

**ATTACHMENT A - CONTRACT**

Department of Information Technology (DoIT)

“Digital Communications Management”

060B6400030

THIS CONTRACT (the “Contract”) is made this 6<sup>th</sup> day of April, 2017 by and between GovDelivery and, on behalf of the STATE OF MARYLAND, the MARYLAND Department of Information Technology (DoIT).

IN CONSIDERATION of the following, the parties agree as follows:

**1. Definitions**

In this Contract, the following words have the meanings indicated.

- 1.1. “COMAR” means the Code of Maryland Regulations.
- 1.2. “Contract” means this contract for Digital Communications Management.
- 1.3. “Contract Manager” means the individual identified in Section 1.6 of the Request for Proposals (RFP), or a successor designated by the Department.
- 1.4. “Contractor” means GovDelivery, whose principal business address is: 408 Saint Peter Street, Suite 600, Saint Paul, MN 55102.
- 1.5. “Department” means the Department of Information Technology (DoIT).
- 1.6. “eMM” means eMaryland Marketplace.
- 1.7. “Financial Proposal” means the Contractor’s financial proposal dated 10/12/2016.
- 1.8. “Minority Business Enterprise” (MBE) means an entity meeting the definition at COMAR 21.0 1.02.01B(54), which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.9. “Procurement Officer” means the person identified in Section 1.5 of the RFP or a successor designated by the Department.
- 1.10. “Proposal” means, as appropriate, either or both an Offeror’s Technical or Financial Proposal.
- 1.11. “RFP” means the Request for Proposals for Digital Communications Management, Solicitation # 060B6400030 and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.12. “Software” means the object code version of computer programs licensed pursuant to this Contract. Embedded code, firmware, internal code, microcode, and any other term referring to software that is necessary for proper operation is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. Software also includes any upgrades, updates, bug fixes or modified versions or backup copies of the Software licensed to the State by Contractor or an authorized distributor.
- 1.13. Software-as-a-Service (SaaS) as used in this document is defined as the right provided to the State to access and use Software running on equipment operated by Contractor or its

suppliers or Subcontractors, including network, servers, operating systems, and storage (“Cloud Infrastructure”). The Software is accessible from various client devices through a thin client interface such as a web browser (e.g., web-based e-mail) or a program interface. The State does not manage or control the underlying Cloud Infrastructure, but may be permitted limited user-specific application configuration settings. The Contractor is responsible for the acquisition and operation of all equipment or hardware, Software and associated network services as it pertains to the services being provided and shall keep all Software current to at least the previously released version (e.g., version “n-1”). The Contractor is responsible for any network service needed for it or its authorized users to access the Cloud Infrastructure via the internet. Under SaaS, the technical and professional activities required for establishing, managing, and maintaining the Cloud Infrastructure and Software are the responsibilities of the Contractor.

- 1.14. “State” means the State of Maryland, including all departments, and agencies thereof.
- 1.15. “Third-Party Software” means Software and supporting documentation that:
  - a) Are owned by a third party, not by the State, the Contractor, or a subcontractor,
  - b) Are included in, or necessary or helpful to the operation, maintenance, support or modification of the services provided under this Contract, and
  - c) Were specifically identified and listed as Third-Party Software in the Proposal.
- 1.16. “Technical Proposal” means the Contractor’s technical proposal dated 10/12/2016.
- 1.17. “Veteran-owned Small Business Enterprise” (VSBE) means a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.18. Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

## 2. Scope of Contract

- 2.1. The Contractor shall provide digital communication services as set forth in the RFP.
- 2.2. These products and services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and Exhibits A through D, the terms of this 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

Exhibit B – The Contract Affidavit dated October 11, 2016.

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

- 2.3. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Purchase Order.

## 3. Period of Performance

- 3.1. The Contract shall start as of the date first set forth above (“Effective Date”) and shall continue until April 30, 2022 (“Initial Term”). In its sole discretion, the Department shall have the right

to extend the Contract for five (5) one-year renewal options (each a “Renewal Term”). “Term” means the Initial Term and any Renewal Term(s).

