

Software As A Service Contract

This Software as a Service Contract ("Contract") is entered into as of March 6, 2019 pursuant to Md. STATE FINANCE AND PROCUREMENT Code Ann. § 11-101 *et seq.* by and between the State of Maryland (hereinafter referred to as the "State") acting through the Department of General Services ("the Department") and Nitor Partners, LLC, a Limited Liability Company whose principal place of business is 3000 Auburn Drive, Suite 430, Beachwood, OH 44122 whose Federal Employer Identification Number is [REDACTED] and whose eMaryland Marketplace vendor ID number is [REDACTED] ("Contractor"), each a "Party" and collectively the "Parties."

1. Purpose

The purpose of this Contract is to provide the State with all eMaryland Marketplace ("eMM") eProcurement and eCommerce-related application tools to be provided as a software-as-a-service ("SAAS") pursuant to the State's RFP and the Contractor's Technical Proposal and Financial Proposal (each of RFP, Technical Proposal and Financial Proposal as defined below).

2. Definitions

Capitalized terms not defined herein have the meaning ascribed to them in the RFP.

A. Acceptance

Successful delivery and performance by the Contractor of its contractual commitments at the location(s) designated in the applicable Statement of Work or Change Order, including completed and successful testing in conformance with the requirements of this Contract.

B. Agent

Any third party independent agent of any Authorized User.

C. Application

The software programs in object code and other related data, including intellectual data, proprietary information and Documentation contained and applicable to Licensed Services provided by Contractor under the Contract, as described in Exhibit C or as described in any SOW or change order issued under the Contract, including any Updates, enhancements, and replacements.

D. Application User

Application User shall include, as specified in the applicable Statement of Work or Change Order, an employee of an Authorized User, independent contractor engaged by an Authorized User, or entity contracting with an Authorized User for services, as well as customer, Contractors, member of the general public, and other entity with whom an Authorized User may find it necessary or desirable to process or communicate electronically in pursuit of its business.

E. Audit

A planned and documented independent activity performed by qualified personnel, including but not limited to third party, State, and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from the data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to the adequacy and compliance with established procedures and internal controls over services pursuant to the Contract.

F. Authorized User

A Public Body as that term is defined in Md. Code Ann., General Provisions Article, § 3-101(h).

G. Business Day/Hour

Normal State business hours for The State of Maryland are Monday-Friday, 8 a.m.-5 p.m. Eastern Standard/Daylight Time, unless otherwise specified on the applicable Change Order or Statement of Work, excluding State holidays.

H. Change Order

Written direction authorized by the Procurement Officer or designee that revises previous instructions for implementing the general scope of Contract as defined in the Statement of Work or preceding Change Order.

I. Code

The Annotated Code of Maryland, as amended from time to time.

J. COMAR

Code of Maryland Regulations, available on-line at
<http://www.dsd.state.md.us/COMAR/ComarHome.html>.

K. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

L. Confidential Information

Any information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract, the RFP, or any Change Order or SOW issued hereunder, and which at the time of disclosure:

- (i) is marked as "Confidential" or "Proprietary";
- (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party;
- (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party;
- (iv) is identifiable or should be reasonably considered as protected health information; or
- (v) any personally identifiable information, including information about the State's employees, contractors, and customers that is protected by statute or other applicable law.

M. Content

Any data, including the selection, arrangement and organization of such data, entered, uploaded to the Application, or otherwise provided to Contractor by an Authorized User or by any Application User.

N. Contract Monitor

The State representative for this Contract who is primarily responsible for contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with its terms and conditions, monitoring MBE and VSBE compliance, and achieving completion of the Services on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on their behalf. The Department may change the Contract Monitor at any time by written notice to the Contractor.

O. Contractor Product

Contractor's proprietary reports, information and data made available to Authorized User and its Application Users as part of the Licensed Services.

P. Deliverable

The tangible embodiment of the work performed or provided by the Contractor in fulfilling the obligations under the Contract.

Q. Documentation

Those materials necessary to wholly reproduce and fully operate the most current deployed version of the Solution in a manner equivalent to the original Solution including, but not limited to:

- 1) Executable: this includes Executable created by the Contractor or subcontractor(s) and executable that is leveraged or extended by the Contractor for use in the Contract.
- 2) All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality.
- 3) All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system.
- 4) All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer's notes and other documentation.
- 5) A complete list of Third Party, open source, or commercial software components and detailed configuration notes for each component necessary to reproduce the system (e.g., operating system, relational database, and rules engine software).
- 6) All associated user instructions and/or training materials for business users and technical staff, including maintenance manuals, administrative guides and user how-to guides.
- 7) Operating procedures.

R. Electronic Self-Help

Any use of electronic means to exercise Contractor's license termination rights, if allowable pursuant to the Contract, including but not limited to any license agreement, subscription agreement or use(r) agreement.

S. Financial Proposal

The Contractor's Financial Proposal dated January 22, 2019, (date of Financial Proposal or final Best and Final Offer, whichever is later).

T. Licensed Services

The operation of the Application and the necessary operating system software, hardware and utilities on Contractor's host computer system, furnishing Contractor Product to Application

Users, storing Content and making the Application, Content, and Contractor Product available to Application User(s) via the Web Site, as more fully described in Exhibit C (see Section 3.1) or as described in any Statement of Work or Change Order issued hereunder.

U. Maintenance Coverage Period (MCP)

The term during which Maintenance is to be provided for a unit of software or product.

V. Maintenance Level

The defined parameters of Maintenance Services, including the times during which and timeframes in which Contractor shall respond to a request for Maintenance Services. The available Maintenance Levels shall be as defined in the Statement of Work or Change Order issued hereunder. The actual Maintenance Level for a unit of software or product shall be set forth in the executed Change Order or Statement of Work for Maintenance of that software or product referencing this Contract.

W. Maintenance Services

If authorized by the Contract, means those services, preventive and remedial, provided or performed by Contractor under the Contract in order to ensure continued operation of the Licensed Services, including Updates. Maintenance Services shall include support services. Maintenance Services may include the development of Work Product, if so authorized in the Contract.

X. Procurement Officer

The representative individual identified in the RFP or otherwise duly authorized by the State to formulate, enter into, administer or make written determinations and findings with respect to the Contract. The term includes any duly authorized representative designated by the State to perform the aforementioned duties with respect to the Contract. The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time and so notify the Contractor in writing.

Y. RFP

The Request for Proposals for the eMaryland Marketplace ("eMM") eProcurement Solution Solicitation # DGSR8400113, together with any amendments, addenda, and attachments thereto issued in writing by the State.

Z. Services

Any work performed or service provided by Contractor in fulfilling its obligations under the Contract or, as applicable, any Statement of Work or Change Order issued under the Contract. This definition does not include Licensed Services.

AA. Software-as-a-Service (SaaS)

A delivery model in which software is made available on a subscription basis and is centrally hosted providing to Authorized Users access to and use of the Contractor's provided applications running on a cloud infrastructure where the applications are accessible from various devices through a thin-client interface such as a Web browser or a program interface.

BB. Solution

All eMaryland Marketplace ("eMM") eProcurement and eCommerce-related application tools to be provided by the Contractor as a software-as-a-Service ("SAAS") pursuant to the State's RFP.

CC. Statement of Work (SOW)

The requirements and specifications set forth in the RFP, and any subsequent Statements of Work issued as Work Orders (see RFP Appendix 1 definition) in substantially the same form of Exhibit E to be sequentially identified and attached as Schedule A-1, A-2, A-3, etc. describing the service needs, Deliverables and expectations, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment that Contractor commits to provide to the State or an Authorized User, which, upon signing by both Parties, shall be deemed a part of this Contract.

DD. Subcontractor

See definition of "Contractor Personnel" in RFP Appendix 1.

EE. Technical Proposal

The Contractor's Technical Proposal dated August 29, 2019, as modified and supplemented by the Contractor's responses to requests for clarifications and requests for cure, and by any Best and Final Offer.

FF. Update

As applicable, any update, modification or new release or version of the Solution, software, Application, Documentation, Licensed Services or Contractor Product that Contractor makes generally available to its customers, including patches, fixes, upgrades, enhancements, improvements, or access mode, including without limitation additional capabilities to or otherwise improve the functionality, increase the speed, efficiency, or base operation of the software.

GG. Web Site

The Internet site operated by Contractor to provide access to the Application, with the Uniform Resource Locator (URL) specified in the applicable Statement of Work or Change Order (or any successor URL(s)).

HH. Work Product

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by Contractor, for delivery to the authorized user under this Contract, or jointly by Contractor and an Authorized User(s) in the performance of this Contract. Work Product shall not include configuration of software.

