

## MASTER AGREEMENT

This MASTER AGREEMENT ("Agreement") is made and entered into as of February 15, 2019 ("Effective Date") by and between Cayuse, LLC, a Delaware limited liability company located at Portland Oregon ("Cayuse"), and Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas, a Non-Profit located at College Station ("Customer"). Cayuse and Customer are each referred to herein as a "Party" and are collectively referred to herein as the "Parties." In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

### 1. ORDERING

Pursuant to this Agreement, Customer may order from Cayuse (a) licenses to access and use one or more of Cayuse's proprietary research administration and grant management software solution modules to be hosted and made available by Cayuse on a software-as-a-service basis, including related APIs (the "Subscription Service"), and/or (b) related training, implementation and/or other professional services (collectively, "Professional Services"). The specifics of each Customer order will be set forth on one or more written or electronic quotations, order form(s) and/or other documents provided by Cayuse (each, an "Order Form") that reference this Agreement and are agreed upon by both Parties. Any Customer Affiliate (as defined below) may enter into an Order Form with Cayuse under this Agreement and, solely with respect to such Order Form, such Customer Affiliate shall become a party to this Agreement and all references to Customer in this Agreement shall be deemed to refer to such Customer Affiliate. Each Order Form is a separate obligation of Customer or the Customer Affiliate, as applicable, and no other Customer Affiliate has any obligation related to, or right to access, the Subscription Service under such Order Form. For purposes of this Agreement, a "Customer Affiliate" shall mean any party that (i) directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Customer; or (ii) is part of an affiliated education system or group of educational institutions with Customer. All Order Forms are incorporated herein by reference.

### 2. SUBSCRIPTION SERVICE ACCESS, SUPPORT AND RESTRICTIONS

2.1 License to Subscription Service. Subject to the terms and conditions of this Agreement and the payment of all applicable Fees (as defined below), Cayuse hereby grants Customer a limited, non-transferable, non-sublicensable, non-exclusive license, during the Subscription Term (as defined below), to permit any of Customer's user(s) who are authorized by the Customer and Cayuse to use the Subscription Service ("End Users") to access and use the Subscription Service solely for Customer's internal business purposes.

2.2 Limitations on License. Customer shall not: (a) modify or make derivative works based on the Subscription Service; (b) use the Subscription Service in a manner not authorized under the documents, agreements, user manuals and any technical publications and specifications, as applicable, made generally available by Cayuse to customers relating to the operation and use of the Subscription Service ("Documentation") or in violation of any applicable law, rule or regulation, including any export/import laws; (c) distribute, transfer, grant sublicenses, or otherwise make available the Subscription Service (or any portion thereof) to other than End Users, including, but not limited to, making the Subscription Service available as an application service provider, service bureau, or rental source; (d) remove any product identification or other notices contained in the Subscription Service; or (e) reverse engineer the Subscription Service for any reason or access the Subscription Service to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions, or graphics of the Subscription Service, or (iii) copy any ideas or features. The Subscription Service is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Subscription Service is provided to U.S. Government End Users (i) only as a commercial end item and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

2.3 Support and Maintenance. Cayuse will provide support and maintenance services for the Subscription Service in accordance with the Cayuse Maintenance and Support Policy attached hereto as Appendix 1

("Support Services").

2.4 Unauthorized Access. Customer shall promptly notify Cayuse of any unauthorized use, copying or disclosure of the Subscription Service of which it becomes aware and further agrees to take such commercially reasonable measures necessary to end and prevent any such further use, copying and disclosure.

2.5 Breach of License. Cayuse, in its sole and exclusive discretion, may immediately terminate this Agreement in the event Customer or any End User violates the license grants made herein or any provision of this Section 2. Each Party acknowledges and agrees that any breach of this Section 2 by Customer or an End User may cause immediate and irreparable injury to Cayuse, and in the event of such breach, Cayuse shall be entitled to seek injunctive relief, without bond or other security, and all other remedies available at law and in equity.

### 3. PROFESSIONAL SERVICES

3.1 Generally. In the event that Customer also requires related Professional Services, the parties will execute one or more statements of work (each, an "SOW"). Cayuse will provide all Professional Services and related deliverables ("Deliverables") in accordance with the specifications and schedule, if any, set forth in each SOW. If Customer notifies Cayuse in writing within thirty (30) days after the Deliverables are made available to Customer that Cayuse is not in compliance with the foregoing covenant with respect to such Deliverables, then Cayuse will, as Customer's sole and exclusive remedy and Cayuse's sole liability, use commercially reasonable efforts to cause the Deliverables to conform to such covenant at no additional cost to Customer.

3.2 Customer Personnel, Facilities and Resources. If applicable to any Professional Services, Customer will provide Cayuse with timely access to appropriate Customer personnel and will arrange for Cayuse personnel to have suitable and safe access to Customer's facilities and applicable systems. Customer will also provide suitable office space and associated resources for Cayuse personnel working on-site, including all necessary computing and office support resources, and will undertake any other responsibilities described in the applicable SOW. The SOW may also specify tasks or activities for which Customer is responsible and, if applicable, those tasks or activities that will be performed jointly by Customer and Cayuse.