- 3.2. The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.3. The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit, confidentiality, document retention, patents, copyrights & intellectual property (see §5), warranty, payment and indemnification obligations, and limitations of liability under this Contract, and any other obligations specifically identified, shall survive expiration or termination of the Contract.

#### 4. Consideration and Payment

- 4.1. The total payment for products and services provided 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. For time and materials contracts, or contracts which include both fixed price and time and materials elements, total payments to the Contractor pursuant to this Contract for the time and materials portion may not exceed \$1,802,726.00 (the "NTE Amount"), which includes \$791,961.00 for the base period and \$1,010,765.35 for the total option years 1-5.

The Contractor shall notify the Contract Manager, in writing, at least 60 days before time and material obligations are expected to reach the NTE Amount. The Contractor shall have no obligation to perform the time and materials requirements under this Contract after payments reach the NTE Amount. The cessation of the Contractor's obligation to perform under this paragraph 4.2 is expressly conditioned on the following: that prior to the NTE Amount being reached, the Contractor shall: (i) give the notice required under this paragraph 4.1; (ii) promptly consult with the Department and cooperate in good faith with the Department to establish a plan of action to assure that every reasonable effort is undertaken by the Contractor to complete critical work in progress prior to the date the NTE Amount will be reached; and (iii) secure databases, systems, platforms and/or applications on which the Contractor is working in an industry standard manner designed to prevent damage or vulnerabilities to any of the same.

- 4.2. The Contractor shall submit invoices as required in the RFP. Invoices that contain both fixed price and time and material items must clearly identify the items as either fixed price or time and material billing. Invoices for Third-Party Software support and maintenance will be paid on an annual basis. Each invoice must include the Contractor's Federal Tax Identification Number [REDACTED]. The Contractor's eMM identification number is 00002030. 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. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Manager.  
The 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.
- 4.3. In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, 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 Procurement Officer.
- 4.4. Payment of an invoice by the Department is not evidence that services were rendered as

required under this Contract.

## 5. Patents, Copyrights, Intellectual Property

- 5.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). “Contractor Materials” means all Pre-Existing Intellectual Property of Contractor and all other intellectual property acquired or developed by Contractor other than in connection with this Contract, and any modifications and derivatives thereof. If Pre-Existing Intellectual Property or Contractor Material includes any design, device, material, process, or other item, which is protected covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 5.2 Except for (1) information created or otherwise owned by the Department or licensed by the Department from third-parties, including all information provided by the Department to Contractor, (2) Software and other deliverables created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Materials included therein, and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Materials embedded in any Deliverables, subject to the terms and conditions herein, Contractor grants to the State the right to use such Contractor Materials in connection with its permitted use of such Deliverable. The rights granted to the State under this Section 5.2 are contingent upon the State’s payment for the applicable Deliverables. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 5.3. Subject to the terms of Section 6, Contractor shall defend, indemnify, and hold harmless the State and its agents, officers, and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that products the Contractor provided to the State under this Contract infringes, misappropriates or otherwise violates any third-party intellectual property rights. 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 rights or interests, without the State’s prior written consent.
- 5.4 To the extent permitted by law, Contractor shall be entitled to control the defense or settlement of such claim provided that the State will, upon requesting indemnification hereunder: (a)