3. SCOPE OF CONTRACT

- A. The Contractor shall perform in accordance with this Contract and Exhibits A-I, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP as the initial SOW and all subsequently issued SOWs
Exhibit B – The Contract Affidavit, executed by the Contractor and dated (date of Attachment B)
Exhibit C – The Technical Proposal
Exhibit D – The Financial Proposal
Exhibit E – Statement of Work (SOW) Template

- Exhibit F - Change Order Template
- Exhibit G - End User/Software Licensing Agreement (for reference only)
- Exhibit H - Other Certifications and Affidavits
- Exhibit I - Contractor Procurement and Subcontracting Plan

This Contract constitutes the entire agreement between the State and Contractor and supersedes any and all previous representations, understandings, discussions or agreements between the State and Contractor as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Contractor's Proposal shall be deemed invalid. This Contract may only be amended or modified by an instrument in writing signed by the State and Contractor.

- B. The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written Change Order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- C. Scalability: The State or an Authorized User may make a written request to increase or decrease the scope (e.g., number of USERIDs) of Licensed Services ("revised usage") under a Change Order or Statement of Work. The revised usage shall be effective no later than one (1) Business Day following the request. Pricing for the revised usage of Licensed Services shall be calculated as provided in Exhibit D and shall be prorated on a daily basis for the remaining portion of the current monthly billing period. For purposes of this provision, a written notice may include an e-mail or the use of a Contractor-provided provisioning web site by an Authorized User's designated administrator.

4. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the date the Contract is signed by the State following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and, unless earlier terminated as provided for in this section, shall continue to be effective and legally binding for a period of ten (10) years ("Initial Term"). The State, in its sole discretion, may, upon notice to the Contractor issued prior to the expiration of the Initial Term or a Renewal Term, extend this Contract for up to two (2) additional five (5) year periods (each a "Renewal Term") after the Initial Term.

B. Termination for Convenience

The performance of work under this Contract, including work on any Change Order or SOW, may be terminated by the State in accordance with this clause in whole, or from time to time in

part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

C. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, which breach, if capable of being cured, is not cured within thirty (30) days after the state gives the contractor written notice of such breach, the State may terminate the Contract by written notice to the Contractor. Notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, then the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11 B.

D. Contractor Termination for Non-Appropriation of Funds

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first. An Authorized User may terminate an order or SOW, in whole or in part, for Services provided under this Contract for which funds have not been appropriated.

E. Termination by Contractor

The Contractor shall have no right to terminate either this Contract or any Change Order or SOW issued hereunder.

5. NEW TECHNOLOGY

A. Access to New Technology

Updates to the Licensed Services shall be made available to the State at no additional cost. If the Contractor offers new versions or upgrades to Licensed Services, other than as an Update, the same shall be made available to the State at the State's option at a price no greater than the Contract price plus a price increase or decrease proportionate to the increase or decrease from the

list price of the original version to that of the new version, if any, or at a price made available to other customers, whichever is less.

B. Contractor New Service Offerings Not Available from Contractor

If the State elects to use services or product offerings that can be integrated into the Solution from a third-party supplier, the Contractor will reasonably assist the State in integrating any such services or products.

C. Replacement Offerings

If the State elects to acquire new Services or products and such Services replace existing Contractor-provided services, then discount tiers and any pricing commitments (as applicable per the Contract) will be reduced to reflect reductions in purchases of the replaced Services or products.

6. DESCRIPTION OF LICENSED SERVICES

During the term of any order or SOW issued pursuant to this Contract, Contractor hereby agrees to host the Application(s) listed and described in Exhibit C and specified in such order or SOW by the ordering Authorized User on servers owned, operated, housed, and maintained by Contractor and shall make such Application(s) available to Authorized User's designated Application Users through the Web Site. Contractor has acquired any and all license rights in the Application(s) necessary and appropriate for Contractor to provide the Licensed Services as listed and described in Exhibit A for all Authorized Users. Contractor hereby grants each ordering Authorized User and its employees, independent contractors and agents a non-exclusive, non-transferable, worldwide license to access and use by any method the Application during the term of the applicable order or SOW issued pursuant to this Contract. The license fee for the rights shall be as set forth in Exhibit D, and shall apply regardless of access mode. If Authorized User is an executive branch agency, legislative, judicial, or independent agency, board, commission, or other quasi-political entity of the State of Maryland or other public governmental body, then the license shall be held by the State. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, then the license shall be held by that public body. Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order or SOW for Licensed Services, including access to the Application(s), or the fact that such other agreement may be presented to an Authorized User or its employees, independent contractors or agents at the time of accessing the Application(s) ("click wrap"), the terms and conditions set forth herein in this Contract and any amendments or modifications thereto shall supersede and govern the licensing and use of all products and services herein.

7. APPLICATION RESPONSIBILITIES OF CONTRACTOR

A. Standard Application Responsibilities

Unless otherwise indicated in Exhibit C, Contractor shall acquire and maintain, at no charge to Authorized User, all hardware, software or other assets or resources needed to host the Application(s). The hardware and software on which the Application(s) is hosted will be maintained in good operating condition, consistent with or exceeding generally accepted industry practices and procedures. In addition, the Contractor shall:

- (i) Maintain sufficient hardware capacity to satisfy the technical requirements and the bandwidth and required storage capacity indicated in Exhibit C.

- (ii) Ensure all telecommunication connections from the server hosting the Application to the Internet are maintained in proper working condition.
- (iii) Collect user-specific data only as necessary to provide the Licensed Services ordered by an Authorized User. No information regarding any Authorized User or any Application User shall be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction provided that the Contractor promptly notifies, to the extent practicable, the State in writing of such demand for or requirement of disclosure. This obligation shall survive the expiration or termination of the Contract.
- (iv) Make the Application available to Authorized User and/or designated Application Users, as specified in the applicable order or SOW, twenty-four (24) hours a day, seven (7) days a week ("Uptime") less Excusable Downtime. For the purposes of this Contract, "Excusable Downtime" is defined as that period of time when the Licensed Services are not available to Authorized User or its Application Users due to scheduled network, hardware or Maintenance Services and/or Updates. Except in cases of emergency, Authorized User shall be provided a five (5) Business Day advance notification of such maintenance and/or upgrade. In cases of emergency, Contractor will use its best efforts to notify Authorized User of a downtime as soon as practicable but in any event within 4 hours of an incident or unplanned downtime. Maintenance or upgrades are not to exceed forty (40) hours in duration in a single month and cannot occur Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m. Eastern Time.

Excusable Downtime shall not include (a) an electronic hardware failure, (b) a failure in the Contractor's Application, (c) an electric utility failure at Contractor's facility where the Application is hosted, or (d) a network failure up to, but not including, the interconnection point of Contractor's network to the public switched telephone network.
- (v) Ensure the Application and Licensed Services will be available for use at least 99.5% of the total time during each month, excluding Excusable Downtime, in accordance with its Service Level Agreement.
- (vi) If non-Excusable Downtime exceeds the parameters listed above, credit to Authorized User the total pro-rata portion of fees that would otherwise be owed by Authorized User under this Contract during the month or year of such failure in addition to remedies provided in its Service Level Agreement. Such credit will be issued in the month or year immediately following the failure.
- (vii) Notify the State in writing at least sixty (60) days prior to any planned change(s) or Update(s) to Content storage/ backup/disaster recovery, including physical location; security architecture; terminations and/or replacement of any Contractor subcontractor. Planned changes or Updates include any change(s) that would potentially impact the secure and efficient use of the Application, as understood and agreed to between Contractor and the State at Contract award. The purpose of this notice is to allow sufficient time for Contractor and the State to discuss any technical/functional considerations and/or changes that may require action by the State.
- (viii) Be responsible for documenting and maintaining any customizations made for operational use of the Application and/or for interoperability use with other systems or applications used by an Authorized User and paid for solely by Authorized User. The associated technical data, documentation and other necessary information about such customizations shall be provided

by Contractor to Authorized User within ten (10) Business Days of the customizations'

operational use. Supplier shall be required to routinely transfer knowledge regarding the Application and Licensed Services, including Updates and all material changes, to Authorized Users in a reasonable manner to ensure proper and efficient use of Application and Licensed Services without degrading performance thereof.

- (ix) Provide access to additional Updates, features, and functionalities of the Application as are provided by Contractor to other customers of Contractor who require functionality similar to that of the Application provided to Authorized Users. All such additional features and functionality, where reasonably necessary, shall be accompanied by updated Documentation, whether in hard copy format or distributed electronically via email or the Contractor Web Site. Notwithstanding the provisions of this Section and except as agreed to in writing by the State and Contractor, nothing in the Contract shall oblige Contractor to undertake any modifications to the Application, which are at the Contractor's sole discretion, unless the modifications are agreed to pursuant to Paragraph B "Ancillary Responsibilities" below.