3.3 Approvals and Information. Customer will respond promptly to any request by Cayuse for information, approvals, decisions or authorizations that are needed by Cayuse to perform the Professional Services. Cayuse may also describe the course of action Cayuse intends to follow if it does not receive a timely response from Customer, which may include suspension of the affected Professional Services. Cayuse may follow the described course of action in the absence of a timely response from Customer. Any subsequent change requested by Customer will be subject to mutual agreement and may result in a change order to the SOW ("Change Order").

3.4 Changes to SOWs. Either party may propose changes to the Professional Services under an applicable SOW. Requests for changes will be submitted to the other party in writing for consideration of feasibility and the likely effect on the fees and the Professional Services. The parties will document any agreed upon changes in mutually executed Change Orders.

3.5 Proceeding on Oral Instructions. Cayuse may proceed with and be compensated for performing changed work for a period of up to thirty (30) calendar days if Cayuse receives an oral instruction to proceed from Customer's authorized representation and Cayuse sends a written confirmation of the oral instruction to Customer before proceeding with the changed work.

3.6 Customer Delays. If action or inaction by Customer, or its suppliers' failure to perform their responsibilities in a timely manner, delays or prevents Cayuse from performing the Professional Services or Custom Development, Cayuse will be entitled to a Change Order documenting an equitable adjustment in the schedule for performance and the Fees under the applicable SOW.

### 4. INTELLECTUAL PROPERTY

4.1 Protection of Proprietary Rights. Customer acknowledges and agrees that the Subscription Service is a commercially valuable asset of Cayuse, the development of which required the investment of substantial time, effort, and cost by Cayuse. Customer further acknowledges and agrees that the Subscription Service contains trade secrets of Cayuse and that it is Cayuse's Confidential Information (as defined below) and is proprietary to Cayuse. Accordingly, Customer hereby agrees that it and its End Users will use the highest degree of care to maintain the

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confidentiality of the Subscription Service.

4.2 **Subscription Service Ownership.** As between Customer and Cayuse, Cayuse shall retain all right, title and interest in and to the Subscription Service, including all output and executables of the Subscription Service, all updates and/or upgrades thereto, and the Documentation. Except for the license granted in Section 2.1, this Agreement does not grant Customer any right, title, or interest in any intellectual property owned or licensed by Cayuse, including Subscription Service. Customer agrees to abide by all applicable proprietary rights laws and other laws, as well as any additional copyright notices and restrictions contained in this Agreement. Cayuse acknowledges and agrees that in the course of performing this Agreement, Customer may disclose confidential and proprietary information relating to the development of other features offered by Customer's Maestro system. In addition to the confidentiality provisions in Section 6, below, Cayuse agrees that all such proprietary information (including all intellectual property rights thereto such as copyrights and trade secrets) is owned by Customer and other than the license rights necessary to perform this Agreement, no rights, title, or interest in any such information and/or intellectual property rights are granted or assigned to Cayuse.

4.3 **Deliverable Ownership.** Unless expressly stated otherwise in an SOW and excluding any Customer trademarks, service marks and other logos, as between Customer and Cayuse, Cayuse will retain all right, title and interest in and to all Deliverables and Customer hereby irrevocably assigns to Cayuse any and all ownership rights it may have in or to such Deliverables. Customer's rights to the Deliverables shall be the same as the rights granted to Customer under the Agreement with respect to the Subscription Services to which such Deliverable pertains.

4.4 **Data Responsibility.** (a) Customer is solely responsible for any and all transactional data, including personally identifiable data (collectively, "Customer Data"), that may be collected or utilized by Customer through its use of the Subscription Service; provided that Customer Data may not include, and Cayuse shall have no responsibility for, any protected health information or personally identifiable data other than user name or ID, account number, user profile or preferences, mailing address, email address, IP address, landline or cellular telephone numbers ("Other Data"). Cayuse reserves the right to take down, delete and/or block access (whether temporarily or permanently) to any Customer Data that violates any of the provisions of this Section or in respect of which Cayuse receives a complaint from any person. Cayuse must provide Customer with no less than 48 hours prior written notice before Cayuse takes down, deletes, and/or blocks such access. Customer is responsible for establishing and enforcing terms of use and privacy policies ("Customer Policies") that govern use of the Subscription Service by End Users as permitted under this Agreement and applicable law. In relation to all personal data comprised within any Customer Data, Customer represents and shall ensure that such personal data shall have been obtained and supplied to Cayuse in compliance with applicable data protection legislation, including Customer having obtained all necessary consents and approvals from End Users pursuant to the Customer Policies that are necessary to permit Cayuse to provide the Subscription Service. (b) During the term of this Agreement, Cayuse shall maintain a security program materially in accordance with industry standards that is designed to: (i) ensure the security and integrity of Customer or Other Data; (ii) protect against threats or hazards to the security or integrity of Customer and Other Data; and (iii) prevent unauthorized access to Customer Data. Such security program will conform to Cayuse's most recently completed Service Organization Control 1 (SOC1) and Service Organization Control 2 (SOC2) audit reports or industry-standard successor reports. The most recently completed, as of the Effective Date, SOC1 and SOC2 audit reports are referred to as the "Current Audit Reports". In no event during the term of this Agreement shall Cayuse materially diminish the protections provided by the controls set forth in the Current Audit Reports. Cayuse and Customer understand that each has an independent duty to comply with any and all data protection laws applicable to it. If either party believes that there has been a security breach, such party must promptly notify the other party. Additionally, each party will reasonably assist the other party in remediating or mitigating any potential damage resulting from a security breach. As soon as reasonably practicable after any security breach, upon Customer's request, Customer and Cayuse will consult in good faith regarding the root cause analysis and any remediation efforts. In the event that any unauthorized access to or acquisition of personal data is caused by Cayuse's breach of its security and/or privacy obligations under this