- provide reasonable cooperation to Contractor in connection with the defense or settlement of any such claim, at Contractor's expense; and (b) be entitled to participate in the defense of any such claim at its own expense.
- 5.5 Except if Contractor has pre-existing knowledge of such infringement, Contractor's obligations under this section will not apply to the extent any third-party intellectual property infringes, misappropriates or otherwise violates any third party intellectual rights as a result of (i) modifications made by the State, in violation of the license granted to the State pursuant to section 5.2 or which were not approved in writing by Contractor, (ii) the failure of the State to use any corrections or modifications made available by Contractor, (iii) the combination, operation or use of the solution or Deliverable in connection with a third-party product, platform, network, data or service not provided by the Contractor (the combination of which causes the infringement); or (iv) Contractor's compliance with the written specifications or directions of the State to incorporate third party Software or other materials which causes infringement.
- 5.6. Without limiting Contractor's obligations under Section 5.3, if all or any part of any Deliverable or solution is held, or Contractor reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right, Contractor (after consultation with the State and at no cost to the State) shall: (a) procure for the State the right to continue using the Deliverable or solution in accordance with its rights under this Contract; (b) replace the Deliverable or solution with an item that (i) does not infringe, misappropriate or otherwise violate any third party intellectual property rights and (ii) complies with the item's specifications, and all rights of use and/or ownership set forth in this Contract; or (c) modify the Deliverable or solution so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and remains compliant with the Deliverable or solution's specifications and all rights of use and/or ownership set forth in this Contract or (d) refund any pre-paid fees for the allegedly infringing services that have not been performed or provide a reasonable pro-rata refund for the allegedly infringing Deliverable or solution.
- 5.7. Except for any Pre-Existing Intellectual Property and third-party intellectual property, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State. Notwithstanding the foregoing, the State agrees to secure all necessary rights, licenses and/or permissions to allow Contractor to access and use any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials the State provides to the Contractor in Contractor's performance of the services or production of the Deliverables.
- 5.8. Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third-party or open source license (including, without limitation, any open source license listed on

<http://www.opensource.org/licenses/alphabetical>) (each an “Open Source License”). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

- 5.9. The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 5.10 The Contractor shall not affix (or permit any third party to affix), without the Department’s consent, any restrictive markings upon any deliverables that are owned by the State, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **6. Indemnification**

- 6.1. At its sole cost and expense, Contractor shall indemnify, defend, and hold the State, its directors, officers, employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable attorney’s fees and costs), whether or not involving a third party claim, which arise out of or relate to the performance of this Contract. 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 rights or interests, without the State’s prior written consent.
- 6.2. The State has no obligation 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 by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor’s obligations under this Contract.
- 6.3. The State has no indemnity obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor’s obligations under this Contract.
- 6.4. The Contractor shall (i) immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the performance under the Contract and (ii) without limiting its obligations under Section 6.1, cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed by a third party against the State as a result of or relating to the Contractor’s performance under this Contract.

## **7. Limitations of Liability**

- 7.1. To the maximum extent permitted by applicable law, the Contractor’s liability under this Contract for loss or damages (i) caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this Contract or (ii) related to the Contractor’s performance under this Contract shall not exceed one times the total value of the Contract or \$1,000,000, whichever is greater. The above limitation of liability is per incident. The foregoing limitation will not apply, however, to liability arising from: (a) personal injury or

death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement. Contractor's indemnification obligations for Third-party claims arising under Section 6 ("Indemnification") of this Contract 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 Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.

7.1.1. 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 its Subcontractors.

## **8. Prompt Pay Requirements**

8.1. If the Contractor withholds payment of an undisputed amount to its subcontractor, the State, 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) Default Contractor for failing to perform in accordance with the requirement to promptly pay sub-contractors.
- (f) Take other or further actions as appropriate to resolve the withheld payment.

8.2. 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 (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.

8.3. 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 subcontractor under this Contract, 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.

8.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

## **9. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment and materials specified as Deliverables to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and other Deliverables are received and accepted by the State, following which, title shall pass to the State.

#### **10. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems and/or cloud infrastructure, if applicable) shall be held in confidence by the other party, using a reasonable degree of care, but in no event less than that applied to the party's own such confidential or proprietary information. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. Each officer, employee and/or subcontractor to whom any of the Department'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. 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.

#### **11. Exclusive Use and Ownership**

Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder.

#### **12. Source Code Escrow**

Source code escrow does not apply to this Contract.

#### **13. Notification of Legal Requests**

The Contractor shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the State's data under this Contract, or which in any way might reasonably require access to the State's data, unless prohibited by law from providing such notice. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the State without first notifying the State, unless prohibited by law from providing such notice.

