

MASTER INTERLOCAL AGREEMENT FOR SaaS PARTICIPATION IN TECHSHARE

1. Recitals

- 1.1. TechShare is a program whereby Local Governments and state agencies may realize economies of scale by jointly developing, procuring, operating, maintaining, and enhancing information technology projects and resources.
- 1.2. The undersigned Local Governments and state agencies and any and all other Local Governments and agencies of the State of Texas or another state adopting this Agreement may be referred to in this Agreement individually as "Subscriber" and collectively as "Subscribers."
- 1.3. TechShare is facilitated by TechShare Local Government Corporation ("TechShare LGC") through this Agreement.
- 1.4. Local Governments and state agencies have the ability to realize substantial savings by jointly planning, developing, procuring, operating or maintaining information technology projects and resources necessary to conduct business for their citizenry.
- 1.5. Local Governments and state agencies approving this Agreement by formal action of their respective governing bodies desire to share the operation and/or maintenance one or more information technology resources on a subscription basis.
- 1.6. This Agreement, including all addenda, exhibits and attachments hereto, set forth the rights and responsibilities of the Subscribers in their joint endeavor(s).
- 1.7. Each of the Subscribers finds that its payments for services performed pursuant to this Agreement may be made from current revenues that are readily available only for payments that are due in the then-current fiscal year.
- 1.8. The Subscribers each find that the amount paid for the services performed under this Agreement fairly compensates the performing party;
- 1.9. The Subscribers, acting by and through their respective governing bodies, individually and collectively, do hereby adopt and find the foregoing premises as findings of said governing bodies.
- 1.10. In consideration of the promises, inducements, covenants, agreements, conditions and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Subscribers and TechShare LGC agree as follows:

2. Definitions

- 2.1. For purposes of this Agreement and all other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment, or addendum, the following terms shall have the meaning prescribed to them within this section 2 (Definitions), unless the context of their use dictates otherwise. Other terms used in this Agreement

- that are not defined herein, but defined in any of the other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment, addendum or associated document, shall have the same meaning herein as in such other documents
- 2.2. "Evergreening" means the process of refreshing software and hardware with new or updated versions to extend the lifecycle of Resources in a cost-effective manner.
 - 2.3. "Intellectual Property" means documented or undocumented knowledge, creative ideas, or expressions of human mind that have commercial (monetary) value and are protectable under copyright, patent, service mark, trademark, or trade secret laws from imitation, infringement, and dilution.
 - 2.4. "Local Government" has that meaning assigned to it by Texas Government Code § 791.003.
 - 2.5. "Participants" means both Stakeholders and Subscribers.
 - 2.6. "Resource" means Intellectual Property, personal property, services or knowledge acquired or developed by, or made available to, Subscribers through TechShare.
 - 2.7. "SaaS Addendum" means an addendum to this Agreement entered into by TechShare LGC and one or more Subscribers for the Subscribers' use of a Resource.
 - 2.8. "SaaS Fee" means the amount paid by a Subscriber for use of a Resource. Each periodic SaaS Fee covers the costs of operating and maintaining the functionality of a Resource, including Evergreening and modifications necessary to address changes in applicable laws, rules or regulations.
 - 2.9. "Software as a Service" or "SaaS" means a software delivery model in which the software is obtained on a subscription basis.
 - 2.10. "Stakeholder" means an entity sharing a Resource other than a Subscriber.
 - 2.11. "Subscriber" means an entity sharing a Resource through a SaaS model.

3. Agreement Supervision and Administration

- 3.1. In addition to providing services as specified in each SaaS Addenda, TechShare LGC will administer this Agreement and may enter into one or more contracts for administrative services as authorized by Tex. Gov't Code § 791.013. Administrative services include:
 - 3.1.1 administering all contracts, procedural documents, manuals, and other guidelines pertaining to the management of each Resource;
 - 3.1.2 providing information to Subscribers and potential Subscribers to increase awareness of TechShare and the opportunities for sharing and collaboration therein;

- 3.1.3 rendering invoices, receiving funds, establishing and maintaining appropriate accounting records, establishing and utilizing an appropriate cost accounting system, and managing accounts receivable;
 - 3.1.4 serving as the communication and distribution center for information related to TechShare;
 - 3.1.5 reviewing and making recommendations on all contracts;
 - 3.1.6 acting as a liaison with federal and state agencies and responding to their inquiries;
 - 3.1.7 computing and providing billings for participation;
 - 3.1.8 filing required forms and reports with state and other governmental agencies;
 - 3.1.9 assisting a Subscriber's auditor and actuary as necessary;
 - 3.1.10 coordinating banking functions and handling deposits and reconciliations;
 - 3.1.11 forming or administering committees.
- 3.2. TechShare LGC shall have the authority to conduct procurement functions and enter into contracts with one or more vendors as may be deemed necessary to carry out the purposes of this Agreement and to effectively manage each Resource.
- 3.2.1. All contracts approved by TechShare LGC with vendors will be exclusively between TechShare LGC and the selected vendors.
 - 3.2.2. TechShare LGC is prohibited from binding any Subscriber to any obligations arising from contracts between TechShare LGC and third-party vendors regarding goods or services, unless expressly approved by a Subscriber's governing body.
- 3.3. This Agreement does not grant to any Subscriber equity rights in any of the assets or property of TechShare LGC unless specifically provided for herein.
- 3.4. The Subscribers intend that TechShare LGC shall operate only within the scope herein set out and have not herein created, as between the Subscribers, any relationship of surety, indemnification, or responsibility for the debt of or claims against any other Subscriber. Nor is such a relationship created between any Subscriber or group of Subscribers and TechShare LGC.
- 3.5. The Subscribers have not, by entering into this Agreement, assumed, in any manner, any liability for the debts of, or claims against, TechShare LGC.
- 3.6. TechShare LGC will not be financially liable to Subscribers for the performance or function of any Resource. In the event of non-performance of a Resource, TechShare LGC will make best efforts within the applicable budget to correct the non-performance.