Agreement, Cayuse shall pay the reasonable and documented costs incurred by Customer in connection with the following items: (a) costs of any required forensic investigation to determine the cause of the breach; and (b) providing notification of the security breach to applicable government and relevant industry self-regulatory agencies and to individuals whose personal data may have been accessed or acquired. Notwithstanding the foregoing or anything in this Agreement to the contrary, Cayuse shall have no responsibility to pay costs of remediation that are due to reckless misconduct, gross negligence, willful misconduct, and/or fraud by Customer or its employees, agents, or contractors.

4.5 **Customer Data License; Usage Data.** Customer grants to Cayuse a limited, nonexclusive, fully paid-up, royalty-free license to Customer Data to copy, store, display and use for purposes of providing Cayuse and End Users access and use of Subscription Service. Cayuse shall fully own and retain all rights to anonymous usage data derived from Customer Data ("Usage Data") as aggregated with usage data from Cayuse's other customers for its own business purposes such as support, operational planning, product innovation and sales and marketing of Cayuse's services. For purposes of clarification, such Usage Data may not include any data that could reasonably identify Customer or any particular End User.

4.6 **Third-Party Access.** Customer consents to allow Cayuse to provide access to Customer Data to Cayuse employees and to certain third party service providers which have a legitimate need to access such data in order to provide their services to Cayuse as part of Cayuse's provision of the Subscription Service to Customer. Customer also acknowledges that, subject to the terms of this Agreement and to the extent permitted by Law, Customer Data may be accessed and processed by Cayuse support or (if applicable) managed and cloud hosting personnel in foreign countries, including countries other than the jurisdiction from which the Customer Data was collected, and Customer hereby authorizes such access and processing. If explicitly authorized by Customer or End User, Customer consents to allow Cayuse to provide access to Customer Data to third parties that Cayuse designates through the provision of Subscription Service under this Agreement. Provided, however, that Cayuse shall comply with all applicable export control laws and regulations required in the performance of its obligations under this Agreement, including but not limited to obtaining all necessary registrations, licenses and other export authorizations prior to the export of any Customer Data, Other Data, technical data, computer software, equipment, or other item controlled under U.S. Export Administration Regulations; U.S. International Traffic in Arms Regulations; or U.S. Office of Foreign Asset Control. Nothing in this Agreement waives any such statutory or regulatory requirements.

4.7 **Customer Data Retention and Deletion Requests.** Cayuse will generally retain possession of Customer Data in accordance with its then-current data retention policies before Cayuse deletes Customer Data from its system, unless instructed otherwise by Customer. Customer may request that Cayuse delete or retrieve Customer Data in Cayuse's possession at any time by providing such a request in writing, which request Cayuse shall then comply in a format mutually agreed upon by the parties within a commercially reasonable time not to exceed two (2) weeks unless a shorter time is required by law. Cayuse will otherwise delete Customer Data within the time periods required by law, and at a minimum other than ordinary course backups within a commercially reasonable time following the end of the term of the Agreement.

4.8 **License to Customer Trademarks.** Customer hereby grants to Cayuse a limited, non-transferable, non-sublicensable, non-exclusive license, during the Subscription Term, to use, reproduce, display, and distribute any trademarks, service marks, or trade names that Customer may designate from time-to-time ("Customer Marks") in connection the Subscription Service to Customer and its End Users, subject to the terms of this Agreement. With prior approval, the Customer further grants Cayuse the right to display the Customer Marks on its Website and marketing materials. Cayuse shall comply with Customer's then-current policies regarding the use of Customer's Marks. Cayuse acknowledges and agrees that all intellectual property rights, howsoever arising and in whatever media, whether or not registered, including patents, copyrights, trademarks, service marks, trade names, design rights, database rights, and any applications for the protection or registration of such rights and all renewals, and extensions thereof throughout the world ("Intellectual Property Rights") in the Customer Marks belong to and shall continue to belong to Customer (or its licensors or other third party owners), and Cayuse shall have no rights in or to the Customer Marks other than as

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specifically set forth in this Agreement. Cayuse acknowledges that any use of Customer Marks, names, or logos must be preapproved by Customer's Office of Business Development.

### 5. FEES AND PAYMENT

5.1 **Subscription Service Fees.** The pricing and fees for the Subscription Service and Professional Services are forth in the applicable Order Form or SOW (the "Fees") and will be invoiced in accordance with the provisions set forth therein. Cayuse escalates the annual Subscription Service Fee by four (4%) percent annually. Cayuse reserves the right to change the Fees for any Renewal Term (as defined below) upon thirty (30) calendar days ("Days") prior written notice to Customer.