B. Ancillary Responsibilities

Contractor shall, throughout the term of this Contract, make available such resources, including Contractor Personnel, as are reasonably required to: (i) train designated Authorized User personnel in the use of the Application; (ii) develop modifications to the Application as agreed by the State and Contractor in any exhibit hereto or as agreed to by Contractor and Authorized User in any order or SOW issued hereunder; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order or SOW issued hereunder.

C. Subcontractors

It is understood that Contractor may utilize Subcontractors to provide integral components of the Licensed Services and Application; however, except for those so named at time of Contract award, Contractor shall not use new or replacement subcontractors to perform or provide integral components of the Licensed Services or Application during performance of this Contract without advance written notification to and approval by the Contract Monitor.

Contractor is responsible for the performance of its Subcontractors and their compliance with the terms and conditions of this Contract.

If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, then Contractor shall not subcontract any Services pursuant to such order or SOW to any subcontractor that is a party excluded from Federal Procurement and Non-procurement Programs. In no event shall Contractor subcontract with any subcontractor which is debarred by The State of Maryland or is not in good standing as evidenced by a Certificate of Status issued by the Maryland Department of Assessments and Taxation.

8. USER-RELATED RESPONSIBILITIES

If Contractor issues unique USERIDs and passwords to an Application User:

- a) Authorized User is responsible for protecting such passwords and for any authorized and unauthorized use made of the passwords. Authorized User will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity related to unauthorized use of the Licensed Services.
- b) Authorized User shall have the right to add, activate, change access for, or disable USERIDs at its sole discretion. Authorized User shall designate Administrators who will be authorized to add, activate, change access for or disable USERIDs.

- c) Upon notification by Authorized User of an Application User's disabled access, Contractor shall remove access authorization by said Application User from its server within one (1) hour of receipt of such notification, ensuring that historical access audit details of such Application User shall not be deleted or lost. If Contractor fails to make such a removal of access, Authorized User shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.
- d) Authorized Users of this Contract agree to notify Contractor of any degradation, potential breach, or breach of the Content and Application privacy or security as soon as possible after discovery. Authorized Users further agree to provide Contractor the opportunity to participate in the investigation of the reported situation.

9. CONTENT PRIVACY AND SECURITY

Contractor shall provide a secure environment for Content and any hardware and software, including servers, network and data components provided by Contractor as part of its performance under this Contract and in accordance with the Maryland Department of Information Technology (DoIT) Security Standards at: <http://doit.maryland.gov/support/pages/securitypolicies.aspx> in order to prevent unauthorized access to and use or modification of, and to protect, the Application and Content. Contractor agrees that all Content of Authorized Users is intended solely for the business of the Authorized Users and is considered private data. Therefore, Contractor shall, at a minimum, apply appropriate controls complying with an industry standard, such as the NIST cybersecurity framework, and implement the following procedures, as further detailed in the Contractor obligations in RFP Sections 2.5, 2.7, and 2.9, designed to protect the privacy and security of Content supplier:

- a) User identification and access controls designed to limit access to Content to Application Users in accordance with the principles of least privilege.
- b) Ensure that all personnel with physical or logical access to Content will receive industry standard annual security awareness training and all other training as required by Content owner, State security standards, regulation, or law.
- c) Ensure that the Application and/or Licensed Services are capable of auditing successful and unsuccessful account logon events, account management events, object access, policy change, privilege functions, process tracking, and system events.
- d) Ensure that the Application and/or Licensed Services are capable of auditing, for Web applications, administrator activity, authentication checks, authorization checks, data deletions, data access, data changes, and permission changes.
- e) Ensure that the Application and/or Licensed Services employs automated mechanisms to centrally review, analyze and correlate audit and log records from multiple components of the Application and/or Licensed Services to support organizational processes for investigation, alerting and response to suspicious activities.
- f) Ensure that the Application and/or Licensed Services support exporting of log files to the State for review and analysis.
- g) Ensure that the Application and/or Licensed Services are capable of maintaining all audit records in accordance with State record retention policies found at the following URL: http://msa.maryland.gov/msa/intromsa/html/record_mgmt/homepage.html.
- h) Provide evidence of a comprehensive continuous monitoring program encompassing all systems with access to Content.

- i) Provide evidence that the Application and/or Licensed Services adhere to a security baseline, which is based on least functionality.
- j) Ensure that all changes to proposed Application and/or Licensed Services are authorized according to change management policies.
- k) Agree to maintain all metadata associated with any original Content submitted into the Application and/or Licensed Services by the Authorized User for easy retrieval and access, using secure industry standard protocols, within a predefined period as specified in the Authorized User's Statement of Work.
- l) Agree to provide a secure method of exporting Content when requested.
- m) Ensure that the Content exported from the Contractor's Application or infrastructure is in an industry standard format that provides for interoperability and portability.
- n) Ensure that the Application and/or Licensed Services provides and maintains a backup of Content that can be recovered in an orderly and timely manner within a predefined frequency consistent with recovery time and recovery point objectives, as specified in the Authorized User's Statement of Work.
- o) Ensure that the Application and/or Licensed Services can store a backup of Content, at least daily, in an off-site "hardened" facility, located within the continental United States, maintaining the security of the Content.
- p) Implement a contingency plan designed to maintain the access to the Application and/or Licensed Services and to prevent the unintended destruction or loss of Content. This plan should provide a predefined frequency, consistent with recovery time and recovery point objectives, as specified in the Authorized User's Statement of Work, for disaster recovery and archival purposes of Content at a secure facility located within the continental United States.
- q) Partition, in aggregate for this contract, all Content submitted into the Application and/or Licensed Services by the Authorized User in such a manner that it will not be impacted or forfeited due to E-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain records, information or Content for reasons or activities that are not directly related to the business of the Authorized User.
- r) Provide a service that supports a multi-factor authentication for access to any administrative portal and/or any remote administrative interface.
- s) Fully cooperate with State incident response resources and all required law enforcement personnel for assistance in the handling and reporting of security incidents.
- t) Maintain an incident response program that implements incident handling for security incidents that includes preparation, detection and analysis, containment, eradication, and recovery processes.
- u) Provide incident response with the capability to support automated mechanisms for supporting incident handling processes.
- v) Provide the capability to document incidents and investigations in the State's incident handling system.
- w) Contractor shall provide quarterly summary reports of Intrusion Detection System (IDS) and Intrusion Prevention System (IPS) events to: service.desk@maryland.gov in accordance with DoIT's IT Security Policies: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>

- x) Ensure that all Content is removed or destroyed in accordance with the requirements of DOIT's IT Security Policies located at the following URL, <http://doit.maryland.gov/support/pages/securitypolicies.aspx>
- y) Ensure that access to facilities housing Content or supporting applications are restricted to only allow access to Contractor Personnel who have a need to know in connection with operation and support of the Application and/or Licensed Services.
- z) Ensure that notification is sent to Authorized Users in writing thirty (30) days prior to Contractor's intention to replace or add any Contractor Personnel that will be provided access to Content whether that access is provided by Contractor or Contractor's subcontractors. The Authorized Users may reject any additional or new Contractor Personnel who may be provided access to Content.
- aa) Ensure that the Application and/or Licensed Services operating systems, middleware, applications, and interfaces are scanned for vulnerabilities every 30 days and scanning reports are provided to Authorized Users as required by State security standards.
- bb) (Intentionally Omitted.)
- cc) Provide Application and/or Licensed Services with the capability to set affinity on tiered systems. Ensure that no one hypervisor can host the application and the data storage.
- dd) Support physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility located within the continental United States and ensure that all Content is stored, processed and maintained within the continental United States at all times.
- ee) Report the exact geographic location of all State data at all times if that Content is not stored in a State facility. Contractor shall provide a report to confirm the exact geographic location of any Content not stored in a State facility every 30 days.
- ff) At all times, remain compliant with the privacy and security requirements mandated by federal, state and local laws and regulations.
- gg) Ensure performance of an AICPA SOC-2 (Type 2) audit at least once annually of the Application's environment and the Contractor's organization and report to the Department in accordance with RFP Section 2.9. Upon request from the Authorized Users, Contractor shall provide a non-redacted copy of current AICPA SOC-2 (Type 2) audit. Contractor shall assist the Authorized Users in obtaining the current AICPA SOC-2 (Type 2) audit report from any third-party providing services to Contractor, if said third-party services involve the processing or storage of any Content. The Trust Service Principles that should be covered in the SOC-2 Type 2 are: Security, Availability, and Confidentiality. Contractor shall ensure that external connections incorporated into the Application and Licensed Services have appropriate security controls including industry standard intrusion detection and countermeasures that will detect and terminate any unauthorized activity prior to entering the firewall maintained by Contractor.
- hh) Ensure that the Application and Licensed Services will utilize industry standard firewalls regulating all data entering the internal data network from any external source which will enforce secure connections between internal and external systems and will permit only authorized data to pass through.
- ii) Ensure that the Application and Licensed Services will use encryption compliant with Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2 to protect Content that is transmitted or stored on behalf of the State. Contractor

shall ensure that the Application will provide for the State to maintain exclusive control of all encryption keying material.