#### **14. Termination and Suspension of Service**

- 14.1. Upon termination or the end of the Term of this Contract, the Contractor must provide transition assistance requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor for the State as follows: (a) return to the State all State data in either the form it was provided to the Contractor or in a mutually agreed format; (b) provide the schema necessary for reading of such returned data; (c) preserve, maintain, and protect all

State data for a period of up to ninety (90) days after the termination or expiration date, so that the State can ensure that all returned data is readable; (d) not delete State data until the earlier of ninety (90) days or the date the State directs such deletion; (e) after the retention period, the Contractor shall securely dispose of all State data in all of its forms, such as disk, CD/DVD, backup tape and paper; State data shall be permanently deleted and shall not be recoverable, according to NIST-approved methods; and certificates of destruction shall be provided to the State; and (f) prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts. The final monthly invoice for the services provided hereunder shall include all charges for the ninety-day data retention period.

- 14.2 The Contractor shall, unless legally prohibited from doing so, securely dispose of all State data in its systems or otherwise in its possession or under its control, in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the State. Data shall be permanently deleted and shall not be recoverable, according to NIST-approved methods. Certificates of destruction shall be provided to the State.
- 14.3 During any period of service suspension, the Contractor shall not erase any State data.
- 14.4 The State shall be entitled to any post-termination assistance generally made available with respect to the services.

**15. Data Center Audit**

A SOC 2 Audit applies to this Contract.

**16. Change Control and Advance Notice**

Unless otherwise specified in an applicable Service Level Agreement, the Contractor shall give seven (7) days advance notice to the State of any upgrades or modifications that may impact service availability and performance.

Contractor may not modify the functionality or features of any SaaS provided hereunder if such modification materially degrades the functionality of the SaaS.

**17. Redundancy, Data Backup and Disaster Recovery**

Unless specified otherwise in the RFP, the Contractor must maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Contractor's processing capability and the availability of hosted services, in each case throughout the Term. Any force majeure provisions of this Contract do not limit the Contractor's obligations under this "Redundancy, Data Backup and Disaster Recovery" Contract provision.

**18. 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.

#### **19. Parent Company Guarantee (If Applicable)**

[Corporate name of Parent Company] hereby guarantees absolutely the full, prompt and complete performance by "[Contractor]" of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. "[Corporate name of Parent Company]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute discretion. "[Corporate name of Parent Company]" further agrees that if the State brings any claim, action, suit or proceeding against "[Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

#### **R20. General Terms and Conditions**

##### **R20.1. 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.

##### **R20.2. Maryland Law Prevails**

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract, the Software, or any Software license acquired hereunder. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

##### **R20.3. Multi-year Contracts contingent upon Appropriations**

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 canceled 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 of Maryland 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 nonrecurring 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.

##### **R20.4. Cost and Price Certification**

R20.4.1. 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 a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- (1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer; or
- (2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.

R20.4.2. The price under this Contract and any 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 agreed upon between the parties, was inaccurate, incomplete, or not current.

### **R20.5. Contract Modifications**

The Procurement Officer may, at any time, by written order, make 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, an equitable adjustment in the Contract price and/or schedule shall be made and the Contract modified in writing accordingly. Pursuant to COMAR 21.10.04, the Contractor must assert in writing its right to an adjustment under this section 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 Section 20.8, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

### **R20.6. 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, the State may terminate the Contract by written notice to the Contractor. The 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 of Maryland 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, 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 21.07.01.11B.

### **R20.7. Termination for Convenience**

The performance of work under this Contract 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 21.07.01.12 (A)(2).

#### **R20.8. Disputes**

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, 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. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

#### **R20.9. Living Wage**

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 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.

#### **R20.10. Non-Hiring of Employees**

No official or employee of the State of Maryland, as defined under General Provisions Article, §5-101, Annotated Code of Maryland, 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.