5.2 **Payment Terms.** All amounts to be paid by Customer hereunder shall be due and payable within thirty (30) Days after Customer's receipt of the invoice therefor. All payments not made by Customer when due shall be subject to late charges of the lesser of (a) one and one-half percent (1.5%) per month of the overdue amount or (b) the maximum amount permitted under applicable law. Any failure to pay Fees will constitute a material breach of this Agreement by Customer.

5.3 **Taxes.** Customer shall pay all sales, use and excise taxes relating to, or under, this Agreement, exclusive of taxes based on or measured by Cayuse's net income, unless Customer is exempt from the payment of such taxes and provides Cayuse with sufficient evidence of such exemption.

5.4 **Suspension.** Without limiting Cayuse's termination rights, Cayuse shall have the right to suspend the Subscription Service in the event Customer fails to pay any Fees when due. Cayuse must give Customer no less than 10 days prior written notice before any such suspension.

### 6. CONFIDENTIALITY

6.1 **Confidentiality Obligations.** The Parties agree to hold each other's information, whether oral, written, electronic, or in any other format, and whether technical or business in nature, regarding this Agreement, Cayuse's products or business, including the Subscription Service, information regarding a Party's products, services, software, intellectual property, pricing, marketing and business plans, other information not generally known to the public and any other information received under circumstances reasonably interpreted as imposing an obligation of confidentiality ("Confidential Information"); provided that Confidential Information shall not include any of such information which: (a) was publicly available at the time of disclosure by the disclosing Party; (b) became publicly available after disclosure through no fault of the receiving Party; (c) was known to the receiving Party prior to disclosure by the disclosing Party; (d) was rightfully acquired by the receiving Party after disclosure by the disclosing Party from a third party who was lawfully in possession of the information and was under no legal duty to the disclosing Party to maintain the confidentiality of the information in strict confidence; or (e) is required by applicable law to disclose Confidential Information. The Parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than as specified in this Agreement. Each Party agrees to take all reasonable steps to ensure that Confidential Information of either Party is not disclosed or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. Each Party's Confidential Information shall remain the sole and exclusive property of that Party. Each Party acknowledges that any use or disclosure of the other Party's Confidential Information other than as specifically provided for in this Agreement may result in irreparable injury and damage to the non-using or non-disclosing party. Accordingly, each Party hereby agrees that, in the event of use or disclosure by the other Party other than as specifically provided for in this Agreement, the non-using or non-disclosing Party may be entitled to equitable relief as granted by any appropriate judicial body.

6.2 **Duration.** The obligations under this Section 6 (Confidentiality) shall terminate five (5) years following expiration or termination of this Agreement (except with regard to trade secrets, which shall remain confidential for so long as the information remains protected as a trade secret).

6.3 **Feedback.** Customer and/or its End Users may provide suggestions, comments or other feedback to Cayuse with respect to the products and services, including the Subscription Service. Feedback is voluntary and Cayuse is not required to hold it in confidence. Feedback may be used by Cayuse for any purpose without obligation of any kind. Nothing contained herein shall preclude either Party from developing any products or services or enhancing any existing products or services,

including but not limited to the products that are the subject of this Agreement, provided any such developments or enhancements are not based on or derived from the other party's intellectual property or Confidential Information.

### 7. TERM AND TERMINATION

7.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue in effect for the later of 3 years or any then-current Subscription Term unless terminated earlier as set forth herein. Each Order Form will specify the initial subscription term (the "Initial Term"). Upon expiration of the Initial Term, the Customer shall have the option to renew the subscription term for successive twelve (12) month renewal terms upon execution of a mutually agreed upon Order Form (each a "Renewal Term") unless otherwise mutually agreed to in the Order Form. The Initial Term and any Renewal Terms are referred to herein collectively as the "Subscription Term." Cayuse shall provide Client with renewal order form sixty (60) days prior to the expiration of the existing Subscription Term.

7.2 **Termination for Breach.** Either Party may terminate this Agreement upon not less than thirty (30) Days prior written notice if the other Party has failed to comply with any material term, condition, or obligation of this Agreement, and such Party subsequently has failed to remedy the default within thirty (30) Days after such notice by the non-defaulting Party.

7.3 **Termination for Insolvency.** If Cayuse believes in good faith that Customer's ability to make payments may be impaired, or if Customer fails to pay any invoice when due and does not make such payment within ten (10) Days after receipt of notice from Cayuse of such failure, then Cayuse may, in its sole discretion, either: (a) suspend the Subscription Service until such payment is made; or (b) terminate the Subscription Service. In either event, Customer shall remain liable to pay all Fees under this Agreement.

7.4 **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, all sums owed to Cayuse by Customer will become immediately due and payable upon the effective date of termination, and each Party shall immediately cease use of all Confidential Information belonging to the other Party and shall irretrievably delete and/or remove such items from all computer hardware and storage media, including backups. Additionally, following termination of this Agreement, Customer shall immediately cease use of the Subscription Service.

