligated under the License Agreement, or other agreements, to indemnify or hold harmless the Vendor, its licensors, successors or assigns, nor arbitrate any dispute, nor pay late fees, legal fees, termination costs, costs of audits, or other similar costs.

3) SECURITY SPECIFICATIONS

a) Solutions Hosted on State Infrastructure:

Vendors must provide a completed Vendor Readiness Assessment Report State Hosted Solutions ("VRAR") at offer submission. This report is located at the following website:

<https://it.nc.gov/documents/vendor-readiness-assessment-report>

The ShareGate solution will be required to receive and securely manage data that is classified **restricted**.

Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding this data classification. The policy is located at the following

website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>

To comply with the State's Security Standards and Policies, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls.

b) Solutions Not Hosted on State Infrastructure: Reserved.

4) General Modifications to the ShareGate End User License, Maintenance and Support Agreement:

- a) Third Party Software, Open Source Software, and flow down terms: Notwithstanding terms and conditions, hyperlinks, or similar references to additional license agreements of Third Parties presented in License Agreement, the State has no financial obligation or liability to Vendor or such Third Parties under such additional license agreements. The State will not knowingly violate the licensing limitations stated in such additional license agreements.

- b) Clickwrap / universal license by use or installation: Notwithstanding terms of the License Agreement conditioning the license grant upon acceptance of terms when downloading, installing, using, etc. the software (e.g. by using the software, you accept and agree to the terms and conditions of this agreement), such conditions shall not bind the State or its agencies, and such conditions shall be superseded by this Addendum to the License Agreement.
- c) Notwithstanding any payment terms in the License Agreement, the State's payment obligations in its contracts with resellers pursuant to this Agreement shall supersede the payment terms in the License Agreement, and the State shall have no payment obligation to Licensor pursuant to the payment terms in the License Agreement.
- d) IP Indemnity – notwithstanding the Licensor's rights to defend its IP and its obligations to indemnify the State, the State shall have the right to participate in any litigation, alternative dispute resolution and settlement of such claims to the extent the State seeks to assert any immunities or defenses applicable to the State as a sovereign government.
- e) Neither party to this Agreement is entitled to obtain judgment from the other party for attorney fees it has incurred in any litigation between the parties or in defense of any claim asserted by a third party. Either party may seek such equitable relief, reasonable costs and fees as permitted by applicable law. Applicable law, for the purpose of this Agreement and all services shall exclude laws of non-US jurisdictions, including but not limited to the European Union General Data Protection Regulation and its implementation in European Countries.
- f) Notwithstanding any term in the License Agreement prohibiting assignment or transfer of the agreement, transfers authorized by N.C.G.S. §143A-6 are not prohibited or limited.
- g) Notwithstanding any merger clauses in the License Agreement, this Addendum shall be read together with the License Agreement as the agreement of the Parties.
- h) Notwithstanding any term in the License Agreement providing for data transfers, no data or records may be transferred outside of the United States, unless specifically authorized by the State. The State authorizes WorkLeap to provide support services from Canada, as well as authorizes sub-processors Inversoft and Flairstech to process data as set forth in Vendor's sub-processor list available at <https://sharegate.com/sub-processors>.

5) Certain terms and conditions are required by applicable North Carolina law and regulation and are set forth below. Such terms supersede all conflicting terms in the License Agreement from the date of execution set forth below. State Terms and Conditions:

- a) By executing this Addendum, the undersigned Vendor certifies that: the License Agreement and this Addendum are entered without collusion (G.S. 143B-1354; False certification is a Class I felony), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. Furthermore, by executing this Addendum, the undersigned certifies to the best of Vendor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

b) **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.**

In accordance with N.C.G.S. §143B-1361(b), Vendor must identify the manner in which it intends to utilize resources or workers located outside the U.S. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:

The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.

The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors.

Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States.

Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Will any work under this contract be performed outside the United States?

x YES ~~NO~~

- c) E-VERIFY Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

d) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

For purposes of the exclusive remedies and limitations of liability set forth herein, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.

The Vendor's liability for damages to the State arising under the contract shall be limited to the annual value of the Contract. Annual value is defined as the total cost of goods, software and services procured by the State from one or more of Licensor's resellers pursuant to the State's contract.

The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 et seq., the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

For delays in the delivery or successful Product or Software installation, whichever is applicable, Vendor shall have no liability unless the delivery or successful installation date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:

To recover direct costs including replacement Products, if any, attributable to Vendor's delay, and

To cancel the order without incurring cancellation charges.

Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions

- e) TRAVEL EXPENSES: In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in GS §138-6; as amended from time to time.
- f) ACCESS TO PERSONS AND RECORDS: Pursuant to N.C.G.S. § 147-64.7, the State, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any State if, in the State's opinion, such requirement is imposed by federal or state law or regulation. The Vendor shall allow the State to audit conformance including contract terms, system security, and data centers as appropriate. The State may perform this audit or contract with a third party at its

discretion at the State's expense. Such reviews shall be conducted with at least thirty (30) days' advance written notice and shall not unreasonably interfere with the Service Provider's business.

- g) **CONFIDENTIALITY:** In accordance with N.C.G.S. §143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in the NC Public Records Act: N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Materials must be identified as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. Any documents that the State obtains from Vendor's Security Trust Center (<https://security.workleap.com/>) shall be deemed confidential. **However, under no circumstances shall price information be designated as confidential.** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.
- i) The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
 - ii) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.
- h) **ASSIGNMENT:** The Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003, to an Affiliate (as defined under the License Agreement), and this Paragraph. The Vendor shall provide reasonable notice of not less than thirty (30) days of any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement attorning to the terms, conditions, and duties as previously agreed, and the Vendor shall affirm that the assignee is fully capable of performing all obligations of the Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, assignee, and the State setting forth the foregoing obligation of the Vendor and the assignee.
- i) **GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform

Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

- j) **ELECTRONIC PROCUREMENT:** Purchasing shall be conducted through the Statewide E-Procurement Service. The State’s third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of contract, and the payment for goods delivered.

Vendor agrees at all times to maintain the confidentiality of its username and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor’s account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

- 6) Additional NC Department of Information Technology Terms and Conditions for a Software-as-a-Service (Saas) application are attached hereto as Attachment A and hereby incorporated herein.

Executed by authorized officials as set of the day and date indicated below.

North Carolina Department of Information Technology

By: Gregory Flynn

Digitally signed by Gregory Flynn

Date: 2026.06.01 10:14:10 -04'00'

Name: Gregory Flynn

Title: Chief Deputy SCIO

Date: 06/01/2026

Workleap Platform Inc.

By:

Signed by:

Maxine Grenon-Dequoy

AA96015B819B49E...

Name: Maxine Grenon-Dequoy

Title: Account Manager

Date: May 21, 2026

ATTACHMENT A

NC Department of Information Technology Terms and Conditions

SOFTWARE-AS-A-SERVICE (SaaS)

1) DEFINITIONS

- a) "Data" means information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- b) "Deliverable/Product Warranties" shall mean and include the warranties provided for products or deliverables licensed to the State as included in Paragraph 7) c) of these Terms and Conditions unless superseded by the Vendor's Warranties pursuant to the Vendor's License or Support Agreements.
- c) "Services" shall mean the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this solicitation including, without limitation, providing web browser access by authorized users to certain Vendor online software applications identified herein and to related services such as Vendor hosted Computer storage, databases, Support, documentation, and other functionalities, all as a Software as a Service ("SaaS") solution.
- d) "State" shall mean the State of North Carolina, the NC Department of Information Technology as an agency, or the agency identified in this solicitation as the Purchasing State Agency and Award Authority.
- e) "Support" includes provision of ongoing updates and maintenance for Vendor online software applications and, as may be specified herein, consulting, training and other support Services as provided by the Vendor for SaaS tenants receiving similar SaaS Services.

2) ACCESS AND USE OF SAAS SERVICES

- a) The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein) by mutual agreement and State Procurement approval. All Services and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act, N.C.G.S. § 132-1 *et seq.*
- b) The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by the Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. The Vendor has a limited, non-exclusive license to access and use the State Data as provided to the Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.
- c) The Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the

benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to the Vendor's SaaS tenants for similar Services. The Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. The Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.

- d) The Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to certain State users for the fees or costs as set forth herein or in an SLA.
- e) Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.
- f) The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services so long as non-public State Data is not removed from the United States per paragraph 18) b). The Vendor shall identify all of its strategic business partners related to Services provided under this 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 Vendor or will be involved in any application development and/or operations.
- g) The Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner, and in accordance with the Services documentation and this Agreement.
- h) An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.
- i) Intentionally omitted.