#### **R20.11. 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, marital status, national origin, sexual orientation, sexual identity, ancestry, or disability of a qualified person with a disability, sexual orientation, or any otherwise unlawful use of characteristics; (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.

#### **R20.12. Commercial Non-Discrimination**

R20.12.1. As a condition of 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, disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, 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 suppliers 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 Agreement 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.

- R20.12.2. As a condition of entering into this Contract, 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 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers 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's 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.

**R20.13. Subcontracting and Assignment**

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State, each at the State's sole and absolute discretion. Any such subcontract or assignment shall include the terms of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to any subcontractors.

**R20.14. Minority Business Enterprise Participation**

There is no Minority Business Enterprise subcontractor participation goal for this Contract.

**R20.15. Insurance Requirements**

The Contractor shall maintain workers' compensation coverage, property and casualty insurance, cyber liability insurance, and any other insurance as required in the RFP. The

minimum limits of such policies must meet any minimum requirements established by law and the limits of insurance required by the RFP, and shall cover losses resulting from or arising out of Contractor action or inaction in the performance of services under the Contract by the Contractor, its agents, servants, employees or subcontractors. Effective no later than the date of execution of the Contract, and continuing for the duration of the Term, and any applicable transition periods, the Contractor shall maintain such insurance coverage and shall report such insurance annually or upon Contract renewal, whichever is earlier, to the Procurement Officer. The Contractor is required to notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation and/or nonrenewal. Certificates of insurance evidencing this coverage shall be provided within five (5) days of notice of recommended award. All insurance policies shall be issued by a company properly authorized to do business in the State of Maryland. The State shall be included as an additional named insured on the property and casualty policy and as required in the RFP.

**R20.16. Veteran Owned Small Business Enterprise Participation**

There is no VSBE subcontractor participation goal for this procurement.

**R20.17. Security Requirements and Incident Response**

- R20.17.1. The Contractor agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State and Department of Information Technology information security policy, currently found at <http://doit.maryland.gov/Publications/DoITSecurityPolicy.pdf>. Contractor shall limit access to and possession of Sensitive Data to only employees whose responsibilities reasonably require such access or possession and shall train such employees on the Confidentiality obligations set forth herein.
- R20.17.2. The Contractor agrees to notify the Department in accordance with Section R20.17.3 when any Contractor system that may access, process, or store Sensitive Data or State systems is subject to an unintended access or attack. Unintended access or attack means a compromise by a computer malware, malicious search engine, credential compromise or unauthorized access by an individual or automated program due to a failure to secure Contractor's a system in accordance with the terms of this Contract or adhere to security procedures required by this Contract.
- R20.17.3. The Contractor shall notify the Department within twenty-four (24) hours of the discovery of an unintended access or attack by providing notice via written or electronic correspondence to the Contract Manager, Department chief information officer and Department chief information security officer.
- R20.17.4. The Contractor agrees to notify the Department within two (2) hours if there is a threat to Contractor's product as it pertains to the use, disclosure, and security of the Department or Agency State data.
- R20.17.5. If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Department within one (1) business day after Contractor's discovery of such use or disclosure and thereafter all information the State (or Department) requests concerning such unauthorized use or disclosure.
- R20.17.6. The Contractor, within one day of discovery, shall report to the Department any

improper or non-authorized use or disclosure of Sensitive Data. Contractor's report shall identify:

- (a) the nature of the unauthorized use or disclosure;
- (b) the Sensitive Data used or disclosed,
- (c) who made the unauthorized use or received the unauthorized disclosure;
- (d) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
- (e) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- (f) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

R20.17.7. The Contractor shall protect Sensitive Data according to a written security policy no less rigorous than that of the State, and shall supply a copy of such policy to the State for validation. The Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of Sensitive Data or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State (or Department) and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.

R20.17.8 The Contractor shall disclose all of its non-proprietary security processes and technical limitations to the State.

R20.17.9. This Section shall survive expiration or termination of this Contract.