7.5 **Survival.** Notwithstanding any provisions contained in this Agreement to the contrary, in addition to any provisions that by their express terms survive expiration and termination of this Agreement, or by their nature may be reasonably inferred to have been intended to survive expiration and termination of this Agreement, the following provisions shall survive expiration and termination of this Agreement: 2.2 (Limitations on License), 4 (Intellectual Property), 5 (Fees and Payment), 6 (Confidentiality), 7.4 (Effect of Termination), 7.5 (Survival), 8.3 (No Other Warranties), 9 (Indemnification), 10 (Limitation of Liability) and 11 (General).

### 8. WARRANTIES

8.1 **Mutual Warranties.** Each Party represents and warrants that (a) it has the authority to enter into this Agreement and to grant the rights and licenses provided herein, and that by entering into this Agreement such Party is not in violation of any previous agreement between such Party and any third party, and (b) it will comply with all laws and regulations applicable to the obligations assumed under this Agreement.

8.2 **Cayuse Warranties.** Cayuse warrants that (a) all Professional Services and Support Services shall be provided in a professional, competent and workmanlike manner in accordance with the prevailing industry standards and (b) the Subscription Service, when used in accordance with the Documentation and this Agreement, will perform in all material respects as specified in such Documentation during the applicable Subscription Term; provided that if Customer notifies Cayuse in writing that the Subscription Service does not comply with the foregoing, then Cayuse will, as Customer's sole and exclusive remedy and Cayuse's sole liability, use commercially reasonable efforts to cause the Subscription Service to comply with the foregoing at no additional cost to Customer.

8.3 **No Other Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 8 (WARRANTIES), CAYUSE DOES NOT MAKE ANY GUARANTEE, WARRANTY, OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBSCRIPTION SERVICE (INCLUDING ANY WARRANTY AS TO

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TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE), NOR WITH RESPECT TO ANY OTHER MATTER SET FORTH IN THIS AGREEMENT.

### 9. INDEMNIFICATION

9.1 Mutual Indemnification. To the extent permitted by Texas law, each Party (the "Indemnifying Party") agrees to indemnify and hold harmless the other Party (the "Indemnified Party") from and against any and all causes of action, claims, damages, liabilities, losses, judgments, and costs (including reasonable attorneys' fees and disbursements) (collectively, "Claims") by third parties arising out of or relating to: (a) the Indemnifying Party's gross negligence or willful misconduct; or (b) any alleged infringement or misappropriation of such third parties' intellectual property rights by, the Customer Data (as to Customer) or Subscription Service (as to Cayuse).

9.2 Indemnification Procedure. The Parties' indemnification obligations are conditioned upon: (a) the Indemnified Party promptly notifying the Indemnifying Party of any Claim for which indemnification is sought, provided, that any failure or delay to provide such notice shall not constitute a breach of this Agreement and shall not excuse the Indemnifying Party from its obligations under this Section 9 (Indemnification), except to the extent (if any) that the Indemnifying Party is prejudiced by such failure or delay; (b) the Indemnified Party cooperating with the Indemnifying Party in its defense or settlement of any such Claim; and (c) the Indemnified Party using commercially reasonable efforts to mitigate the damages, if applicable. The Indemnified Party shall be entitled to participate in (but not control) the defense of such action, with its counsel and at its own expense. The foregoing notwithstanding, the Indemnifying Party shall not finalize any settlement that prejudices or materially, adversely affects the Indemnified Party without the prior written consent of the Indemnified Party.

### 10. LIMITATION OF LIABILITY

10.1 Disclaimer of Consequential Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR SPECIAL DAMAGES OR COSTS (INCLUDING LOST PROFITS, LOST REVENUES, LOST DATA, COSTS OF RECREATING LOST DATA, OR LOSS OF USE) RESULTING FROM ANY CLAIM OR CAUSE OF ACTION BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE (INCLUDING STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, EVEN IF EITHER OR BOTH OF THEM KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF.

10.2 Cap on Direct Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES AND ROYALTIES PAID BY CUSTOMER TO CAYUSE IN THE TWELVE (12) FULL CALENDAR MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED.

10.3 Exclusions. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE LIMITATIONS UPON THE TYPES AND AMOUNTS OF EACH PARTY'S LIABILITY, AND THE EXCLUSIONS OF CERTAIN TYPES OF DAMAGES, SET FORTH IN THIS SECTION 10 (LIMITATION OF LIABILITY), SHALL NOT APPLY TO THE FOLLOWING: (A) DAMAGES RESULTING FROM CUSTOMER'S BREACH OF SECTION 2 (LICENSE GRANTS AND RESTRICTIONS); (B) DAMAGES RESULTING FROM A BREACH OF SECTION 6 (CONFIDENTIALITY); OR (C) CLAIMS SUBJECT TO OR AMOUNTS PAYABLE PURSUANT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER.

### 11. GENERAL

11.1 Nature of Relationship. In entering this Agreement, Customer does so as an independent party and not as an agent, partner, or joint venturer of Cayuse. Customer does not have any right or authority, nor shall Customer hold itself out as having any right or authority, to assume, create, or enter into any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon, Cayuse.