3) WARRANTY OF NON-INFRINGEMENT; REMEDIES

- a) The Vendor warrants to the best of its knowledge that:
 - i) The Services do not infringe any intellectual property rights of any third party; and
 - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b) Intentionally omitted: Reserved. (See Attachment B Section 11)
- c) Intentionally omitted: Reserved. (See Attachment B Section 11)
- d) The Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's material alteration of any Vendor-branded Services, or from the continued use of the good(s) or Services after receiving notice they infringe on a trade secret of a third party.

4) ACCESS AVAILABILITY; REMEDIES:

- a) The Vendor warrants that the Services will be in good working order and operating in conformance with the Vendor's standard specifications and functions as well as any other specifications agreed to by the parties in writing and shall remain accessible 24/7 with the exception of scheduled outages for maintenance and of other service level provisions agreed in writing (e.g., in an SLA). The Vendor does not warrant that the operation of the Services will be completely uninterrupted or error free or that the Services functions will meet all the State's requirements unless developed as Customized Services.
- b) The State shall notify the Vendor if the Services are not in good working order or inaccessible during the term of the Agreement. The Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the

applicable Agreement term without cost to the State.

- c) Workleap shall ensure that the Products are available at a monthly uptime percentage of 99.5%. This availability does not account for temporary unavailability of the Products scheduled by Workleap to perform upgrades to, and maintenance of, the Products.

Scheduled Maintenance Window

Friday night 10:00 PM EST to Sunday night 10:00PM EST. Any unavailability of the Products occurring during this Scheduled Maintenance Window will not be accounted for in the availability calculation. This maintenance window will be used by Workleap to implement major changes to the Products (major feature release, important bug fix, etc.).

Ad-hoc Maintenance Window

Any unavailability of the Products during ad-hoc maintenance windows will be accounted for in the availability calculation. These maintenance windows will be used by Workleap to implement minor changes to the Products (minor bug fix, small release, etc.).

In the even that the Products are available at a monthly uptime of less than 99.5%, for three (3) times or more in a quarter, this will be deemed as a material breach, and Customer may terminate the Agreement in accordance with paragraph 12.2(i) of the ShareGate End-User License, Maintenance and Support Agreement.

5) EXCLUSIONS

- a) Except as stated above in Paragraphs 3 and 4, the Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, as to the Services.
- b) The warranties provided in Paragraphs 3 and 4 above do not cover repair for damages, malfunctions, or service failures substantially caused by:
 - i) Actions of non-Vendor personnel;
 - ii) Failure to follow the Vendor's written instructions relating to the Services provided to the State;
 - iii) Force Majeure conditions set forth hereinbelow; or
 - iv) The State's sole misuse of, or its own inability to use, the Services.

6) PERFORMANCE REVIEW AND ACCOUNTABILITY: Reserved.

7) LIMITATION OF LIABILITY: Limitation of Vendor's Contract Damages Liability: Reserved. (See Addendum 5) d))

8) VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, Services, materials or supplies in connection with the performance of this Agreement, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors.
- c) The Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor.

9) MODIFICATION OF SERVICES: If the Vendor modifies or replaces the Services provided to the State

and other tenants, and if the State has paid all applicable Subscription Fees, the State shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to the State for an additional subscription fee. In the event of either of such modifications, the then accessible version of the Services shall remain fully available to the State until the newer version is provided to the State and accepted. If a modification materially affects the functionality of the Services as used by the State, the State, at its sole option, may defer such modification.

10) TRANSITION PERIOD

- a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, the Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, Services access shall continue to be made available to the State without alteration.
- d) The Vendor agrees to compensate the State for damages or losses the State incurs as a result of the Vendor's failure to comply with this Transition Period section in accordance with the Limitation of Liability provisions above.
- e) Upon termination, and unless otherwise stated in an SLA, and after providing the State Data to the State as indicated above in this section with acknowledged receipt by the State in writing, the Vendor shall permanently destroy or render inaccessible any portion of the State Data in the Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, the Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
- f) The State, at its option, may purchase additional Transition services as may be agreed upon in a supplemental agreement.

11) TRANSPORTATION: Transportation charges for any Deliverable sent to the State other than electronically or by download shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State or otherwise specified in the solicitation document or purchase order.

12) TRAVEL EXPENSES: Reserved. (See Addendum 5) e))

13) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES: The Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements with the Vendor. Violations of this provision may result in debarment of the Vendor as permitted by 9 NCAC 06B.1206 or other provision of law.

14) AVAILABILITY OF FUNDS: Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the State for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the State's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is *expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the State will provide written notification to the Vendor. If the Agreement is terminated under this paragraph, the Vendor agrees to terminate any Services supplied to the State under this Agreement and relieve the State of any further obligation thereof. The State shall remit payment for Services accepted on or prior to the date of the aforesaid notice in conformance with the payment terms.

15) PAYMENT TERMS

- a) Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered.

Payment terms are Net 30 days after receipt of a correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the State will be permitted based upon, or arising from, the State's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the

N.C. General Statutes and applicable Administrative Rules.

- b) Upon the Vendor's written request of not less than thirty (30) days and approval by the State, the State may:
 - i) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
 - ii) Include any person or entity designated in writing by the Vendor as a joint payee on the Vendor's payment check(s), however,
 - iii) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.
- c) For any third party software licensed by the Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- d) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date unless the Agency requests more time for review of the invoice. Upon the Vendor's receipt of a disputed invoice notice, the Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software or Services provided without a written purchase order from the appropriate Purchasing State Agency. In addition, all such Services provided must meet all terms, conditions, and specifications of this Agreement and purchase order and be accepted as satisfactory by the Purchasing State Agency before payment will be issued.
- e) The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as the Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.

16) ACCEPTANCE CRITERIA

- a) Initial acceptance testing is required for all Vendor supplied Services before going live unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and the Vendor's technical representations. Acceptance of Services may be controlled by additional written terms as agreed by the parties.
- b) After initial acceptance of Services, the State shall have the obligation to notify the Vendor in writing and within ten (10) days following provision of any Deliverable described in the Agreement if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Deliverable is unacceptable. Acceptance by the State of any Vendor re-performance or correction shall not be unreasonably withheld but may be conditioned or delayed as required for confirmation by the State that the issue(s) in the notice has been successfully corrected.

17) CONFIDENTIALITY: Reserved. (See Addendum Section 5) g))

18) SECURITY OF STATE DATA

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural

event or other eventuality. Proprietary Vendor materials shall be identified to the State by the Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts or State Data except (i) during data center operations; (ii) in response to service or technical issues; (iii) as required by the express terms of this Agreement; or (iv) at the State's written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of the Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing reports, records and other materials.

- b) The Vendor shall not store or transfer non-public State data outside of the United States, except as authorized above in Addendum Section 4, Paragraph h). This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.
- c) Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>), that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by the Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within forty-eight (48) hours of confirmation as required by N.C.G.S. § 143B-1379.
- d) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, and protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services.
- e) The Vendor shall certify to the State:
 - i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
 - ii) That the system used to provide the Subscription Services under this Agreement has and will maintain a valid third party security certification not to exceed one (1) year and is consistent with the data classification level and security controls appropriate for low or moderate information system(s) per the National Institute of Standards and Technology NIST 800-53 revision 4. The State reserves the right to independently evaluate, audit, and verify such requirements.
 - iii) That the Services will comply with the following:
 - (1) Any NCDIT security policy regarding Cloud Computing and the NCDIT Statewide Information Security Policy Manual to include encryption requirements as defined below:
 - (a) The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.
 - (b) For engagements where the Vendor stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest. Examples are Social Security number, date of birth, driver license number, financial data, federal/state tax information, and hashed passwords. The Vendor's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2, Security Requirements. The key location and other key management details will be discussed and negotiated

by both parties. When the Service Provider cannot offer encryption at rest, it must maintain, for the duration of the Agreement, cyber security liability insurance coverage for any loss resulting from a data breach. Additionally, where encryption of data at rest is not possible, the Vendor must describe existing security measures that provide a similar level of protection.