#### **R20.18. Security Incident or Data Breach Notification**

The Contractor shall inform the State of any Security Incident or data breach.

R20.18.1. Incident Response: The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.

R20.18.2. Security Incident Reporting Requirements: The Contractor shall report a Security Incident to the appropriate State-identified contact immediately.

R20.18.3. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any State content that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate State-identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

**R20.19 Data Breach Responsibilities**

This section only applies when a data breach occurs with respect to Sensitive Data within the possession or control of the Contractor.

- R20.19.1. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate State-identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a Security Incident.
- R20.19.2. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate State-identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been, a data breach. The Contractor shall (1) cooperate with the State to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- R20.19.3. Unless otherwise stipulated, if a data breach is a direct result of the Contractor's breach of its Contract obligation to encrypt Sensitive Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this Contract's limitation of liability.

**R21 Data Protection****R21.1 Data Ownership**

The State will own all right, title and interest in its data that is related to the services provided pursuant to this Contract. The Contractor and/or Subcontractor(s) shall not access public jurisdiction user accounts or public jurisdiction data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Contract, including as necessary to perform the services hereunder or (4) at the State's written request.

**R21.2 Loss of Data**

In the event of loss of any State data or records where such loss is due to the act, omission, or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring such lost data in accordance with the Service Level Agreement. The Contractor shall ensure that all data is backed up and is recoverable by the Contractor. In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in Section 20.17.

Protection of data and personal privacy (as further described and defined in section 20.17) 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 following

conditions:

- R21.2.1 The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Sensitive Data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Sensitive Data and non-public data of similar kind.
- R21.2.2 All data collected or created in the performance of this contract shall become and remain property of the State.
- R21.2.3 All Sensitive Data shall be encrypted at rest and in transit with controlled access, including back-ups. Unless otherwise stipulated, the Contractor is responsible for the encryption of the Sensitive Data.
- R21.2.4 Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The State shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and made a part of this Contract.
- R21.2.5 At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- R21.2.6 The Contractor shall not use any information collected in connection with the service issued under this Contract for any purpose other than fulfilling the service.

## **R22 Other Mandatory Items**

### **R22.1 Data Location**

The Contractor shall provide its services to the State and its end users solely from data centers in the United States (“U.S.”). Storage of State data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access State data remotely only as required to provide technical support. If requested by the State, the Contractor shall provide technical user support on a 24/7 basis.

### **R22.2 Import and Export of Data**

The State shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor. This includes the ability for the State to import or export data to/from third parties.

### **R22.3 Encryption of Data at Rest**

The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Sensitive Data, unless the State approves the storage of Sensitive Data on a Contractor portable device in order to accomplish Contract work. A minimum of AES-256 or better is acceptable to the State.

### **R22.4 Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law**

HIPAA clauses do not apply to this Contract.

#### **R22.5. Suspension of Work**

The Procurement Officer 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. Notwithstanding anything to the contrary elsewhere in this Contract or the RFP, (i) Contractor shall not be obligated to retain any personnel on this engagement during the suspension period, and (ii) upon recommencement of the services following any such suspension, Contractor may use personnel other than those performing the services immediately prior to the start of the suspension period. In the event of such a written order, the Procurement Officer may grant Contractor's request for a no cost extension of the Implementation Date.

#### **R22.6. Delays and Extensions of Time**

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable 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 suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

#### **R22.7. Nonvisual Accessibility Warranty**

R22.7.1. The Contractor warrants that the information technology to be provided under the Contract.

- (a) provides equivalent access for effective use by both visual and non-visual means;
- (b) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use;
- (c) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and
- (d) is available, whenever possible, without modification for compatibility with Software and hardware for non-visual access.

R22.7.2. The Contractor further warrants that the cost, if any, of modifying the information technology for compatibility with Software and hardware used for non-visual access does not increase the cost of the information technology by more than five percent. For purposes of this Contract, the phrase "equivalent access" means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

**R22.8. Compliance with Laws/Arrearages**

The Contractor hereby represents and warrants that:

- R22.8.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- R22.8.2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, 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;
- R22.8.3. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- R22.8.4. 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.