11.2 Non-solicitation. During the term of this Agreement and each SOW and for twelve (12) months after their respective expiration or termination, neither party will, either directly or indirectly, solicit for employment or employ (except as permitted below) by itself any employee of the other party who was involved in the performance of the party's obligations, unless the hiring party obtains the written consent of the other party. The foregoing provision will not prohibit a general solicitation of employment in the ordinary course of business or prevent

either party from employing any employee who contacts such party as a result of such a general solicitation or at his or her own initiative without any direct or indirect solicitation by or encouragement from such party.

11.3 Press Release. Each Party will have the right to issue a press release about the relationship between the Parties with the other Party's prior written approval (which shall not be unreasonably withheld or delayed). Cayuse may include Customer's name on Companies customer list and may describe briefly, and in general terms, the nature of the work performed by Cayuse for Customer, but shall not, without Customer approval, directly or indirectly indicate any endorsement by Customer of Cayuse's services.

11.4 Construction. The section headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement, and will not be referred to in connection with the construction or interpretation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."

11.5 Inapplicability of UCITA. THE PARTIES AGREE THAT NO PROVISION OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA) IS INTENDED TO APPLY TO THE INTERPRETATIONS OF THIS AGREEMENT, WHETHER OR NOT UCITA IS ENACTED IN THE LEGAL JURISDICTION WHOSE LAW GOVERNS THIS AGREEMENT AS SET FORTH IN THIS AGREEMENT.

11.6 Governing Law; Severability. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and constructed in accordance with Texas State Law. In the event that one or more of the provisions herein shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforcement of the remaining provisions shall not be affected or impaired.

11.7 Assignment. Customer shall not assign this Agreement or any rights or obligations hereunder, without the express written consent of Cayuse save as described in the agreement. Any assignment or transfer in violation of the foregoing will be null and void. Cayuse reserves the right to assign this Agreement in connection with the sale, combination, or transfer of all or substantially all of the assets or capital stock or from any other corporate form of reorganization by or of Cayuse. Subject to all of the terms and conditions hereof, this Agreement inures to the benefit of and is binding upon the Parties hereto and their successors and assigns.

11.8 Waiver. The failure to enforce or the waiver by either Party of one default or breach of the other Party shall not be considered to be a waiver of any subsequent default or breach.

11.9 Remedy. The rights and remedies of the Parties will be cumulative (and not alternative). In the event of any litigation between the Parties relating to this Agreement, the prevailing Party will be entitled to recover its reasonable attorneys' fees, expert witness fees, and court costs from the other Party.

11.10 Entire Agreement. This Agreement, and each order form and exhibit hereto, together constitute the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written and oral agreements with respect to the subject matter. No modification of this Agreement shall be binding on either Party unless it is in writing and signed by both Parties. In the event of any conflict or inconsistency between this Agreement, order form, and/or any exhibit, the terms and conditions of this Agreement shall prevail. The terms on any purchase order or similar document submitted by Customer to Cayuse will have no effect and are hereby rejected.

11.11 Notices. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth above.

11.12 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which taken together shall constitute one and the same Agreement.

### 12. STATE CONTRACTING LANGUAGE

Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide



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property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: "Under Section 231.006, Texas Family Code, the Cayuse or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

**Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Cayuse agrees that any payments owing to Cayuse under this Agreement may be applied directly toward certain debts or delinquencies that Cayuse owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

**Prohibited Bids and Agreements.** A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Texas Government Code requires the following statement: "Under Section 2155.004, Texas Government Code, the Cayuse certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

**Venue.** Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against Customer shall be in Brazos County, Texas.

**Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

**Dispute Resolution.** The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and Cayuse to attempt to resolve any claim for breach of contract made by Cayuse that cannot be resolved in the ordinary course of business. Cayuse shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Texas A&M University, who shall examine Cayuse's claim and any counterclaim and negotiate with Cayuse in an effort to resolve the claim.

**Public Information.** Cayuse acknowledges that Customer is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Customer's written request, Cayuse will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to Customer in a non-proprietary format acceptable to Customer. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which Customer has a right of access. Cayuse acknowledges that Customer may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

**Franchise Tax Certification.** If Cayuse is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Cayuse

certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Cayuse is exempt from the payment of franchise (margin) taxes.

**Products and Materials Produced in Texas.** Cayuse agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Agreement, Cayuse will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

**Loss of Funding.** Performance by Customer under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, Customer will issue written notice to Cayuse and Customer may terminate this Agreement without further duty or obligation hereunder. Cayuse acknowledges that appropriation of funds is beyond the control of Customer.

**Prompt Payment Act.** Payment from Customer will be due thirty (30) days from the date Customer receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

**State Auditor's Office.** Cayuse understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Cayuse agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Cayuse will include this provision in all contracts with permitted subcontractors.

**Non-Waiver.** Cayuse expressly acknowledges that Customer is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Customer of its right to claim such exemptions, privileges, and immunities as may be provided by law.