- jj) Ensure that it will apply all security updates to its systems as required by State security standards. For third-party hosted systems, Updates should be installed in compliance with State standards. Please refer to the following link for the above mentioned State security standards: <http://doit.maryland.gov/support/pages/securitypolicies.aspx>.
- kk) Ensure that it will utilize industry standard malware protection, incorporating both signature and non-signature-based detection mechanisms, on all systems with access to Content.
- ll) Ensure that malware protection will be centrally managed and receive regular automatic updates to malicious code protection mechanisms and data files from the software vendor.
- mm) Within 90 Business Days after the expiration or termination of this Contract, confirm in writing to Authorized Users and the State that all Content has been removed from all systems where the Content resided during performance of this Contract in a manner that complies with the State's IT Security Policy at the following URL: <http://doit.maryland.gov/support/pages/securitypolicies.aspx>. Written confirmation shall include: (a) sufficient detail describing the processes and procedures used in removing the Content; (b) information about the locations of where it was removed from within the Application and storage and other locations, and; (c) the date the removals were performed. All metadata, in its original form, shall be returned to the respective Authorized User(s).
- nn) Train Contractor Personnel regarding the security and data recovery programs referenced in this Section.
- oo) Regularly test the systems and procedures outlined in this Section; and
- pp) Have audit controls that record and monitor Application and Licensed Services activity continuously.

10. Proprietary rights

A. Contractor's Proprietary Rights

Except as otherwise stated herein, the Licensed Services (including without limitation, the Application and Updates, and Contractor Product, except to the extent that Contractor Product contains Content) and Documentation are the sole and exclusive property of Contractor and its licensors. All modifications, enhancements, Updates, and translations of the Licensed Services shall be deemed a part thereof.

B. Authorized User Requirements and License Restrictions

Except as otherwise provided in this Contract or as provided by law, Authorized User:

- (i) Will use commercially reasonable efforts to ensure that Application Users comply with all of the terms and conditions hereof;
- (ii) Shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the software comprising or in any way making up a part of the Application;
- (iii) Shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without prior written permission from Contractor;

provided, however, an Authorized User may reproduce and distribute any Application output generated from the relevant Authorized User Content, and an Application User may reproduce and distribute any Application output generated pursuant to the permissions set forth in the applicable Authorized User's order or SOW;

- (iv) Shall not rent, lease, sublicense, resell for profit, loan, distribute, network or modify the Application or Contractor Product or any component thereof, provided as part of the Licensed Services, except as otherwise authorized by Contractor. However, an Authorized User may reproduce and distribute any Application output (e.g., reports) generated by Authorized User using the Application, and an Application User may reproduce and distribute any reports or output generated by the Application User using the Application and pursuant to the permissions in the applicable Authorized User's order or SOW;
- (v) Shall only use the Application and Contractor Product in the normal course of business, in connection with, and as part of, the Licensed Services;
- (vi) Shall not attempt to gain unauthorized access to the Application or Licensed Services, other user accounts, computer systems or networks connected to the Licensed Services;
- (vii) Shall not remove, obscure or alter Contractor's proprietary notices, disclaimers, trademarks, or other proprietary rights notices of any kind affixed or contained in the Application or Licensed Services or any written or electronic report, output or result generated in connection with the Licensed Services;
- (viii) Shall take reasonable care not to, and shall not intentionally or knowingly, use the Application to post, transmit, distribute, store or destroy any information: (1) in violation of any applicable law, statute, ordinance or regulation; (2) in a manner that infringes the intellectual property rights of others; (3) that is defamatory or trade libelous, or (4) that contains any Computer Viruses; and
- (ix) Shall not use the Application or Licensed Services for any illegal, obscene, offensive or immoral purpose.

C. Authorized User Proprietary Rights

Except as otherwise stated herein and with the exception of any applicable third-party rights, Content and any customizations made for Authorized User's operation of the Application or for interoperability with other Authorized User's systems or applications paid for by the Authorized User, are and shall be and remain the sole and exclusive property of Authorized User, including all applicable rights to patents, copyrights, trademarks, trade secrets or other proprietary property rights thereto. Additionally, all right, title and interest in and to any Content or customizations relating to Authorized User's business shall be and remain the property of Authorized User, whether or not supplied to Contractor or uploaded into the Application. Nothing in this Contract shall be construed as conveying any rights or interest in Content or customizations to Contractor. Upon termination of an order or SOW issued hereunder, Contractor agrees to either provide the Content and customizations to the applicable Authorized User, or, at such Authorized User's request, certify in writing that said Content and customizations in all formats, have been destroyed.

11. TRANSITION ASSISTANCE

Prior to or upon expiration or termination of this Contract and in conjunction with RFP Section 2.2, at the request of the State, Contractor shall provide all assistance as the State or such Authorized User

may reasonably require to transition the Contractor's contractual obligations, or any portion thereof, as requested by the State or such Authorized User, to any other Contractor with whom the State or such Authorized User contracts for provision of same. This obligation may extend beyond expiration or termination of the Contract for a period of time not to exceed 12 months or longer as agreed upon by the Parties (herein referred to as "Transition Period"). If this Contract includes Contractor's provision of licensed products, Contractor agrees that, without the prior written consent of the Department or such Authorized User, no action will be taken by Contractor to modify, restrict or terminate the use of such licensed products after the date of expiration or termination of the Contract or during any Transition Period in which Contractor is contractually committed to work with the State or any Authorized User. Contractor must provide all reasonable transition assistance requested by the State or such Authorized User to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services. Such transition assistance will be deemed by the Parties to be governed by the terms and conditions of this Contract. Further, any period of transition will not affect the State's or any Authorized User's rights in regards to any purchased Software Perpetual Licenses which are paid in full.

Upon execution of a Change Order or SOW pursuant to this Contract, Contractor and Authorized User will develop a transition plan ("Transition Plan") detailing each Party's respective tasks for the orderly transition and migration of (i) all Content stored by Contractor pursuant to such Change Order or SOW to Authorized User's archive and/or to a system or application maintained by Authorized User or a third party application service provider and agreed in writing by Authorized User and Contractor and, (ii) the Application and Licensed Services to Authorized User or a third party service provider when such transition and migration to occur upon termination or expiration of the Contract or the Change Order or SOW.

At a minimum, the Transition Plan shall provide that upon expiration or termination of this Contract or the applicable Change Order or SOW for any reason, Contractor will return all Content in its possession to the Authorized User in a format accessible without the use of Contractor's Application. In addition, Contractor will, at Authorized User's option, continue to provide Licensed Services for up to six (6) months after the date of expiration or termination of such Change Order or SOW in order to facilitate Authorized User's transition to a new service provider.

Contractor shall, within thirty (30) days of expiration, completion, or termination of this Contract or any Change Order or SOW issued hereunder, provide to all affected Authorized Users a complete set of all Content provided to Contractor by the relevant Authorized User and/or its Application Users and stored by the Application on behalf of such Authorized User.

12. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES

A. Licensed Services Commencement Date

The Contractor shall begin delivery of Licensed Services upon receipt of a Notice to Proceed. An Authorized User may delay the Licensed Services commencement date by notifying the Contractor at least ten (10) days before the scheduled Licensed Services commencement date.

B. Acceptance

The Application shall be deemed accepted when the Authorized User reasonably determines that such Authorized User and its Application Users can successfully access and use all functionalities

of the Application which Contractor is required to provide to such Users. The Authorized User agrees to complete Acceptance testing within 30 days after receiving written notice from Contractor of the ability of such Authorized User and its Application Users to access the Application, or within such other period as set forth in the applicable Change Order or SOW. Contractor agrees to provide to such Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by such Authorized User at the then current per diem amounts set forth by the State Department of Budget and Management, Travel Management Services and as published online at: <http://www.dbm.maryland.gov/Pages/TravelManagementServices.aspx> or any successor URL(s). Authorized Users who are not public bodies may have their own per diem amounts applicable to Contractor's pre-approved travel expenses. Authorized User shall provide to Contractor written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Contractor written notice of successful or unsuccessful Acceptance testing within 15 Business Days following the Acceptance testing period, the Service shall be deemed Accepted.

c. Cure Period

If during the Acceptance test period, Authorized User is unable to access the functionalities of the Application, Contractor shall provide Authorized User with such access, and such Authorized User's Application Users with their required access, within seven (7) days of written notice of inability to access, or as otherwise agreed between the Authorized User and Contractor in the applicable Change Order or SOW. Should Contractor fail to provide access to the licensed functionalities of the Application, such Authorized User may, in its sole discretion: (i) reject the Application in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Application access with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Application access while reserving its right to revoke Acceptance if timely correction is not forthcoming.