- (2) Privacy provisions of the Federal Privacy Act of 1974;
 - (3) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. §§ 75-65 and -66);
 - (4) The North Carolina Public Records Act, N.C.G.S. Chapter 132;
 - (5) Applicable Federal, State and industry standards and guidelines including, but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines, Criminal Justice Information, The Family Educational Rights and Privacy Act (FERPA); and
 - (6) Any requirements implemented by the State under N.C.G.S. §§ 143B-1376 and -1377.
- f) **Security Breach.** "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60 *et seq.*) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by the Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by the Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.
- g) **Breach Notification.** In the event the Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the Vendor shall, at its own expense (1) promptly notify, but in any case, within 48 hours from discovering the Security Breach, the State's Contract Administrator of such Security Breach and perform a root cause analysis thereon; (2) investigate such Security Breach; (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents; (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
- h) **Notification Related Costs.** The Vendor shall reimburse the State for all reasonable, documented Notification Related Costs incurred by the State directly arising from any such Security Breach due to caused by Vendor's negligence or willful misconduct in performing its obligations under the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's reasonable internal and external costs associated with addressing and responding to the Security Breach including, but not limited to (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of

such other communications to customers, agents or others as the Parties mutually agree is reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training) for a period not to exceed ninety (90) days from the date of the applicable notification; (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications for a period not to exceed twelve (12) months from the date of the applicable notification. The State shall use commercially reasonable efforts to mitigate Notification Related Costs and shall provide Vendor with reasonable documentation of all costs for which it seeks reimbursement. Vendor's aggregate liability for Notification Related Costs under this Section shall be subject to the limitation of liability set forth in Section 7 of the Agreement to the extent allowable by N.C.G.S § 143B-1350(h1). If the Vendor becomes aware of any Security Breach which is not due to Vendor negligence or willful misconduct other than in accordance with the terms of the Agreement, the Vendor shall promptly notify the State of such Security Breach and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.

- i) The Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.
- j) In the course of normal operations, it may become necessary for the Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- k) Intentionally omitted (See Addendum Section 4, Paragraph h)). .
- l) In the event of temporary loss of access to Services, the Vendor shall use its reasonable commercial efforts to promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
- m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, the Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the Purchasing State Agency. The Vendor shall provide such notification within twenty-four (24) hours after the Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, the Vendor shall inform the State of:
 - (1) The scale and quantity of the State Data loss;
 - (2) What the Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
 - (3) What corrective action the Vendor has taken or will take to prevent future State Data and Services loss.
 - (4) If the Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

The Vendor shall investigate the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. The Vendor shall cooperate fully with the State, its agents and law enforcement.

- n) In the event of termination of this Agreement, cessation of business by the Vendor or other event preventing the Vendor from continuing to provide the Services, the Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, and promptly return to the State the State Data and any other State confidential information (including copies thereof) if

requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of the Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), the Vendor will also provide the State any data maps, documentation, software, or other materials necessary including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.

- o) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, and paper). Data shall be permanently deleted and shall not be recoverable according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.

19) ACCESS TO PERSONS AND RECORDS: Reserved. (See Addendum Section 5) f)).

20) ASSIGNMENT: Reserved. (See Addendum Section 5) h)).

21) NOTICES: Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.

22) TITLES AND HEADINGS: Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

23) AMENDMENT: This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and the Vendor.

24) TAXES: The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to the Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.

25) GOVERNING LAWS, JURISDICTION, AND VENUE: Reserved. (See Addendum Section 5) i)).

26) DEFAULT: In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Agreement term fail to conform to any material requirement(s) of the Agreement specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or the Vendor fails to meet the material requirements and specifications herein, the State may cancel the Agreement. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

- a) If the Vendor fails to deliver or provide correct Services within the time required by this Agreement, the State shall provide written notice of said failure to the Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. § 143B-1340(f). The Vendor is responsible for the delays resulting from its failure to deliver or provide Services or other Deliverables.
- b) Should the State fail to perform any of its obligations upon which the Vendor's performance is conditioned, the Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. The Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such Vendor failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure. The Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.

27) FORCE MAJEURE: Reserved. (See Attachment B Paragraph 15.3)

28) COMPLIANCE WITH LAWS: The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and the provision of Services hereunder, including those of federal, state, and local agencies having jurisdiction and/or authority.

29) TERMINATION: Reserved. (See Attachment B Section 12)

30) DISPUTE RESOLUTION: The parties agree that it is in their mutual interest to resolve disputes

informally. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Agreement. If a dispute cannot be resolved between the parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Agreement or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

31) SEVERABILITY: In the event a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

32) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT: The parties agree that the State shall be entitled to any and all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

33) ELECTRONIC PROCUREMENT: Reserved.

ATTACHMENT B

SHAREGATE END USER LICENSE, MAINTENANCE AND SUPPORT AGREEMENT

This ShareGate End User License, Maintenance, and Support Agreement (the “**Agreement**”) governs the use of, and the subscription to, ShareGate and/or the Services (as defined hereunder) provided by Workleap Platform Inc. (“**Workleap**”). By accessing or using ShareGate and/or the Services or by clicking the “I agree” button displayed when prompted to agree with this Agreement during the subscription process of ShareGate, you agree to be bound by the terms and conditions of this Agreement, which include Workleap’s Privacy Policy, the Data Processing Addendum, and the Product-Specific Terms, to the extent applicable, on behalf of yourself as a User and/or, as the case may be, on behalf of the organisation you represent (“**Customer**”), unless you have a superseding written agreement with Workleap.

Workleap agrees to grant Customer the right to use or try ShareGate and the Services only if Customer accepts all terms and conditions of this Agreement, and pays or has paid Workleap, its resellers or agents, all applicable fees.

1. DEFINITIONS AND INTERPRETATION

1.1. The following capitalized terms shall have the meaning ascribed to them below. Other capitalized terms used in this Agreement are defined in the context in which they are used and shall have the meanings ascribed therein.

- (i) “**Affiliate**” means any entity directly or indirectly controlling, controlled by, or under common control with a Party. For the purposes of referring to any Affiliate hereunder, “control” (including the terms “controlling” and “under common control with”) shall mean: (i) the ownership of more than 50% of the equity or beneficial interest of such entity, or the right to vote for or appoint a majority of the board of directors of other governing body of such entity; or (ii) the power to directly or indirectly direct or cause the direction of the management and policies of such entity by any means whatsoever, whether through the ownership of voting securities, by contract, or otherwise;
- (ii) “**B2B Contact Data**” means (i) contact details of Customer personnel which Workleap uses to communicate with Customer in its provision of ShareGate, or (ii) any other Customer contacts which Customer provides or makes available to Workleap in connection with the Agreement and applicable Product-Specific Terms;
- (iii) “**Beta Services**” means Workleap services, products, or functionalities that may be made available to Customer to try at its option at no additional charge, which are clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation,

or by a similar description, and which are still in testing phase and not fully developed or released to the public;

- (iv) **“Confidential Information”** has the meaning set forth in Section 7 of this Agreement.
- (v) **“Customer Data”** means any content, which may include Personal Information of Users, that Customer or Users submit or transfer to Workleap in connection with their use of ShareGate and/or Services;
- (vi) **“Effective Date”** means (i) for a User, the first date a User accessed the Website or ShareGate; or (ii) for a Customer, the last date both Parties signed the Agreement, or the date Customer accepted the Agreement, as the case may be;
- (vii) **“Internal Use”** means use of ShareGate in the internal operations and on the own technological environment of Customer or its Affiliates, including, without limitation, the Customer or its Affiliates’ SharePoint environment. For clarity purposes, “Internal Use” excludes any use of ShareGate for the benefit of a third party (other than an Affiliate of Customer), including, among others, in the context of providing services to such third party;
- (viii) **“Order Form”** means the applicable order form, invoice, executed quote, or other written Workleap-approved ordering document, such as a confirmation email from Workleap, describing the ShareGate Subscription purchased by Customer;
- (ix) **“Microsoft 365”** means the Microsoft 365 platform provided by Microsoft Corporation or its Affiliates;
- (x) **“Party”** means either Workleap or the Customer, and “Parties” means both;
- (xi) **“Personal Information”** has the meaning set out in Privacy Laws whether such term is defined as “personal information”, “personal data,” or similar terms;
- (xii) **“Privacy Laws”** means all applicable data protection and privacy legislation, regulations and guidance governing the protection of Personal Information and Sensitive Personal Information;
- (xiii) **“Privacy Policy”** means Workleap’s Privacy Policy available at <https://sharegate.com/privacy-policy/>;
- (xiv) **“Product-Specific Terms”** means additional terms that apply to ShareGate Migrate and ShareGate Protect, which are found in Schedule 1 hereto, and which form an integral part of the Agreement;
- (xv) **“Related Materials”** means any and all documentation supplied by Workleap under this Agreement, whether in electronic and/or physical formats;
- (xvi) **“Sensitive Personal Information”** has the meaning set out in Privacy Laws whether such term is defined as “sensitive personal information”, “sensitive personal data”, or a similar

term, and may include race, ethnicity, national origin, religious affiliation, sexual orientation or physical or mental disability;