**Cayuse Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, Texas Government Code, Cayuse certifies Cayuse (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Cayuse acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Cayuse Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Cayuse certifies Cayuse (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Cayuse acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Conflict of Interest.** By executing and/or accepting this Agreement, Cayuse and each person signing on behalf of Cayuse certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("CustomerS") or CustomerS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Customer or CustomerS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

*Signature Page Following*

## MASTER AGREEMENT

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

CAYUSE, LLC

BY: jason porter

NAME: jason porter

TITLE: Vice President

CUSTOMER: TEXAS A&M UNIVERSITY

BY:

NAME: **ROBERT C. BOUNDS**

TITLE: **DIRECTOR, PROCUREMENT SERVICES**

## MASTER AGREEMENT

### Appendix 1 Cayuse Maintenance and Support Policy

During the Term of this Agreement, Cayuse shall provide standard technical support for End Users (as defined in section 2 of the Order Form) for the Subscription Service between the hours of 6:00 am and 5:00 pm, Pacific Time, Monday through Friday, excluding Cayuse companywide holidays. Any requests for support must be made by the parties specified in Section 4.2. Cayuse shall make available applications and technical staff to assist with questions about the Subscription Service and to assist Customer in solving any problems. The Cayuse technician responding to Customer's inquiry will be experienced, technically competent, and familiar with the Subscription Service. Customer shall submit a help desk request through Cayuse' website, with verifiable and reproducible evidence of problem, questions, or requests for assistance. Upon receipt of a help desk request, Cayuse shall respond by email to acknowledge receipt of the request based on the priority status Customer notes on the request.

- i) Urgent – Production Down. Reserved for issues when the production environment is down. Cayuse will respond within one (1) hour from the time the request is received (during business hours or within one (1) hour of opening if the request is not received during business hours).
- ii) High – Production Critical. Reserved for issues when the production environment is threatened, but not actually down. Cayuse will respond the same day the request is received (if the request is received by 4:00 pm Pacific Time of any day the help desk is open or, if received later, the next business day).
- iii) Medium – Time Sensitive. Cayuse will respond within 24 hours of the time the request is received, excluding in the computation of such 24 hours any days outside of normal business hours. (For example, if such a request is received at 1:00 pm on a Friday, Cayuse will respond by 1:00 pm on the following Monday, if such Monday is within normal business hours.)
- iv) Low – Non Essential Timeline. Cayuse will respond within 48 hours of the time the request is received, excluding in the computation of such 48 hours any days during which the help desk is not open. (For example, if such a request is received at 1:00 pm on a Friday, Cayuse will respond by 1:00 pm on the following Tuesday, if neither such Tuesday nor the preceding Monday is outside of normal business hours.)

Cayuse may undertake scheduled maintenance of the Subscription Service during time periods designated by Cayuse. Cayuse will provide Customer with no less than 48 hours prior electronic mail or other notice of any scheduled maintenance that is likely to make the Products inaccessible or unusable and will only perform this type of scheduled maintenance outside of normal business hours (M – F, 6:00 am - 5:00 pm Pacific Time).



## ORDER FORM #1

This Cayuse Order Form ("Order Form" or "OF") by and between Cayuse LLC ("CAYUSE"), and Texas A&M University ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form shall become effective on February 15, 2019. This Order Form, together with the Cayuse Master Agreement attached hereto, and any Statements of Work ("SOW") and/or Exhibits or Addenda form the entire agreement between the parties in respect of the products and services set forth in the Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Cayuse to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Cayuse Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Cayuse, as applicable.

### 1. CAYUSE PRODUCT & PRICING SUMMARY

Cayuse Subscription Products	Annual Subscription License Fees		
	Year 1 of Initial Term	Year 2 of Initial Term	Year 3 of Initial Term
Cayuse 424 (Includes Training Environment, SSO, Data Connect)	\$157,500	\$163,800	\$170,352
Cayuse HR Connect	\$11,250	\$11,700	\$12,168
<b>Annual Management and Support</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>
<b>Total Subscription License Fees</b>	<b>\$168,750</b>	<b>\$175,500</b>	<b>\$182,520</b>

Cayuse Professional Services (Outlined in SOW – Exhibit 1)	One-time Implementation & Services Fees
Cayuse 424 Implementation	\$16,000
Cayuse HR Connect Implementation	\$4,500
Cayuse 424 Training (4 days, Onsite, inclusive of related travel expenses)	\$10,500
Cayuse Training Environment, SSO, Data Connect Implementation	\$3,600
<b>Total Implementation &amp; Service Fees</b>	<b>\$34,600</b>

### 2. Notes and Additional Terms

Initial Term	The ("Initial Term") is for the three-year period beginning 3/1/2019.	
Payment Terms	Customer shall pay to CAYUSE the Total Fees for this OF #1 as follows:	
	Year 1 Subscription & Implementation & Services Fees	3/1/2019
	Year 2 Subscription Fees	3/1/2020
	Year 3 Fees	3/1/2021
	1. All initial and subsequent payments shall be due Net 30. Unless otherwise specified, all dollars (\$) are United States currency. 2. Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form. 3. Sales Tax: If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.	
Renewal Terms	The license will renew for successive one (1) year periods following Year 3, unless a party gives written notice at least ninety (90) calendar days prior to the next scheduled expiration stating that it does not wish for the license to renew.	
Additional Terms	Pursuant to Texas Government Code §2270.002, Cayuse affirmatively states that it does not boycott Israel. Additionally, Cayuse will not engage in a boycott of Israel during the term of the Agreement.	