If the Authorized User and its Application Users are unable to access the licensed functionalities of the Application after a second set of Acceptance tests, Contractor shall be deemed in default of the Change Order or SOW. In the event of such default in addition to any remedies available hereunder or in the Contractor's Service Level Agreement, the Authorized User may, at its sole discretion, terminate its Change Order or SOW, in whole or in part, for the Licensed Services to be provided thereunder by Contractor.

13. RETENTION OF RECORDS

A. The Contractor and its Subcontractors shall retain and maintain all records and documents in any way relating to this Contract and under any Change Order or SOW issued pursuant to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

B. This provision shall survive expiration of this Contract.

14. APPLICATION AND LICENSED SERVICES SUPPORT

A. Coverage

Twenty-four (24) hours per day, seven (7) days a week, Contractor shall provide telephone or written consultation as requested by an Authorized User in connection with use, problems and operation of the Application.

B. Service Levels

Within the designated response times set forth in Exhibit C, Table of Service Levels, one (1) hour after a request from an Authorized User or the Department, in its governance role, Contractor will respond to such request for support of Licensed Services regarding the Application and Licensed Services, including Application, Contractor Product and Documentation in accordance with the procedures identified in Exhibit C of the Contract, Table of Service Levels, Response and Resolution Times and Escalation Procedures for Licensed Services. In each case, Authorized User may describe the problem by telephone or electronic mail or via a web site provided by Contractor. Contractor shall use its best efforts but in no case less than commercially reasonable efforts to meet Response Time and Resolution Time and other obligations under this Contract.

The level of severity (e.g., 1, 2, 3), shall be as stated in Exhibit C, Table of Service Levels.

C. Application Evolution

Should Contractor merge or splinter an Application provided to any Authorized User, such action on the part of Contractor shall not in any way result in such Authorized User being charged additional license or support fees in order to access the Application, to enable its Application Users to access the Application, or to receive enhancements, releases, Upgrades or support for the Application.

15. SERVICE LEVELS AND REMEDIES

A. Availability

Contractor's failure to make the Application or Licensed Services Available to Authorized User and its Application Users at least 99.5% of the time in any given month, excluding scheduled maintenance or excusable downtime, shall be deemed a service level default ("Service Level Default") and Authorized User may obtain the non-exclusive remedies set forth in the Contractor's Service Level Agreements and as otherwise proposed in Exhibit C. For purposes of this Contract, "Available" means that Authorized User and its Application Users are able to access all features and functions of the Application and Licensed Services required by Authorized User, including but not limited to the Application and Contractor Product.

In the event Authorized User is eligible for a 100% service level credit under this Section during any given month of the term of such Authorized User's Change Order or SOW, Authorized User may terminate such Change Order or SOW without penalty upon written notice to Contractor and, in addition to the remedies available under this Section, receive any additional remedies set forth in the Contract.

Credits shall be applied against the next invoice. In the event a Service Level Default occurs after the State or an Authorized User has given notice of termination hereunder, or Authorized User has made final payment to Contractor for the Application and Licensed Services and no further invoices shall issue as a result, Contractor shall refund to Authorized User the amount of the appropriate service level credit due for the period of default.

B. Provisioning

Incremental additions of Application Users, access authorizations, moves or reductions, including disabled access updates, in the scope of the Licensed Service (e.g., USERIDs), shall be completed within one (1) Business Hour of a written request (including e-mail to the Contractor's Point of Contact or submission to its provisioning web site) from an Authorized User's designated Administrator. In the event that provisioning is not made available within one (1) Business Hour of the request, a credit for the incremental amount of the revision shall be applied against the next invoice for 1/30th of the corresponding pro-rated amount.

C. Reporting

Once each calendar month during the term of a Change Order or SOW issued pursuant to this Contract, Contractor shall provide Authorized User with a written report that shall contain information with respect to the performance of the Application and Licensed Services. Contractor shall submit a copy of each report to the Procurement Officer. Such report, unless otherwise agreed upon by the Parties, shall be in conformity with the reporting Contractor provides to its other customers utilizing an application and licensed services identical or similar to the Application and Licensed Services provided to the Authorized User. Representatives of Contractor, Authorized User, and the State at its option, shall meet as often as may be reasonably requested by either Party, but no less often than once each calendar quarter, to review Contractor's performance of Licensed Services and the performance of the Application and to discuss technical plans, financial matters, system performance, service levels and any other matters related to this Contract or such Authorized User's Change Order or SOW that may be reasonably requested by either Contractor or Authorized User or the State. Contractor shall notify the Procurement Officer of such meetings. Authorized User or the State may independently audit the report at its expense no more than two (2) times annually.

D. Failure to Meet Service Level Commitments

In the event that any Application or Licensed Services fail to meet the applicable Service Levels, Contractor, Contractor, at its sole cost and expense, will: (i) promptly replace the Application or Licensed Services with an Application or Licensed Services that conforms to this Contract and such specifications; (ii) repair the Application or Licensed Services so that it conforms to this Contract and such specifications; or (iii) refund to Authorized User all fees paid for the Application and the Licensed Services for the period applicable after the failure of the Application to meet the Service Levels. In the event Contractor fails to comply with these remedies, Authorized User may exercise all available rights and remedies under law and equity.

E. Escalation Procedures

[To be provided by Contractor in response to RFP Section 2.8.]

16. GENERAL WARRANTY

Contractor warrants and represents to the State as follows:

A. Ownership

Contractor shall perform all contractual obligations and provide all Services hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

B. Licensed Services, Application and Documentation

- (i) Contractor maintains superior knowledge with respect to the Application and acknowledges that all Authorized Users are relying on Contractor's skill and judgment in providing the Licensed Services, including the Application, Solution and software.
- (ii) Contractor shall perform the Licensed Services in conformity to the specifications set forth in Exhibit A in a professional and workmanlike manner.
- (iii) The Application and Licensed Services shall conform in all material respects to the requirements hereunder and any Change Order or SOW issued hereunder; Contractor and the applicable specifications and Documentation, not including any post-Acceptance modifications or alterations to the Documentation which represent a material diminishment of the functionality of the Application, Licensed Services or Contractor Product and that such Application and Licensed Services are compatible with and will operate successfully in accordance with the Documentation and all of the terms and conditions hereof.
- (iv) The Application is at the current release level unless an Authorized User specifies an older version in its Change Order or SOW;
- (v) No corrections, work arounds or future Application releases shall degrade the Application, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software, or licensed services;
- (vi) All post-Acceptance Updates, changes, alterations or modifications to the Application, Licensed Services and Documentation by Contractor will be compatible with, and will not materially diminish the features or functionality of the Application, Licensed Services and/or Contractor Product when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- (vii) That the Documentation and all modifications or amendments thereto which Contractor is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and utilize fully the Application without reference to any other materials or information.

C. Privacy and Security

Contractor and Contractor Personnel have taken all necessary and reasonable measures to ensure that the Application, Licensed Services, Contractor Product, and any related Deliverables do not include any degradation, known security vulnerabilities, or breach of privacy or security (collectively, an "Occurrence"). Contractor agrees to notify the State of any Occurrence as soon as possible, but no later than 24 hours or lesser time as required by applicable law, after the Contractor discovered or should have discovered the Occurrence and provide the State with fixes or upgrades for security vulnerabilities as soon as possible but not more than 60 days of discovery unless otherwise agreed to by the Parties.

D. Operating System and Software Supportability

Contractor and Contractor Personnel have taken all necessary and reasonable measures to ensure that the Application, Licensed Services, Contractor Product, and any Deliverables do not have dependencies on other operating systems or software that are no longer supported by Contractor Personnel.

E. Documentation and Deliverables

- (i) If Exhibit A or C specifies the hardware an Authorized User shall use to run the Solution, then Contractor warrants the Solution, and any subsequent Solution or software release, is compatible with and shall perform well with such hardware and in accordance with its Documentation; If Exhibit A or C specifies the hardware an Authorized User shall use to run the software, then Contractor warrants the software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of ten (10) years of the Effective Date. However, Contractor will in no event be liable for the failure of software if such failure is due to changes in the hardware or use of third party software by an Authorized User. Further, if a Change Order or SOW issued by an Authorized User pursuant to this Contract specified the hardware such Authorized User shall use to run the software, then Contractor warrants the software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of ten (10) years of the date of such Change Order or SOW. However, Contractor will in no event be liable for the failure of software if such failure is due to changes in the hardware or use of third party software by such Authorized User.
- (ii) No corrections, work arounds or future software or Solution software releases provided by Contractor under the warranty provisions or under maintenance shall degrade the Solution, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software. No corrections, work arounds or future software releases provided by Contractor under the warranty provisions or under maintenance or support services shall degrade the software, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software.