- (xvii) **"ShareGate"** means collectively the suite of technological tools marketed by Workleap as ShareGate Migrate and ShareGate Protect, to which Customer subscribed, whether by subscription or free trial, as referenced in the Order Form;
 - (xviii) **"ShareGate Migrate"** means the downloadable desktop software application available within ShareGate comprising a set of features for SharePoint, Microsoft Teams, Microsoft 365 and email migration, ShareGate's Server Extension, and Related Materials;
 - (xix) **"ShareGate Protect"** means the cloud-based services available within ShareGate that help manage a self-sustained and scalable Microsoft 365 environment;
 - (xx) **"ShareGate Subscription"** has the meaning set out in Section 12 (Term and Termination);
 - (xxi) **"Services"** has the meaning set forth in Section 3 of this Agreement;
 - (xxii) **"Term"** has the meaning set forth in Section 12 of this Agreement;
 - (xxiii) **"User"** means any individual, including an agent, contractor or third-party service provider of the Customer, who accesses or uses ShareGate, the Services, and/or the Beta Services on the Customer's behalf.
- 1.2. The term "including" is not limiting and means "including, without limitation".

2. ACCESS TO AND USE OF SHAREGATE

- 2.1. **ShareGate.** During the Term, Workleap grants to Customer, its Affiliates and their respective Users, the right to access and use ShareGate, and any related Services, in accordance with the Agreement and the applicable Product-Specified Terms.

All rights not specifically granted to the Customer by this Agreement are reserved to Workleap.

- 2.2. **Products and Services Revisions.** Workleap shall offer ShareGate and the Services materially in accordance with the Related Material. Workleap may revise the content, features and functions of ShareGate and the Services at any time without notice. Workleap will provide Customer with prior notice if there is a change to ShareGate resulting in overall material decrease in the purpose of ShareGate. If such material decrease occurs, and Customer is materially impacted in its use of ShareGate, Customer may terminate the Agreement and/or the impacted ShareGate Subscriptions in accordance with paragraph 12.2(i) or Section 12.3, as applicable.
- 2.3. **Temporary Suspension of ShareGate and/or Services.** Workleap may temporarily limit or suspend the availability of ShareGate and/or the Services from time to time, at its discretion, including to perform upgrades to, and maintenance of, ShareGate. Customer may consult at any time Workleap's status page where reasonable notice is given ahead of scheduled maintenance which may affect the availability of ShareGate and/or the Services.
- 2.4. **Customer's Representations.** Customer represents that (i) it is fully authorized to enter into this Agreement and that Customer and any Users are fully authorized to use ShareGate and/or the Services, (ii) it is not domiciled in a country, and its Users are not, subject to sanctions imposed by Canada and/or the United States, including economic sanctions preventing Customer and its

Users from contracting with Workleap and using ShareGate under Canadian, US, and/or international laws.

- 2.5. **Unacceptable Use.** Except in accordance with its rights granted under this Agreement, the Customer shall not: (a) use ShareGate for any other use than for Internal Use or as expressly provided under this Agreement and/or the Product-Specific Terms; (b) provide ShareGate serial codes, password or other product key information to any third party who is not a User; (c) share non-public features or content of ShareGate with any third party who is not a User; (d) access or use ShareGate in order to build a competitive product or service; to build a product using similar ideas, features, functions or graphics of ShareGate; or to copy any ideas, features, functions or graphics of ShareGate; (e) send any viruses, worms, time bombs, trojan horses or other harmful or malicious code, files, scripts, agents or programs; or (f) attempt to gain unauthorized access to, or disrupt the integrity or performance of ShareGate, including by performing penetration testing or by hacking ShareGate. In the event that it suspects any breach of the requirements of this Section 2.5, including without limitation by Users, Workleap may suspend the Customer's ShareGate Subscription, including the License and access to the Services if applicable, without advanced notice, in addition to such other remedies as Workleap may have. This Agreement does not require that Workleap take any action against the Customer or any User or other third party for violating this Section 2.5 or this Agreement, but Workleap is free to take any such action it sees fit.
- 2.6. **Unauthorized Access.** The Customer shall take reasonable measures to prevent unauthorized access to ShareGate, including without limitation by protecting its passwords and other login information.
- 2.7. **Unauthorized Use or Distribution.** Except in accordance with this Agreement or with the rights described under the Agreement and/or the Product-Specific Terms, Customer shall not copy, duplicate, reverse engineer, decompile, decode, decrypt, disassemble, record, alter, merge, adapt, translate, create any derivative works or otherwise reproduce any part of ShareGate, or Confidential Information, nor authorize or attempt to do any of the foregoing, without the prior written consent of Workleap. Any tangible embodiments of ShareGate, including source code of ShareGate and any copies, reproductions, or derivative works thereof, either pursuant to or in violation of this Agreement, will be deemed to be the sole property of Workleap and fully subject to the obligation of confidentiality set forth in Section 7 of this Agreement.
- 2.8. **Compliance with Laws.** In its use of ShareGate, Customer shall comply with all applicable laws.
- 2.9. **Users & Access.** Customer is responsible and liable for: (a) any User's use of ShareGate, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement applicable to Customer; and (b) any use of ShareGate through Customer's account, whether authorized or unauthorized.

3. MAINTENANCE AND SUPPORT SERVICES

- 3.1. **Maintenance and Support Services.** During the Term, Workleap agrees to provide Customer with maintenance and support services, which consist strictly of the following: (i) making available to Customer, via ShareGate, patches, fixes, updates and/or enhancements generally made available to Workleap's customers from time to time, if any, and (ii) technical support, on an as-needed basis for the sole purpose of responding within a reasonable period of time and attempting to address, during normal business hours, technical issues relating to the use of ShareGate, and on-demand technical support meetings when deemed appropriate at the sole discretion of Workleap,

but which exclude any on-site technical support by Workleap personnel, agents or subcontractors (collectively referred to as the “Services”). The Services are further described at <https://help.sharegate.com/en/articles/10236088-contact-our-technical-support-team>, where Customer can also learn how to best get in touch with Workleap’s support team. Without limiting the generality of the foregoing, any requests by Customer for additional features or functionality that fall outside of Workleap’s ongoing updates and/or enhancements of ShareGate are excluded from Maintenance and Support Services.

3.2. **Limitations**

- 3.2.1. Workleap may refuse to provide technical support related to (i) Customer Data; (ii) unauthorized modified portions of ShareGate, or (iii) portions of ShareGate affected by unauthorized modified portions of ShareGate. Customer agrees that the hardware on which ShareGate operates must be operating properly and must have been and continue to be properly maintained by the manufacturer of the hardware or a properly qualified service organization.
- 3.2.2. Corrections for difficulties or defects traceable to Customer’s errors or unauthorized changes, Customer’s hardware, or conflicts with other software not identified by Workleap as compatible or part of the recommended operating environment (as described at <https://help.sharegate.com/en/articles/10236101-install-sharegate-migrate>) are excluded from the Services.
- 3.2.3. Customer is responsible for properly testing and applying routine virus updates and security patches without the need for additional notice by Workleap.
- 3.2.4. Services are provided to Customer with Workleap’s limited internal resources available to help when contacting Workleap in accordance with this Section 3.2. Resource availability may vary and remains at all times at Workleap’s sole discretion. Customer remains at all times sole responsible to implement any advice offered as part of the Maintenance and Support Services.