3. Customer Data Summary

Entity Name	Texas A&M University	Purchase Order Required?	Yes / No
Address	400 Bizzell St College Station, TX 77843	Sales Exemption Form	Yes/No (if Yes, please attach a copy)
		Billing Address (if different)	
Main Contact	Kristi Billinger	Billing Contact	
Telephone	(979) 862-6777	Telephone	
Email	kristib@tamu.edu	Email	
Deployment & Training Contact			
Telephone			
Email			

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this OF#1 as of the Date below:

**CAYUSE, LLC:**

Signature: \_\_\_\_\_

Printed Name: jason porter

Title: Vice President

Date: Feb 15, 2019

**CUSTOMER:**

Signature: [Signature]

Printed Name: **ROBERT C. BOUNDS**  
DIRECTOR, PROCUREMENT SERVICES

Title: \_\_\_\_\_

Date: 15 FEB 2019



## Statement of Work – Exhibit 1

### PROFESSIONAL SERVICES: CAYUSE 424 IMPLEMENTATION

#### I. Project Overview and Objectives

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This SOW addresses the Implementation project associated with Cayuse 424. Detailed schedules and delivery dates will be specified in a Project Plan document.

The Discovery and Implementation project phases are outlined below.

- Week 1: Project kick-off
- Week 2: Use of institutional profiles, unit hierarchy, sponsors, and bulk-load templates
- Week 3: Use of professional profiles, user accounts, and routing profiles
- Week 4: Navigation, starting a proposal, and managing key persons
- Week 5: Use of budget and subawards
- Week 6: How will you use 424 (e.g. proposal summary, non-federal proposals, etc.)?
- Week 7: “Train-the-trainer” training (onsite or web-based training)
- Week 8: “Green light” session. Are you ready for go-live?

#### II. Scope of Work

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##### Discovery Phase

The Discovery phase allows Cayuse to understand the current business process and data requirements of a successful implementation. We will work with the Customer to first understand the current state of their business process and then establish a revised business process using Cayuse 424.

In addition, during the Discovery phase, Cayuse will implement basic functionality in the form of temporary User Acceptance Testing (UAT) instances for Cayuse 424. The purpose of deploying a UAT instance is to provide an effective environment for process testing and development and to empirically test certain parameters of conversions and integrations projected for the larger project (if applicable). This UAT implementation will be suitable for discovery and testing purposes only, not for production use.

##### Implementation Phase

Cayuse begins Implementation phase work by utilizing the results of the Discovery phase. The final deliverables include 1) a functional system that has been loaded with selected production data from Customer legacy systems and formally accepted by Customer, 2) training provided to Customer by Cayuse that may be modified for use during Customer-provided internal training sessions for end users, and 3) functioning data integration with Customer systems (if applicable).

##### Customer Role

Customer technical and business staff will contribute directly and actively during the Implementation. They will commit time and effort to responding to questions from Cayuse, and actively utilize pre-production releases of the modules in order to provide regular dialog throughout the implementation process. Customer staff will advise and guide on institutional priorities, budget constraints and time commitments of affected staff.



Time is of the essence in performing each task on the attached Project Plan document. If Customer is unable to execute tasks in a timely manner that are solely or partially the responsibility of Customer, Cayuse will not be held liable for late delivery, increased costs or other impact to Customer business results.

### III. Deliverables

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The results of the Discovery phase are presented as an Implementation Project Plan with deployment schedules, effort, and cost for the selected software modules.

The results of the Implementation phase are:

- A system that is functioning according to the specifications assembled during Discovery and as jointly adjusted by Cayuse and Customer during Implementation
- Detailed, personalized business process maps identifying the roles and responsibilities of all key people who will interact with Cayuse 424.
- Train-the-trainer training delivered by Cayuse to Customer for their use in developing institution-internal training materials
- Notification of functional acceptance by the Customer

### IV. SOW Terms and Conditions

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Professional Services compensation for the Project defined in this SOW shall not exceed the total fees set forth on the order form, unless the Customer agrees in writing to such increase, prior to the charges being incurred. Upon completion of the Discovery phase and delivery of the Implementation Plan, customer may decline to proceed with the balance of the project without incurring any additional fees. If circumstances cause this project to be cancelled by the Customer during Implementation, Customer is obligated to pay any service fees incurred to that point on the project.

Cayuse may perform the work remotely, or, where appropriate, portions of the engagement may be performed on site, at Customer offices or other designated location(s). Onsite engagements must be scheduled in advance. All reasonable efforts will be made to accommodate customer schedules. Expenses incurred for cancellation of onsite sessions will be the responsibility of Customer.

All reasonable travel related fees and expenses incurred through this engagement will be billed to Customer on a pass-through basis. Payment terms are net 30 days invoiced on a weekly basis unless otherwise agreed to in writing. Sales and use tax is the responsibility of customer.

This Statement of Work constitutes a binding agreement between Customer and Cayuse. The scope covered within the stated project fees within this document is limited to the topics covered herein.

Cayuse uses a formal change order process that requires joint approval between the two organizations. Change orders will be used to address variations in scope, schedule or budget outside of this baseline statement of work.