**R22.9 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 bona fide agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or bona fide agent, any fee or other consideration contingent on the making of this Contract.

**R22.10. Financial Disclosure**

The Contractor shall comply with the provisions of §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 of Maryland 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.

**R22.11 Political Contribution Disclosure**

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement 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 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 website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

## **R22.12 Retention of Records**

R22.112.1. The Contractor and Subcontractors shall retain and maintain all records and documents in any way relating to this Contract for three (3) years after final payment by the State under this Contract, or any applicable statute of limitations, prevailing federal or State law or regulation, or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. The Contractor shall, upon request by the Department, surrender all and every copy of documents needed 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. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees 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. All records related in any way to the Contract are to be retained for the entire time provided under this section.

R22.12.2. This provision shall survive expiration of this Contract.

## **R23. Right to Audit**

R23.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or Subcontractors' performance under this Contract. In this agreement, an audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from 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 the services being performed for the State.

R23.2 Upon three (3) business days' notice, Contractor and/or Subcontractors shall provide the State reasonable access during normal business hours to their records to verify conformance to the terms of this Contract. The State shall be permitted to conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting/audit firm, solely at the State's election. The State shall have the right to copy, at its own expense, any record related to the services performed pursuant to this Contract.

R23.3 Contractor and/or Subcontractors shall cooperate with the State or the designated auditor and shall provide the necessary assistance for the State or the designated auditor to conduct the audit.

R23.4 The right to audit shall include subcontractors in which goods or services are subcontracted by Contractor and/or Subcontractors and that provide essential support to the services provided to the State under this Contract. Contractor and/or

Subcontractors shall ensure the State has the right to audit with any lower tier subcontractor.

**24. Administrative Information**

**24.1. Procurement Officer and Contract Manager**

The day-to-day work to be accomplished under this Contract shall be performed under the direction of the Contract Manager and, as appropriate, the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

**24.2. Notices**

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

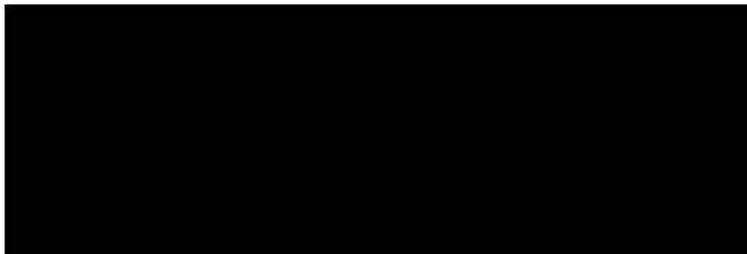
If to the State:

Susan Lyon  
Department of Information Technology (DoIT)  
100 Community Place, 2<sup>nd</sup> Floor  
Crownsville, MD 21032  
Phone Number: 410-697-9356  
E-Mail: [susan.lyon@maryland.gov](mailto:susan.lyon@maryland.gov)

With a copy to:

Larif Hamm  
Department of Information Technology (DoIT)  
100 Community Place, Room 3.305  
Crownsville, MD 21032  
Phone Number: 410-697-9674  
E-Mail: [Larif.Hamm@maryland.gov](mailto:Larif.Hamm@maryland.gov)

If to the Contractor:



IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

GovDelivery

STATE OF MARYLAND

Department of Information Technology (DoIT)

[Redacted Signature]

[Redacted Signature]

By: Dawn Kubat, Director of Contracts and Sales Operations

By: Albert G. Bullock, Assistant Secretary

4/3/2017

Or designee.

[Redacted Signature]

\_\_\_\_\_

4/6/17

Date

Approved for form and legal sufficiency  
this 6 day of April, 2017.

[Redacted Signature]

Assistant Attorney General

APPROVED BY BPW: 3/22/17  
(Date)

1-IT  
(BPW Item #)