4. **BETA SERVICES**

From time to time, Workleap may make available to Customer Beta Services for evaluation and testing purposes. Customer hereby acknowledges that Beta Services are provided “as is” and may not be suitable for production use. Beta Services are provided without any implied warranties of fitness for a particular purpose or merchantability, and without any warranty that they will be error-free or will operate without interruption. In the event that Customer chooses to use the Beta Services, Workleap grants to Customer a non-exclusive, non-transferable, revocable, limited right to use the Beta Services, subject to Customer’s acceptance of any additional terms and conditions with respect to the Beta Services, where applicable. Except as specified otherwise in this Section 4, the terms and conditions in this Agreement, including Section 2.5 (Unacceptable Use) and 2.7 (Unacceptable use or Distribution), fully apply to the Beta Services. Workleap reserves the right to terminate or modify the Beta Services at any time and without notice to the Customer. Customer understands and acknowledges that Customer will not, unless otherwise agreed to in writing, receive any payment, compensation or discount for participating in, or for providing any feedback, suggestions, comments, evaluations, or reports with regards to, the Beta Services. Customer agrees and acknowledges that, following termination of the Beta Services, Workleap shall have no obligation to transfer Customer Data to any other Workleap product or service, including with respect to any final release of the Beta Services. Workleap does not offer

any service level agreement with regards to the Beta Services. To the maximum extent permitted by applicable laws, Workleap disclaims all obligations or liabilities with respect to the Beta Services including any support, warranty and indemnity obligations. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, WORKLEAP'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER IN RESPECT OF THE BETA SERVICES WILL BE \$100.

5. FEES

- 5.1. **ShareGate Subscription Fees.** In consideration for the ShareGate Subscription described under Section 2 hereof, Customer shall pay Workleap, at the beginning of the Term, the annual fees specified on the website (<https://sharegate.com/pricing>) for the subscription term selected by Customer, unless other payment terms have been agreed to in writing, for instance in an Order Form, between Customer and Workleap (the "**Subscription Fees**").
- 5.2. **Renewal.** Customer's subscription may be renewed on the first day following the expiration of the Term (the "**Renewal Date**") for the same subscription term as the then expiring subscription term. Workleap shall send to Customer a prior notice of renewal at least 60 days before the Renewal Date, and thus if Customer no longer wishes to renew the ShareGate Subscription, Customer's Subscription will terminate at the end of Term. Unless otherwise agreed in writing by the Parties, the Subscription Fees applicable to any such renewal shall be Workleap's then-current standard Subscription Fees.
- 5.3. **No Refunds.** Except as expressly otherwise provided herein, payments are non-refundable and there are no refunds or credits for partially used periods.
- 5.4. **Overdue Fees.** Workleap shall have the right to suspend the ShareGate Subscriptions and the Services without notice should Customer's invoiced Subscription Fees become overdue. The ShareGate Subscriptions and Services shall be restored within one (1) business day of payment.
- 5.5. **Third-Party Payment Processor.** Workleap reserves the right to use a third-party PCI-DSS compliant payment processor for all billing and receipt of payments hereunder. Customer hereby authorizes Workleap to share payment information, which may include B2B Contact Data, to such third-party payment processor, including for the purpose of updating Customer's payment method.
- 5.6. **Taxes.** Unless otherwise stated, the Subscription Fees do not include any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction (collectively "**Taxes**"). Customer is responsible for paying Taxes except those assessable against Workleap based on its income. It is agreed that the User's address detailed in the Order Form shall be used for Tax purposes, unless the Customer has certified an alternative address to that end in a written statement provided to Workleap. Workleap will invoice Customer for such Taxes if Workleap has a legal obligation to do so, and Customer shall pay such Taxes if so invoiced, or shall provide evidence of a Tax exemption. Workleap reserves the right to charge applicable taxes retroactively if it determines upon review that the tax exemption certificate provided by Customer is invalid or otherwise not compliant.

6. CUSTOMER DATA

- 6.1. **Customer Data.** Customer represents and warrants that it owns or has obtained all necessary rights, title and interest, and obtained all necessary consents to transfer Customer Data in relation with the Agreement and the Product-Specific Terms, as applicable, and that Customer Data

doesn't infringe any third-party intellectual property right and is used in accordance with any labor and privacy laws applicable to Customer.

- 6.2. **Back-Ups.** Customer acknowledges that it is solely responsible for ensuring that adequate back-ups of its Customer Data are made and stored.
- 6.3. **Disclosure of Customer Data.** Unless it receives Customer's prior written consent, Workleap shall not intentionally grant any third-party access to Customer Data, except to Workleap's third-party service providers in connection with the provision, the performance or the improvement of ShareGate. Before sharing any Customer Data with any of its third-party service providers, Workleap will ensure that such third party maintains data practices for maintaining the confidentiality and security of Customer Data and preventing unauthorized access providing a level of protection equivalent or greater than that afforded by this Agreement. Notwithstanding the foregoing, Workleap may disclose Customer Data as required by applicable law or by a lawful order of a governmental authority. Unless prohibited by law or by any court order, Workleap shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.
- 6.4. **Anonymized Data.** Customer grants Workleap a perpetual, irrevocable, worldwide, royalty-free right to create anonymized and/or aggregated data non-related to a specific customer (including, but not limited to, the usage metrics of ShareGate, stack trace data and reports related thereto), which does not constitute Customer Data and is owned by Workleap.
- 6.5. **Data Accuracy.** To the extent permitted by law, Workleap shall have no responsibility or liability for the accuracy of data uploaded or processed by Customer when using ShareGate, including without limitation Customer Data and any other data uploaded or processed by Users.
- 6.6. **Deletion of Customer Data after the Term.** Customer Data that has been archived on Workleap's storage through ShareGate may be retrieved by Customer directly via ShareGate. Customer may also request a copy of such Customer Data up to ninety (90) days after the termination of the Agreement by submitting a written request to Workleap. Customer understands and agrees that Workleap has no obligation of retention of the Customer Data beyond ninety (90) days after the termination of the Agreement, and it is Customer's sole responsibility to obtain a copy of Customer Data archived on Workleap's storage through ShareGate.
- 6.7. **Privacy Policy and Data Processing Addendum.** When using ShareGate, the Services and/or when accessing the Website, including by subscribing to Workleap's newsletter, by downloading content from the Website or by using the Website chatbot, Customer and/or User may transfer to Workleap, and Workleap may collect, access or process, Personal Information, including, when applicable, Customer Data containing Personal Information. Workleap shall collect, access, or process any Personal Information in accordance with the Privacy Policy and Data Processing Addendum (as applicable). The Privacy Policy and the Data Processing Addendum (as applicable) are hereby incorporated by reference and are part of the Agreement.

7. CONFIDENTIALITY

- 7.1. **"Confidential Information"** means all non-public, confidential, or proprietary information disclosed before, on or after the Effective Date, by either Party (a **"Disclosing Party"**) to the other Party (a **"Recipient"**) or its Affiliates, or to any of such Recipient's or its Affiliates' employees, officers, directors, partners, shareholders, agents, attorneys, accountants, or advisors (collectively, **"Representatives"**), including, without limitation, Customer Data and all trade

secrets and other information regarding the features, functioning, security, pricing, sales strategy or marketing strategy of current or future products or services of Workleap, including ShareGate.

The term “**Confidential Information**” as used in this Agreement shall not include information that (a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives; (b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient; (c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, before being disclosed by or on behalf of the Disclosing Party under this Agreement; or (d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

7.2. **Use or Disclosure of Confidential Information.** The Recipient shall (a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information; (b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to fulfill the purpose of this Agreement; and (c) not disclose any such Confidential Information to any person or entity, except to (i) the Recipient's Representatives and (ii) Workleap's third party service providers, who are subject to confidentiality duties or obligations to Workleap that are no less restrictive than under this Agreement, in connection with the providing of ShareGate. Notwithstanding the foregoing, the Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The Recipient shall give the Disclosing Party prompt notice of any such legal or governmental demand and reasonably cooperate with the Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party's expense.

7.3. **Rights to Confidential Information.** Each Party retains its entire right, title, and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to the Recipient or any of its Representatives.

8. **WARRANTIES AND DISCLAIMERS**

8.1. **General Disclaimer.** SHAREGATE IS PROVIDED “AS IS” AND “AS AVAILABLE,” WITH ALL DEFECTS AND ERRORS, IF ANY. SHAREGATE IS SUBJECT TO CHANGE WITHOUT NOTICE. WORKLEAP MAKES NO REPRESENTATIONS AND NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATIONS OR WARRANTIES OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO SHAREGATE. WORKLEAP ASSUMES NO LIABILITY FOR ANY SYSTEM ON WHICH SHAREGATE IS INSTALLED OR FOR ANY CONTENT MANIPULATED BY SHAREGATE.

REGARDLESS OF ANY RECOMMENDATIONS MADE BY SHAREGATE, CUSTOMER REMAINS SOLELY RESPONSIBLE FOR TAKING OR NOT TAKING ACTIONS OR DECISIONS ARISING OUT OF OR IN CONNECTION WITH SHAREGATE AS WELL AS FOR THE CONSEQUENCES THEREOF. CUSTOMER'S USE OF AND RELIANCE UPON SHAREGATE IS AT CUSTOMER'S SOLE DISCRETION AND RISK.