F. Malicious Code

Contractor has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features or any embedded device or code (e.g., time bomb) in any Solution, Solution component, Deliverables, product, software, Update, Application /or Licensed Service, provided by Contractor at the time of delivery to the Authorized User.

G. Access to Product and Passwords

The Application and Licensed Services do not contain disabling code or any program device or other undisclosed feature, including but not limited to, viruses, worms, trojan horses, or other code which is designed to permit unauthorized access, delete, disable, deactivate, interfere with or otherwise harm the Application, Licensed Services or the hardware or software of any Authorized User or its Application Users. In addition, Contractor warrants that Authorized User and its Application Users will be provided commercially reasonable uninterrupted access to the Application. Contractor also warrants that it will not cancel or otherwise terminate access to the Application by disabling passwords, keys or tokens that enable continuous use of the Application by the Authorized User and its Application Users during the term of this Contract or any Change Order or SOW issued hereunder.

Notwithstanding any rights granted under this Contract or at law, Contractor hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Contractor agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

H. Open Source

(Intentionally Omitted.)

I. Contractor's Viability

Contractor has the financial capacity to perform and continue to perform its obligations under this Contract; that Contractor has no constructive or actual knowledge of a potential legal proceeding being brought against Contractor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

J. Contractor's Past Experience

(Intentionally Omitted.)

THE OBLIGATIONS OF CONTRACTOR UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

17. PAYMENT AND PAYMENT PROCEDURE

A. Consideration and Payment

- i. In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified, payment to the Contractor, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Financial Proposal.

- ii. Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor as required by RFP Section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

(1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- iii. In addition to any other available remedies, if the Contractor fails to perform in a satisfactory and timely manner in accordance with the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Contract.
- iv. Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

B. Reimbursement of Expenses

If allowable pursuant to an Authorized User's Statement of Work, such Authorized User shall pay, or reimburse Contractor, for all reasonable and actual travel-related expenses for greater than thirty (30) miles from portal to portal incurred by Contractor during the relevant period; provided, however, that such Authorized User shall only be liable to pay for Contractor's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by such Authorized User in advance in the Statement of Work and which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Travel Management Services office located with the Maryland Department of Budget and Management (<http://www.dbm.maryland.gov/Pages/TravelManagementServices.aspx>, or a successor URL(s)). Authorized Users who are not public bodies may have their own per diem amounts applicable to Contractor's pre-approved travel expenses.

All reimbursed expenses will be billed to the Authorized User on a pass-through basis without any markup by Contractor. At Authorized User's request, Contractor shall provide copies of receipts for all travel expenses.

C. Statement of Work

A SOW, in the format provided in Exhibit E, shall be required for any Work Orders placed by an Authorized User pursuant to this Contract. Contractor shall perform any and all contractual obligations at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit D herein. Unless in furtherance of compliance, invoicing, and auditing requirements, for time and materials type SOWs, Contractor Personnel shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by the Authorized User upon forty-eight (48) hours advance written notice.

Any change to an SOW must be described in a written Change Order (template provided as Exhibit B). Either Party to an SOW may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract. In no event shall any SOW or any modification thereto require the Contractor to provide any products or services that are beyond the scope of this Contract as such scope is defined in the RFP.

D. Invoice Procedures

Contractor Invoicing shall be in accordance with Section 2.3 of the RFP.

E. Purchase Payment Terms

Contractor is responsible for the accuracy of its billing information. Contractor agrees not to issue invoices hereunder until all Contractor's performance obligations have been accepted and in accordance with the milestone payment schedule, if any, in the applicable Change Order or SOW, or until after services have been rendered. Charges for Deliverables, components or services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. Should Contractor repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

18. COST AND PRICE CERTIFICATION

- A. The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.
- B. The price under this Contract and any SOW, Change Order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

19. FINANCIAL DISCLOSURE

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

20. STATUS MEETINGS

The Contractor through its Account Team will be prepared to conduct monthly stewardship meetings with the State to provide a broad review of all services, projects and ongoing operations.

21. STEERING COMMITTEE

In order to facilitate mutually beneficial contractual relationships with a Contractor for this procurement, the State will establish a procedure for a steering committee ("Steering Committee") to consist of senior management personnel, program operational and/or technical staff, and staff involved in the contractual relationship, from both the State and Contractor.

Roles of the Steering Committee are to include, but not be limited to: a) identifying potential opportunities, challenges, or other issues that may arise during performance of the contract, b) discussing and assigning roles and responsibilities, c) establishing methods for quickly resolving potential disputes, d) setting rules for communication and decision-making, e) monitoring and measuring program planning and Solution components, roadmap strategies and timing, and managing the relationship between parties, and f) acting as a final decision board for program opportunities or problems.

A meeting of the Steering Committee is intended to be a forum for brainstorming and sharing ideas, emphasizing respect, cooperation, and access, with the goal of developing the business relationship to recognize public needs, program opportunities, avoid conflict, and better assure contract success. A facilitator may, but is not required to, conduct a meeting of the Steering Committee.

A Steering Committee for this Contract will be formed at the State's option. Meetings may be held quarterly, bi-monthly, monthly, weekly, daily, or at any time during the Contract term, should the State, at its sole discretion, determine that a meeting(s) are necessary or beneficial to State operations or to the contractual relationship, and Contractor agrees to participate in such meeting(s). In addition, Contractor may at any time submit a written request to the State for a meeting of the Steering Committee, which the State will not unreasonably deny.

Contractor shall ensure the availability of the appropriate personnel to meet with the State contract management team. Additional Steering Committee meetings involving representatives from the State, the Contractor, and an Authorized User may be required prior to or during performance on any specific SOW issued pursuant to this Contract.

22. POLICIES AND PROCEDURES GUIDE

Within thirty (30) days of the Effective Date of the Contract, Contractor will provide the State with a policy and procedures guide to describe how the Contractor and the State will work together and how performance, including Deliverables and Services, are to be delivered. The guide will provide process diagram details, working activities, interface points with the State and Contractor. Updated versions of the guide will be provided by Contractor to the State and all Authorized Users during the term and any extensions of the Contract.

23. COMPETITIVE PRICING

If Contractor offers better pricing related to labor rates to another government entity within the United States, Contractor must offer such pricing to the State and implement it within 30 days. Such pricing shall be applicable to future invoices only and may not be applied retroactively under the Contract.

24. CONFIDENTIALITY AND PROPRIETARY INFORMATION AND DOCUMENTATION

A. Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all Confidential Information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer

systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant Confidential Information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's Confidential Information is to be disclosed shall be advised by Contractor of, and bound by, confidentiality and intellectual property terms substantially equivalent to those of this Contract.

- B. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

C. Contractor Return or Destruction

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Authorized User, Contractor shall (i) at its own expense, (a) promptly return to the disclosing Authorized User all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Authorized User, or (b) upon written request from the disclosing Authorized User, destroy such Confidential Information and provide the disclosing Authorized User with written certification of such destruction, and (ii) cease all further use of the Authorized User's Confidential Information, whether in tangible or intangible form.

- D. The State or the Authorized User shall retain and dispose of Contractor's Confidential Information in accordance with The State of Maryland's records retention policies or, if Authorized User is not subject to such policies, in accordance with such Authorized User's records retention policies.

E. Confidentiality Statement

All Contractor Personnel performing Services pursuant to this Contract shall be required to sign a confidentiality statement or non-disclosure agreement, which format is approved by the State. Any violation of such statement or agreement shall be deemed a breach of this Contract and may result in termination of the Contract or any Change Order or SOW issued hereunder.

25. LOSS OF DATA

- A. In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, or applications with which the Contractor is working hereunder.
- B. In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in RFP Section 2.7.9 "Security Incident Response" and 2.7.10 "Data Breach Responsibilities."
- C. Protection of data and personal privacy, as described and defined in RFP Section 2.7.5, "Data Protections and Controls", shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end,

the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in the RFP.