- 3.7. In addition to SaaS Fees, Subscribers may be required to pay implementation costs for a Resource. Implementation costs will be unique to each Subscriber and will not be shared with other Subscribers.
- 3.8. All SaaS Fees, implementation costs, and other fees or charges assessed by TechShare LGC are payable in advance of services being rendered.
- 3.9. Installation or implementation of a Resource will only be done by TechShare staff or TechShare contractors.

4. Ownership of Data

- 4.1 When use of a Resource involves the shared storage of data or the shared access to data of Participants and other entities, the data remains the property of the Participant or entity that created or submitted the data, unless otherwise provided in the applicable SaaS Addendum.
- 4.2 Information or other data of a Participant shall not be used by the other Participants other than in connection with the performance of this Agreement and the applicable SaaS Addendum, or another similar agreement in the case of Stakeholders.
- 4.3 Information or other data of a Participant shall not be disclosed, sold, assigned, leased or otherwise provided to third parties, or commercially exploited by or on behalf of any other Participant, their employees, officers, agents, subcontractors, invitees, or assigns in any respect.
- 4.4 In the event a Participant receives a request for information or other data belonging to another Participant or entity, the Participant receiving the request must promptly notify the requestor that the Participant receiving the request is not the custodian of the requested information or data.
 - 4.4.1 A copy of the request must be forwarded to TechShare LGC within 24 hours of receipt.
- 4.5 Each Participant shall contractually bind other entities with access to information or data through the Participant to observe the same restrictions on the use and disclosure of information and data belonging to other Participants or entities, and the requirement to send requests for information and data belonging to other Participants or entities to TechShare LGC.
- 4.6 It is the intention of the Participants that the custodian(s) of data in the event such custodian(s) did not share a Resource will remain the custodian(s) of such information and data, unless an applicable SaaS Addendum provides otherwise.

5. Warranties

- 5.1. **NO PARTY TO THIS AGREEMENT WARRANTS THE AVAILABILITY, ACCURACY, QUALITY, RELIABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY RESOURCE OR DATA ACCESSIBLE THROUGH A RESOURCE.**

- 5.2. **THIRD PARTY WARRANTIES OR GUARANTEES MAY INURE TO THE BENEFIT OF THE PARTICIPANTS TO A PARTICULAR RESOURCE IF SUCH ARE CONTRACTUALLY SECURED AS PART OF SUCH RESOURCE, AS SET FORTH IN THE APPROPRIATE ADDENDUM. NO PARTY TO THIS AGREEMENT SHALL BE HELD LIABLE FOR A WARRANTY OR GUARANTEE OFFERED BY A THIRD PARTY.**
- 5.3. **ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED BY ALL PARTIES TO THIS AGREEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**

6. Notice

- 6.1. Any and all notices to be given under this Agreement by a Subscriber or TechShare LGC shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or certified mail, return receipt requested, postage pre-paid, to the address set forth on the signature page of the intended recipient.
- 6.2. A Subscriber may change its address for receiving notification under this Agreement by providing written notice of the change of address to TechShare LGC.
- 6.3. TechShare LGC may change its address for receiving notification under this Agreement by providing written notice of the change of address to all Subscribers.
- 6.4. Any notice required hereunder shall be deemed to have been given three (3) days subsequent to the date it was placed in the United States mail, postage pre-paid.

7. Amendment

- 7.1. This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by all Participants.
- 7.2. Any modification, alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

8. Current Revenue

- 8.1. The Parties warrant that all payments, expenditures, contributions, fees, costs, and disbursements, if any, required of it hereunder or required by any other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment,

addendum or associated document, shall be paid from current revenues available to the paying Party.

8.2. The Parties warrant that no debt is created by this Agreement.

9. Binding Agreement, Authority, Parties Bound

9.1. This Agreement has been duly executed and delivered to all parties and constitutes a legal, valid and binding obligation of the Parties.

9.2. This Agreement may be executed in multiple counterparts. Each person executing this Agreement on behalf of each Party represents and warrants that they have full right and authority to enter into this Agreement.

10. Applicable Law

10.1. This Agreement shall be expressly subject to the Subscribers' sovereign immunity and other governmental immunity and all applicable federal and state law.

10.2. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

11. Severability

In the event that one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in force and effect.

12. Assignment

No Subscriber may assign its rights and duties under this Agreement without the prior written consent of TechShare LGC. Any assignment attempted without such prior consent shall be null and void.

13. Full Agreement

13.1. This Agreement, standing alone, does not grant any rights, or bind any Party, to any obligations.

13.2. Only upon execution of a SaaS Addendum will a Subscriber have any rights or obligations pursuant to this Agreement.

13.3. This Agreement and any SaaS Addenda executed by a Subscriber shall contain the entire understanding of the Parties with respect to that Subscriber regarding participation in TechShare.

13.4. Each Subscriber acknowledges that the other Participants, or anyone acting on behalf of the other Participants, and TechShare LGC have made no representations, inducements, promises or agreements, orally or otherwise, unless such representations, inducements, promises or agreements are embodied in this Agreement, expressly or by incorporation.

14. Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be and shall be construed as an original, and all of which shall constitute and be construed as a single agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DUPAGE COUNTY

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

Title: _____

TECHSHARE LGC

BY: _____

Title: Executive Director

Date: _____

Name and Address for Purposes of Notice:

Executive Director
TechShare Local Government Corporation
500 W. 13th Street
Austin, TX 78701