WORKLEAP DOES NOT WARRANT THAT (A) SHAREGATE WILL BE UNINTERRUPTED, TIMELY, DEFECT FREE, BUG FREE AND ERROR FREE; (B) THERE WILL NOT BE ANY HARM TO CUSTOMER COMPUTER SYSTEM, LOSS OF DATA, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION OR OTHER HARM THAT RESULTS FROM CUSTOMER ACCESS TO OR USE OF SHAREGATE; (C) THERE WILL NOT BE ANY DELETION OF, OR FAILURE TO STORE OR TO TRANSMIT, ANY DATA THAT RESULTS FROM CUSTOMER'S ACCESS TO OR USE OF SHAREGATE. CUSTOMER IS RESPONSIBLE TO BACK UP ALL OF ITS DATA AND INFORMATION PRIOR TO, DURING AND AFTER USING SHAREGATE. CUSTOMER ASSUMES ALL COSTS ASSOCIATED WITH ITS USE OF SHAREGATE, INCLUDING, WITHOUT LIMITATION, ANY BACK-UP EXPENSE.

WHEN USING SHAREGATE, IT IS CUSTOMER'S SOLE RESPONSIBILITY TO ENSURE THAT THE CUSTOMER DATA USED WITH SHAREGATE CAN BE USED LAWFULLY IN SUCH MANNER. CUSTOMER UNDERSTANDS THAT SHAREGATE MAY NOT BE APPROPRIATE TO ARCHIVE OR OTHERWISE PROCESS CUSTOMER DATA, INCLUDING SENSITIVE DATA, HEALTH RELATED DATA AND MILITARY DATA.

9. LIMITATION OF LIABILITY

- 9.1. **Dollar Cap.** EXCEPT FOR FRAUD, PHYSICAL INJURY, DEATH, OR INTENTIONAL OR GROSS FAULT OF WORKLEAP, OR FOR THE INDEMNIFICATION FOR INTELLECTUAL PROPERTY INFRINGEMENT REFERRED TO IN SECTION 0 (INTELLECTUAL PROPERTY AND FEEDBACK), IN NO EVENT SHALL WORKLEAP'S AGGREGATE, CUMULATIVE LIABILITY OF PROVEN DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID AND PAYABLE, IF ANY, BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE LAST EVENT GIVING RISE TO LIABILITY. THE PARTIES UNDERSTAND THAT THE ESSENTIAL PURPOSE OF THIS SECTION IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WORKLEAP WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. WORKLEAP HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE THE RIGHTS TO ACCESS AND USE SHAREGATE.
- 9.2. **Exclusion.** IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES, GOODWILL, BUSINESS OR DATA OR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT FOR INTENTIONAL OR GROSS FAULT OF THE PARTY. THE FOREGOING EXCLUSIONS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
- 9.3. **Consultant.** Should Customer hire a consultant to perform services relating to the implementation and the use of ShareGate, Workleap shall have no responsibility in relation to such third-party services.

10. INDEMNIFICATION BY CUSTOMER

Intentionally omitted.

11. INTELLECTUAL PROPERTY AND FEEDBACK

- 11.1. **Intellectual Property Rights.** Workleap warrants that it is the owner of ShareGate and of each and every component thereof or the recipient of a valid license thereto, and that it has and will

maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party.

- 11.2. **No Rights Granted.** Workleap retains all rights, title, and interest in and to ShareGate, and the content Customer accesses through ShareGate, other than Customer Data. This Agreement does not grant Customer any intellectual property rights in or to ShareGate, or in Workleap's logos and other trademarks, except for such rights expressly licensed to Customer hereunder.
- 11.3. **Indemnification for IP Claim.** Workleap will defend Customer against any third-party claim, suit or proceeding arising out of or related to a claim that ShareGate, when used in accordance with this Agreement, infringes or violates any intellectual property right (an "**IP Claim**"). Workleap will indemnify Customer for any costs (including reasonable attorneys' fees) associated with the defense or settlement of and/or damages finally awarded against Customer in any IP Claim. If an IP Claim is made or appears likely to be made, Workleap, at its sole discretion and own expense, will take one or any of the following actions: (a) secure for Customer the right to continue using ShareGate; (b) replace or modify ShareGate to render it non-infringing; or (c) terminate the infringing features of ShareGate and refund to Customer any prepaid fees for such features, in proportion to the portion of the term remaining after such termination. The indemnification obligations in this section are subject to: (i) prompt notification in writing by Customer of any IP Claim (provided however, that the delay or failure to give such notification shall not affect Customer's entitlement to indemnification hereunder, except to the extent that Workleap shall have been prejudiced as a result of such delay or failure) (ii) the transfer of sole control of the defense and any related settlement negotiations to Workleap, unless agreed otherwise by the Parties; and (iii) Customer's cooperation, at Workleap's expense, in the defense of such claim. THIS SECTION STATES WORKLEAP'S SOLE OBLIGATION AND LIABILITY, AND CUSTOMER'S SOLE REMEDY, FOR BREACH OF THE WARRANTY IN SECTION 11.1 AND FOR POTENTIAL OR ACTUAL INTELLECTUAL PROPERTY INFRINGEMENT BY SHAREGATE. NOTWITHSTANDING THE ABOVE, WORKLEAP SHALL HAVE NO LIABILITY TO THE CUSTOMER IF THE INFRINGEMENT ALLEGED IN THE IP CLAIM RESULTS FROM USE OF SHAREGATE IN COMBINATION WITH HARDWARE OR SOFTWARE NOT PROVIDED BY WORKLEAP.
- 11.4. **Feedback.** Any feedback or suggestions sent by Customer or shared by Customer with Workleap to improve ShareGate may be implemented by Workleap. In such case, Customer grants Workleap an unlimited, irrevocable, perpetual, sublicensable, transferable, royalty-free right to use any such feedback or suggestions, excluding any Customer Data or Customer's Confidential Information, for any purpose without any obligation or compensation to Customer.

12. **TERM AND TERMINATION**

- 12.1. **Term.** The Agreement is effective as of the Effective Date, for a period (the "**Term**") ending (i) for Customer, when all subscriptions to ShareGate (each a "**ShareGate Subscription**"), including all renewals of said ShareGate Subscriptions, have expired after being cancelled pursuant to Section 5.2 (Renewal) or until they are terminated by any or both Parties in accordance with Sections 12.2 (Termination – Agreement) or 12.3 (Termination – ShareGate Subscription), as applicable; or (ii) for a User, when the User is no longer accessing the Website or ShareGate. For greater clarity, the Agreement shall remain in force so long as at least one ShareGate Subscription is active.
- 12.2. **Termination – Agreement.** The Agreement may be terminated:
- (i) by the Parties at any time if the other Party materially breaches any of its obligations under the Agreement or the Product-Specific Terms, to the extent applicable. If the

material breach is curable, the Agreement may only be terminated if such breach is not cured within 15 days after a Party provides notice of the breach to the other Party. For clarity purposes, any violation of Section 2.5 (Unacceptable Use) and 2.7 (Unacceptable Use or Distribution) by Customer shall be deemed a material breach of the Agreement;

- (ii) by Workleap if Customer fails to make any payment of the Subscription Fees within 15 days after Workleap provides notice that such amounts are overdue to Customer; or
 - (iii) by either Party for convenience with at least a 90-day prior written notice.
- 12.3. **Termination – ShareGate Subscription.** The conditions applicable to the termination of the Agreement under Section 12.2 (Termination – Agreement) apply equally to the termination of a ShareGate Subscription, with the necessary modifications.
- 12.4. **Termination Fee.** In the event (i) Customer terminates a ShareGate Subscription or the Agreement for convenience under paragraph 12.2(iii) hereof, prior to the expiry of the Term, or (ii) Workleap terminates a ShareGate Subscription or the Agreement for cause under paragraphs 12.2(i) or 12.2(ii) hereof prior to the expiry of the Term, and Customer has not prepaid the total Subscription Fees payable hereunder, Customer shall pay any remaining Subscription Fees that have not yet been paid to Workleap (the “**Termination Fee**”).
- 12.5. **No Refund in the Event of Termination.** Section 5.3 (No Refunds) (i) applies, regardless of the cause of termination. However, if Customer has terminated the Agreement pursuant to paragraph 12.2(i) or a ShareGate Subscription pursuant to Section 12.3 (Termination – ShareGate Subscription), or if Workleap has terminated the Agreement pursuant to paragraph 12.2(iii) or a ShareGate Subscription pursuant to Section 12.3 (Termination – ShareGate Subscription), Workleap shall refund prepaid Subscription Fees prorated for the remainder of the unused Term. WHERE QUEBEC LAW APPLIES, CUSTOMER HEREBY EXPRESSLY WAIVES ITS RIGHTS UNDER ARTICLES 2125 TO 2129 OF THE CIVIL CODE OF QUEBEC.
- 12.6. **Survival.** Any rights and obligations of the Parties hereunder that by their nature are reasonably intended to survive termination or expiration of the Agreement, shall survive termination or expiration of the Agreement including Sections 2.5 (Unacceptable Use), 2.7 (Unauthorized Use or Distribution), 7.2 (Use or Disclosure of Confidential Information), 8 (Warranty Disclaimers), 9 (Limitation of Liability), 10 (Indemnification by Customer), 10 (Intellectual Property and Feedback), 12 (Term and Termination) and 15 (General) shall survive termination of the Agreement.