26. INDEMNIFICATION AND NOTIFICATION OF LEGAL REQUESTS

- A. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents and any Authorized Users and employees and agents thereof (collectively, "Indemnified Parties") harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses including but not limited to attorneys' fees and costs, (each, a "Claim" and collectively, "Claims"), which arise out of or relate to:
- a) any intentional or willful conduct or negligence of any Contractor or Contractor Personnel;
 - b) any act or omission of any Contractor or Contractor Personnel; and
 - c) any actual or alleged infringement or misappropriation of any third party's intellectual property rights, patent infringement, or trademark or copyright violation arising out of the purchase or use of any of the Contractor-provided products or services;
- and (ii) cooperate, assist, and consult with the State and Authorized Users in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's or Authorized Users' rights or interests, without the State's prior written consent.
- B. The State and Authorized Users have no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- C. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State or Authorized User intellectual property, or other information considered to be the property of the State or Authorized User, including but not limited to State or Authorized User data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State and Authorized User, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State and Authorized User of such receipt providing the State and Authorized User with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request.
- D. In the event a Claim is commenced against any of the State's Indemnified Parties alleging that use of the Contractor-provided products or Services, including any components thereof, or that the Contractor's performance or delivery of any product or Service under this Contract infringes any third party's intellectual property rights and Contractor is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Contractor shall immediately notify the State and the affected Authorized User(s) in writing, via certified mail, specifying to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of this Contract and the extent to which it is not. Contractor shall in such event

protect the interests of the State's Indemnified Parties and secure a continuance to permit the State and the affected Authorized User(s) to appear and defend their respective interests in cooperation with Contractor as deemed appropriate by the State or the affected Authorized Users, including any jurisdictional defenses the State or the affected Authorized User(s) may have.

- E. In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Contractor-provided Deliverables, products, software, Services, Solution, including Solution components, Application and Licensed Services, as applicable, or Contractor's performance, and in addition to all other obligations of Contractor in this Section, Contractor shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Deliverables, products, software, Services, Solution, including Solution components, Application and Licensed Services, as applicable, or any component thereof; or (b) replace or modify such infringing Deliverables, products, software, Services, Solution, including Solution components, Application and Licensed Services, as applicable, or any component thereof, with non-infringing Deliverables, products, software, Services, Solution or Solution component(s), Application and Licensed Services, as applicable, satisfactory to the State. If (a) or (b) are not available despite Contractor's commercially reasonable efforts, then the State will have the right to terminate this Contract and the State may exercise any of its rights and remedies as set forth in this Contract at law or in equity. Nothing in this Section is to be interpreted to waive any of the State's rights or Contractor's obligations under the State's right to indemnification resulting from third party claims.
- F. And in addition, Contractor shall provide any Authorized User with a comparable temporary replacement products and/or services or reimburse the State or any Authorized User for the reasonable costs incurred by the State or such Authorized User in obtaining an alternative product or service, in the event such Authorized User cannot use the affected Deliverable, product, software, Services, Solution or Solution component(s), Application and Licensed Services, as applicable, or any component thereof. If Contractor cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Contractor shall accept the return of the infringing Deliverables, products, software, Services, Solution, Solution component, Application and Licensed Services, as applicable, or any component thereof, along with any other components rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Contractor for such components and pay any damages the State may incur in replacing the infringing components on its own.

27. LIMITATIONS OF LIABILITY

- A. Contractor shall be liable for any loss or damage to the State or Authorized User occasioned by the acts or omissions of Contractor and Contractor Personnel as follows:
- i. For infringement of patents, trademarks, trade secrets and copyrights as provided in the Section herein, entitled "Patents, Copyrights, Intellectual Property," provided that the Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon the State's use other than in accordance with applicable terms of use;
 - ii. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
 - iii. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract ("Claims") and regardless of the basis on which the claim is made, Contractor's liability shall not exceed (a) for claims arising out of the first three years of this Contract, two

(2) times the total value of the Contract, including any Change Orders and SOWs, for such period of time, and (b) for claims arising after the first three years of the Contract, two (2) times the total amounts payable to the Contractor in the 24 months preceding the event giving rise to such damages.

- B. Contractor's indemnification obligations for Third party claims arising under the Section herein, entitled "Indemnification and Notification of Legal Requests" are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under "Indemnification and Notification of Legal Requests" shall be unlimited if the State is not immune from liability for claims arising under "Indemnification and Notification of Legal Requests".
- C. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by Subcontractor Personnel and all Contractor Personnel shall be held to be agents of Contractor.

28. LIQUIDATED DAMAGES

- A. The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of each violation.

- i Failure to submit each monthly payment report in full compliance with COMAR § 21.11.03.13B(3), entitled "Compliance": \$31.65 per day until the monthly report is submitted as required.
- ii Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR § 21.11.03.13B(4), entitled "Compliance": \$112.10 per MBE subcontractor.
- iii Failure to comply with COMAR § 21.11.03.12, entitled "Amendment of MBE Participation Schedule", in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation

- schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- iv. Failure to meet the Contractor's total MBE participation goal and sub-goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
 - v. Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$100 per day until the undisputed amount due to the subcontractor is paid.
- B. Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which maybe available under the Contract or otherwise may be available at law or in equity.

29. INSURANCE

In addition to the insurance coverage required by law as referenced in the Incorporated Contractual Provisions section of this Contract, Contractor shall comply with the provisions of RFP Section 2.6, "Insurance."

30. SECURITY AND COMPLIANCE

- A. Contractor agrees to comply with all provisions of the then-current The State of Maryland security procedures, published by the Maryland Department of information Technology (DoIT) and which may be found at: <http://doit.maryland.gov/support/pages/securitypolicies.aspx> or any successor URL(s), as are pertinent to Contractor's operation. Contractor further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Contractor's operation and which have been supplied to Contractor by such Authorized User. Contractor shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Contractor Personnel. Contractor may, at any time, be required to execute and complete, for each individual Contractor Personnel, additional forms which may include non-disclosure agreements to be signed by Contractor Personnel acknowledging that all Authorized User information with which such Contractor Personnel come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary or Personal information by Contractor or Contractor Personnel shall constitute a breach of its obligations under this Section and the Contract. Contractor shall immediately notify DGS and Authorized User, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as defined in Md. STATE GOVERNMENT Code Ann. §§10-1301 to 10-1308, and other personal identifying information, such as insurance data or date of birth, provided by DGS or Authorized User to Contractor. Contractor shall provide DGS the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law. Contractor shall indemnify, defend, and hold the State, DGS, the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the State, the Authorized User, their officers, directors, agents

or employees, on account of the failure of Contractor to perform its obligations pursuant this Section.

- B. DGS shall have the right to review Contractor's information security program prior to the commencement of Licensed Services and from time to time during the term of this Contract. During the performance of the Licensed Services, on an ongoing basis from time to time, DGS, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Contractor's information security program. In lieu of an on-site audit, upon request by DGS, Contractor shall implement any reasonably required safeguards as identified by any program audit.

31. ACCEPTABLE USE POLICY (IF APPLICABLE)

The State and Authorized Users agree to abide by the Contractor's Acceptable Use Policy (AUP), if provided and as applicable, and as may be amended by the Parties hereby and incorporated hereto as Exhibit G. Because certain standard clauses that may appear in, or be incorporated by reference into, Contractor's standard AUP cannot be accepted by the State, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the Parties hereto specifically agree that:

- (i) in the event of a conflict between this Contract and the AUP, this Contract shall control; and
- (ii) a material, unilateral revision to the AUP by Contractor that substantially impairs the ability of the State or any other Authorized User from its lawful use of the Service constitutes a default under the Contract.

32. THIRD PARTY TERMS AND CONDITIONS

Should Contractor's provision of the Licensed Services or any performance obligations under the Contract, or any Change Order or SOW issued under the Contract, include third-party terms and conditions, State security policies standards and guidelines shall take precedence over any third party terms and conditions. For the purposes of statutory law as referenced and incorporated in the Contract, if there is any conflict with any third party terms, such statutory law shall govern.

33. COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

34. **BANKRUPTCY**

If Contractor becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) Business Days, then the State may immediately terminate this Contract, and an Authorized User may terminate a Change Order or SOW, on notice to Contractor unless Contractor immediately gives the Department or such Authorized User adequate assurance of the future performance of this Contract or the applicable Change Order or SOW. If bankruptcy proceedings are commenced with respect to Contractor, and if this Contract has not otherwise terminated, then the State may suspend all further performance of this Contract until Contractor assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to 11 U.S.C. § 365 or any similar or successor provision, it being agreed by the State and Contractor that this is an executory contract. Any such suspension of further performance by the State or Authorized User pending Contractor's assumption or rejection shall not be a breach of this Contract, and shall not affect the rights of the State or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

35. **EFFECT OF CONTRACTOR BANKRUPTCY**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

36. **GENERAL PROVISIONS**

A. Relationship between the State and Authorized User and Contractor

Contractor has no authority to contract for the State or any Authorized User or in any way to bind, to commit the State or any Authorized User to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of the State or any Authorized User. Under no circumstances shall any of Contractor or Contractor personnel, hold itself out as or be considered an agent or an employee of the State or any Authorized User, and neither the State nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Contractor or Contractor Personnel. Contractor represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither the State nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Contractor. Any and all taxes, interest or penalties, (including, but not limited to, any federal, state or local withholding or employment taxes, and any penalties related to health care or employee benefits laws) that are imposed, assessed or

levied as a result of this Contract or Services performed pursuant to this Contract shall be paid or withheld by Contractor or, if assessed against and paid by the State or any Authorized User, shall be reimbursed by Contractor upon demand by the State or such Authorized User.

B. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

C. Incorporated Contractual Provisions

For any Change Orders or SOWs issued by an Authorized User under a Contract that will or may include the entry, handling, processing, storage, movement, sharing of or access to Federal Tax Information (FTI) by Contractor or any subcontractor of Contractor in any manner, IRS Publication 1075 shall apply to that order, SOW and Contract. The Tax Information Security Guidelines for Federal, State and Local Agencies – Exhibit 7, Safeguarding Contract Language, as appropriate, and the requirements specified in Exhibit 7 in accordance with IRC 6103(n) are included by reference at the following, or any successor, URL: <https://www.irs.gov/pub/irs-pdf/p1075.pdf>. Contractor hereby acknowledges that it will comply with all applicable requirements of these terms and IRS Publication 1075 in its entirety. Non-compliance with the terms and IRS Publication 1075 may be determined, solely by the State, as a material breach of the applicable Change Order or SOW or the Contract. Further, the use of the term “Contractor” in these terms and IRS Publication 1075 means the same as the term “Contractor,” as defined and used in the Contract. FTI consists of federal tax returns and return information (and information derived from it) that is in the agency’s (i.e., Authorized Users of this Contract, as defined herein) possession or control which is covered by the confidentiality protections of the Internal Revenue Code (IRC) and subject to the IRC 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as Sensitive but Unclassified information and may contain personally identifiable information (PII).

The terms and conditions in documents posted to the aforementioned URLs are subject to change pursuant to action by the legislature of The State of Maryland, change in State policy, adoption of revised eMM business requirements, or change to IRS Publication 1075. Contractor is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that the State or Authorized User issuing the Change Order or SOW will be held harmless. If a change is made to the mandatory terms and conditions, a new effective date will be noted in the document title. Contractor is advised to check the URLs periodically.

D. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual’s refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

E. Commercial Nondiscrimination

- i. By entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, Contractors, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and Contractors to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- ii. The Contractor shall include the language in the previous paragraph or similar clause approved in writing by the Department, in all subcontracts.
- iii. Upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and Contractors that Contractor has used in the past four (4) years on any of its contracts that were undertaken within The State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

F. Use of Estimated Quantities

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope-of Work, any sample amounts provided are estimates only and the State does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

G. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative

amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections web site: http://www.elections.state.md.us/campaign_finance/index.html.

H. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

I. Maryland Law Prevails

- i. This Contract shall be construed, interpreted, and enforced according to the laws of The State of Maryland.
- ii. The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any SOW, Change Order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- iii. Any and all references to the Maryland Code Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

J. Disputes

This contract shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

K. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

L. Advertising and Use of Proprietary Marks

Contractor shall not use the name of the State or any Authorized User or refer to the State or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of the State or such Authorized User. In no event may Contractor use a proprietary mark of the State or an Authorized User without receiving the prior written consent of the State or the Authorized User.

M. Prompt Pay Requirements

- i. If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- a) Not process further payments to the Contractor until payment to the subcontractor is verified;
 - b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
 - c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
 - d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - e) Take other or further actions as appropriate to resolve the withheld payment.
- ii. An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- iii. An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor under this section 31, may not:
- a) Affect the rights of the contracting parties under any other provision of law;
 - b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
 - c) Result in liability against or prejudice the rights of the Department.
- iv. The remedies enumerated above are in addition to those provided under COMAR § 21.11.03.13, entitled "Compliance," with respect to SUBCONTRACTORS THAT HAVE CONTRACTED PURSUANT TO THE MBE PROGRAM.
- v. To ensure compliance with certified MBE subcontract participation goals, the State may, consistent with COMAR § 21.11.03.13, entitled "Compliance," take the following measures:
- a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 1. Inspecting any relevant records of the Contractor;
 2. Inspecting the jobsite; and
 3. Interviewing subcontractors and workers.Verification shall include a review of:
 1. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 2. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.

- b) If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- c) If the Department determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - 1. Terminate the Contract;
 - 2. Refer the matter to the Office of the Attorney General for appropriate action; or
 - 3. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

N. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:
Sachin Bhatt
100 Community Place, Rm. 2.329
Crownsville, MD 21032
410.697.9680
sachin.bhatt3@maryland.gov

With a copy to:
Rachel Hershey
Department of Budget & Management (DBM)
45 Calvert Street Room 137, Annapolis, MD 21401
Phone Number: 410.260.7681
E-Mail: Rachel.Hershey@maryland.gov

If to the Contractor:
Ryan Walicki
Nitor Partners
3000 Auburn Drive, Suite 430
Beachwood, OH 44122
ryan@nitorpartners.com
440.334.6256

O. Parent Company Guaranty (If applicable)

Not applicable.

P. No Waiver

Any failure to enforce any terms of this Contract shall not constitute a waiver.

Q. Subcontracting; Assignment

The Contractor may not subcontract any of its obligations under this Contract without obtaining prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without prior written approval of the Procurement Officer, each at the State's sole discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its Subcontractors.

R. Captions

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

S. Severability

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. The State and Contractor further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

T. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions may be granted only for delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or contractors arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or Contractor Personnel.

U. Survival

Any provisions of this Contract regarding Software License, Rights to Work Product, Warranty, Escrow, Confidentiality, Content Privacy and Security, Liability, Indemnification, Transition of Services, and the General Provisions shall survive the expiration or termination of this Contract.

V. Risk of Loss; Transfer of Title

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State.

W. Remedies

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, the State and all Authorized Users reserve any and all other remedies that may be available at law or in equity.

X. Right to Audit

The State reserves the right in its sole discretion and at any time, to perform an Audit of the Contractor's performance of the Services under the Contract including but not limited to an Audit of Contractor or Subcontractor records of any kind in any form, including electronic records, that relate to the Contract and any SOWs or Change Orders issued there under. The State's right to Audit shall:

- i. Not extend more than three (3) years from end date of the Contract including any renewals;
- ii. Be performed at Contractor's premises, during normal Business Hours upon three Business Days' notice;
- iii. Exclude access to Contractor price information unrelated to this Contract; and
- iv. May be conducted with any or all of the State's own internal resources or by securing the services of a third party accounting or audit firm, solely at the State's election. The State may copy any record related to the Services. The Contractor agrees to fully cooperate and assist in any Audit conducted by or on behalf of the State, including, by way of example only, making records and Contractor Personnel available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any Audit variances. Contractor shall not be compensated for providing any such cooperation and assistance. The Contractor shall ensure the State has the right to Audit any Subcontractor Personnel.

In no event shall Contractor have the right to Audit, or require to have audited, the State or any Authorized User.

Y. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR § 21.11.10.05, entitled "Employer Reporting and Posting Requirements", to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the Department may withhold payment of any invoice or retainage. The Department may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

Z. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

AA. Electronic Signatures

Electronic signatures provision. This Contract and any SOW or Change Order issued hereunder may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g., and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

BB. Compliance with Federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

Not applicable.

CC. Limited English Proficiency

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.

37. Exhibits

A. Exhibit A – RFP	B. Exhibit B – Contract Affidavit Proposal
C. Exhibit C – Technical Proposal	D. Exhibit D – Financial Proposal
E. Exhibit E – Statement of Work	F. Exhibit F – Change Order Template
G. Exhibit G – License Agreement(s)	H. Exhibit H – Certifications and Affidavits
I. Exhibit I – Contractor Procurement and Subcontracting Plan	

[SIGNATURE PAGE(S) TO FOLLOW]

Executed as of the date set forth above by the undersigned authorized representatives of the State and Contractor.

Nitor Partners, LLC
By: [Redacted]
Name: [Redacted]
Title: PARTNER
Date: 1/29/19

THE DEPARTMENT OF
By: [Redacted]
Name: [Redacted]
Title: SECRETARY
Date: 3/6/19

Approved for form and legal sufficiency
this 8th day of March 2019
[Redacted]

APPROVED BY BPW: March 6, 2019 6-5
(Date) (BPW Item #)