13. **LIMITATIONS ON TRANSFER**

Neither Party shall assign or transfer this Agreement or its respective interests, rights or obligations hereunder, and any purported assignment or transfer shall be null and void. Notwithstanding the foregoing, either Party may assign or transfer this Agreement and any rights granted thereunder to an Affiliate; provided that such Affiliate agrees in writing to be bound by the terms of this Agreement.

14. **RELATION OF PARTIES**

Nothing in this Agreement will create or imply an agency relationship between Workleap and Customer, nor will this Agreement be deemed to constitute a joint venture or partnership between the Parties.

15. **GENERAL**

- 15.1. **Governing Law.** This Agreement is governed, construed, and enforced in accordance with the laws of the State of North Carolina.
- 15.2. **Jurisdiction and Venue.** The Parties agree that any litigation in any way relating to this Agreement shall be brought and venued exclusively in an appropriate federal or state court in Wake County, North Carolina, USA if Customer is located outside of Canada, and waives any objection that such venue is inconvenient or improper. If Customer is a governmental or public entity, this Section 15.2 will not apply to Customer only to the extent Customer's jurisdiction's laws prohibit Customer from accepting the requirements in this section.
- 15.3. **Force Majeure.** Except as expressly provided otherwise in this Agreement, dates and times by which a Party is required to render performance under this Agreement shall be automatically postponed to the extent and for the period of time that such Party is prevented from meeting them by reason of an unforeseeable and irresistible event, including external causes with the same characteristics, provided the Party so prevented promptly notifies the other Party of the commencement and nature of such event or cause and the probable consequences thereof.
- 15.4. **Time of the Essence.** Time is of the essence of this Agreement and of every part thereof.
- 15.5. **Entire Agreements. Reserved.**
- 15.6. **Waiver.** No waiver by either Party of any default in performance on the part of the other Party will constitute a waiver of any subsequent breach or default by the defaulting Party.
- 15.7. **Notices.** Workleap may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received 72 hours after they are sent. Customer may send notices pursuant to this Agreement to Workleap at sales@sharegate.com and such notices will be deemed received 72 hours after they are sent.
- 15.8. **Assignment & Successors.** The Agreement will be binding upon and inure to the benefit of the Parties' respective successors and assigns.
- 15.9. **Severability.** To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 15.10. **Conflicts.** In the event of any conflict between this Agreement and any Workleap policy posted online, including without limitation Privacy Policy, the terms of this Agreement will govern.
- 15.11. **Technology Export.** Customer shall not permit any third party to access or use ShareGate or the Services in violation of any Canadian law or regulation, or the laws or regulation of the jurisdiction in which ShareGate or the Services were procured. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use ShareGate in, or export such products or services to, a country subject to an embargo by Canada, the United States of America or by the jurisdiction in which ShareGate or the Services were procured (each a "**Restricted Country**"). Customer hereby represents that they are not located in a Restricted Country and that they shall not cause ShareGate or the Services to be used or accessed in a Restricted Country.
- 15.12. **Inappropriate Conduct.** Customer, its Users and Workleap recognize the right of employees to work in an environment free from harassment, including sexual harassment and discrimination. The Parties shall not, and they shall ensure that their respective employees, agents and

representatives shall not, engage in any conduct that creates an intimidating, hostile or offensive work environment. Where an allegation of inappropriate conduct, harassment or discrimination is received in connection to this Agreement, the Parties agree to cooperate in order for the matter to be investigated on a priority basis. A breach of this section shall be deemed a material breach of the Agreement.

- 15.13. **Consumer Protection Law.** ShareGate is a workplace tool intended for use by businesses and organizations and not for consumer purposes. To the maximum extent permitted by law, consumer protection laws do not apply.
- 15.14. **Anti-Money Laundering, Anti-Bribery, and Anti-Modern Slavery Laws.** The Parties agree to comply with any anti-money laundering laws and regulations, anti-bribery laws and regulations, and anti-modern slavery legislation that are applicable to and binding upon the respective Party. This may include, but is not limited to, (a) the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada), the Money Laundering Control Act (United States) and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (United Kingdom); (b) the Corruption of Foreign Public Officials Act (Canada), the Foreign Corrupt Practices Act (United States), and the Bribery Act 2010 (United Kingdom); and (c) the Modern Slavery Act 2015 (United Kingdom) and the Fighting Against Forced Labour and Child Labour in Supply Chains Act (Canada). The Parties acknowledge that these laws and regulations are subject to change and agree to promptly update their compliance programs to reflect any changes. The Parties further agree to reasonably cooperate with each other and with any regulatory authorities in connection with any investigation or inquiry related to anti-money laundering, anti-bribery and anti-modern slavery laws and regulations.

16. **MODIFICATION OF AGREEMENT**

This Agreement may only be amended, modified, altered, or otherwise supplemented by written instrument executed by the authorized representative of both Parties.

Schedule 1 – Product-Specific Terms

SHAREGATE MIGRATE

Your use of ShareGate Migrate is subject to the terms of the Sharegate End User License, Maintenance and Support Agreement (the “**Agreement**”) as well as the following additional terms (the “**Migrate Terms**”). Any capitalized terms used but not defined below have the meanings ascribed to them in the Agreement.

1. DEFINITIONS AND INTERPRETATION.

- (i) “**Customer Data**” has the definition ascribed to it in the Agreement and also includes data in electronic form that is managed, to be managed, migrated or to be migrated by Customer using the Migration Tool, including without limitation by Customer’s employees;
- (ii) “**ShareGate Migrate License**” has the meaning ascribed to it in Section 2.2 of the Migrate Terms.
- (iii) “**ShareGate Migrate Trial License**” has the meaning ascribed to it in Section 2.1 of the Migrate Terms.
- (iv) “**Machine Activation**” means one (1) use of the license key by an individual User to access the ShareGate Migrate solely on one (1) specific machine.
- (v) “**System Requirements**” means the minimum system specifications, including the prerequisite hardware components and software resources required to be present on a computer for installation of the Migration Tool, as published on Workleap’s website and updated from time to time (<https://help.sharegate.com/en/articles/10236101-install-sharegate-migrate>) ;
- (vi) “**Third-Party License**” has the meaning ascribed to it in 2.4 of the Migrate Terms.

2. LICENSE

- 2.1. **ShareGate Migrate Trial License.** If the ShareGate Subscription for ShareGate Migrate is a trial version, this Section 2.1, and not Section 2.2, shall apply. Subject to the provisions of the Agreement, Workleap hereby grants to Customer a limited, revocable, non-perpetual, non-exclusive, non-transferable object code license to review, test, and evaluate ShareGate Migrate for its Internal Use for the duration specified on Workleap’s website when ShareGate Migrate is installed (the “**ShareGate Migrate Trial License**”).
- 2.2. **ShareGate Migrate License.** If the ShareGate Subscription for ShareGate Migrate is not a ShareGate Migrate Trial Version, this Section 2.2, and not Section 2.1, shall apply. Subject to the provisions of this Agreement as well as the payment of all applicable fees for the term of such License, Workleap hereby grants to Customer a revocable, non-perpetual, non-exclusive, non-transferable object code license to use the ShareGate Migrate for its Internal Use for the period purchased by Customer (the “**ShareGate Migrate License**”).
- 2.3. **Machine Activation.** The ShareGate Migrate License is a per-activation license. Customer may only activate the number of Machine Activations it has purchased and is responsible for coordinating the activation and deactivation of the license key to permit Users to use ShareGate Migrate in accordance therewith. For the avoidance of doubt, (a) Customer may transfer a license

key from one User to another at no additional charge so long as Customer does not exceed the total number of Machine Activations, and (b) mere installation of ShareGate Migrate does not count toward the number of activations.

- 2.4. **Third-Party License.** Notwithstanding Section 2.3, Customer may purchase and use a License for the benefit of one third party other than Customer but may only use such License for the benefit of that very specific third party (a **“Third-Party License”**). Customer acknowledges and accepts that it may never use the Third-Party License for its own benefit and that it may never use the Third-Party License or allow the Third-Party License to be used for the benefit of any other third party than the one for which the Third-Party License was purchased for by Customer.

3. CUSTOMER'S OBLIGATIONS FOR MAINTENANCE AND SUPPORT SERVICES

- 3.1. **Current Version.** Customer must update the Migration Tool in its entirety to the most recent released version. In order to provide technical support, Workleap may request that Customer update the Migration Tool to the most recent released version.
- 3.i.1. **System Requirements.** Customer agrees that, subject to Customer's internal policies, it will upgrade its hardware, computer operating system and software to meet the changing System Requirements as specified by Workleap in the support documentation published on its website (<https://help.sharegate.com/en/articles/10236101-install-sharegate-migrate>). The Parties agree that Workleap is bound by no obligation to ensure that ShareGate is compatible with other components than those specified in the System Requirements, nor to ensure that new releases of ShareGate are compatible with versions of any required computer operating system or software exceeding three (3) years from the date of their respective releases.

4. CUSTOMER DATA

- 4.1. Customer grants Workleap the right to access, use, process, copy, distribute, export and display Customer Data, only to the extent permitted by law and as necessary during the Term (a) to prevent or address service, security, support or technical issues; (b) to comply with Customer's express instructions; or (c) to comply with a valid legal request. Notwithstanding the foregoing, Workleap shall have the right to retain any residual backup copies of Customer Data made in the ordinary course of business until it is deleted, in accordance with Workleap's retention rules, provided such copies shall be used only for the purposes permitted hereunder, and for no other purpose.

5. TERMINATION

- 5.1. Upon termination of this Agreement or a ShareGate Subscription to ShareGate Migrate by either Party, Customer must permanently delete all copies of the ShareGate Migrate under its control or in its possession, and upon request by Workleap, must provide a written confirmation of such deletion. The ShareGate Subscription for ShareGate Migrate, including the ShareGate Migrate License, shall be immediately revoked upon termination of the Agreement, and all rights and obligations of Customer shall be extinguished, except for such rights and obligations which are meant to survive due to their nature or as expressly provided for under the Agreement.

SHAREGATE PROTECT

Your use of ShareGate Protect is subject to the terms of the Sharegate End User License, Maintenance and Support Agreement (the “**Agreement**”) as well as the following additional terms (the “**Protect Terms**”). Any capitalized terms used but not defined below have the meanings ascribed to them in the Agreement.

1. DEFINITIONS AND INTERPRETATION.

- (ii) “**API Security Tokens**” has the meaning ascribed to it in Section 3.1 of the Protect Terms;
- (iii) “**Customer Data**” has the definition ascribed to it in the Agreement and also includes data that Customer or Customer’s Microsoft 365 group owners transfer to Workleap in conjunction with ShareGate Protect;
- (iv) “**ShareGate Protect Access**” has the meaning ascribed to it in Section 2.2 of the Protect Terms.
- (v) “**ShareGate Protect Trial Access**” has the meaning ascribed to it in Section 2.1 of the Protect Terms.
- (vi) “**Tenant Activation**” means activation of ShareGate Protect on one (1) Microsoft production tenant.

2. ACCESS TO SHAREGATE PROTECT

- 2.1. **ShareGate Protect Trial Access.** If the ShareGate Subscription for ShareGate Protect is a trial version, this Section 2.1, and not Section 2.2, shall apply. Subject to the provisions of the Agreement, Workleap hereby grants to Customer the right to access and use the ShareGate Protect to review, test, and evaluate ShareGate Protect for its Internal Use for the duration specified on Workleap’s website when ShareGate Protect is made available to Customer (the “**ShareGate Protect Trial Access**”).
- 2.2. **ShareGate Protect Access.** If the ShareGate Subscription for ShareGate Protect is not a ShareGate Protect Trial Access, this Section 2.2, and not Section 2.1, shall apply. Subject to the provisions of this Agreement as well as the payment of all applicable fees for the term of such access, Workleap hereby grants to Customer the right to access and use ShareGate Protect for its Internal Use for the period purchased by Customer (the “**ShareGate Protect Access**”).
- 2.3. **Number of End-Users and Tenants.** ShareGate Protect is limited to be used by only one Microsoft production tenant. However, for each Tenant Activation, Customer is allowed to have up to the number of Microsoft 365 admin authorized by the Customer’s ShareGate Subscription. If Customer wishes to increase the number of Microsoft production tenants, Customer must purchase a new ShareGate Subscription for ShareGate Protect.

3. USE OF SHAREGATE PROTECT

- 3.1. **Access granted by Customer.** Customer understands and agrees that in order for Workleap to perform ShareGate Protect, Workleap must be granted access to Customer’s Microsoft 365 SharePoint Online, Microsoft Azure Directory and Microsoft Graph and that Workleap will host the security tokens to access those APIs (the “**API Security Tokens**”). Customer confirms that it has granted such access to Workleap. Customer understands and agrees that this access includes

the access to the content of the files stored by Customer in its Microsoft 365 tenant, although Workleap does not intend to access such content. Workleap has implemented technical, organizational and administrative systems, policies, and procedures to mitigate the risk of unauthorized access to, or use of, Customer's Microsoft 365 environment.

- 3.2. **Services ShareGate Protect.** Workleap may revise the content, features and functions of the ShareGate Protect at any time without notice.
- 3.3. **Technical Limitations.** Due to the architecture of ShareGate Protect and to the nature of information necessary for the Services to work as intended, access to and use of the Services may be limited for certain use cases. Such technical limitations are posted and further detailed at <https://documentation.sharegate.com/hc/en-us/articles/14560968978836>. Workleap shall periodically update information about technical limitations.

4. CUSTOMER DATA

- 4.1. **Use of Customer Data.** Customer grants Workleap the right to access, use, process, copy, distribute, export and display Customer Data, only to the extent permitted by law and as necessary during the Term (a) to provide, maintain and improve ShareGate Protect; (b) to prevent or address service, security, support or technical issues; (c) to comply with Customer's express instructions; or (d) to comply with a valid legal request. Notwithstanding the foregoing, Workleap shall have the right to retain any residual backup copies of Customer Data made in the ordinary course of business until it is deleted, in accordance with Workleap's retention rules.

5. ADDITIONAL WARRANTIES AND DISCLAIMERS

- 5.1. **Availability of the Services.** Customer acknowledges the technical limitations described in Section 3.3 hereof and accepts that ShareGate Protect may be limited, inaccessible or unavailable because of such technical limitations. Workleap is not responsible if ShareGate Protect is unavailable because of technical limitations described in Section 3.3 hereof and Customer is responsible for ensuring that there are no technical limitations preventing their intended use of ShareGate Protect.
- 5.2. **Performance Disclaimer.** The speed of operations performed using the ShareGate Protect may vary depending on a variety of factors, including Customer's Internet connexion. Workleap does not warrant that operations (including copies) performed using the ShareGate Protect will be faster than operations performed using the ShareGate Migrate.
- 5.3. **Storage.** IN ORDER FOR WORKLEAP TO PROVIDE SHAREGATE PROTECT, WORKLEAP NEEDS AND REQUIRES FULL CONTROL OF THE CUSTOMER'S OWN STORAGE. TO THAT END, WORKLEAP RECOMMENDS THE USE OF A DEDICATED STORAGE WHEN CUSTOMER USES SHAREGATE PROTECT.

Failure Caused by Microsoft 365, Windows Azure Active Directory and Microsoft Graph.

Workleap relies on Microsoft 365, Windows Azure Active Directory and Microsoft Graph to perform the Services. Without limiting Section 8 (Warranties and Disclaimers) of the Agreement, Workleap is therefore not responsible if a failure to perform the ShareGate Protect is caused by a default of Microsoft 365, Windows Azure Active Directory or Microsoft Graph.