



**Department of Information Technology (DoIT)
REQUEST FOR PROPOSALS (RFP)**

Virtual Educational Learning Management System (VELMS)

SOLICITATION NO. 060B8400016

Issue Date: August 31, 2017

**Minority Business Enterprises Are Encouraged to Respond to
this Solicitation**

STATE OF MARYLAND
Department of Information Technology (DOIT)
RFP KEY INFORMATION SUMMARY SHEET

RFP Title:	Virtual Educational Learning Management System (VELMS)
RFP Number:	060B8400016
RFP Issuing Department:	DOIT 100 Community Place Crownsville, MD 21032
RFP Issue Date:	08/31/2017
Proposals Due Date and Time:	November 1, 2017 at 2:00 PM Local Time
Questions Due Date and Time:	September 22, 2017 at 2:00 PM Local Time
Procurement Officer:	June Dwyer Phone: 410-767-0116 e-mail: june.dwyer@maryland.gov
Contract Manager:	Valerie Emrich Phone: 410-767-0382 e-mail: valerie.emrich@maryland.gov
Send Proposals to (e-mail delivery strongly preferred):	june.dwyer@maryland.gov
Send Questions (e-mail only) to:	e-mail address: june.dwyer@maryland.gov
Contract Type	IDIQ, Fixed Price
Contract Duration	Three (3) year base period and two (2) two-year option periods
MBE Subcontracting Goal:	0 %
VSBE Subcontracting Goal:	0%
Small Business Reserve	No
Pre-Proposal Conference:	September 20, 2017 10:00 am Local Time 200 West Baltimore Street Baltimore, Maryland 21201 8 th floor conference room 2 – WebEx information to follow upon request. See Attachment E for Directions and Response Form

STATE OF MARYLAND
NOTICE TO OFFERORS/BIDDERS/CONTRACTORS
Maryland Wants to Do Business with You

Please let us know why you are not proposing. (Check all that apply).

- We do not offer the services/commodities requested.
- Busy with other commitments.
- Specifications are unclear or too restrictive.
- Timetable is unworkable.
- Bonding/Insurance requirements are prohibitive.
- Our experience with State of Maryland has not been satisfactory.
- Other (Please specify)

Additional Comments:

Please add suggestions for improvement here:

Name of commenter and Business (optional): _____

Contact Person (optional): _____ Phone (____) _____ -

Bid/proposal Number: 060B8400016 Entitled: Virtual Educational Learning Management System (VELMS)

Your comments will help us improve the procurement process.

Thank You.

Please return your comments with your proposal. If you have chosen not to propose to this RFP, please e-mail this completed form to the Procurement Officer's e-mail address.

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1 GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Department of Information Technology (“DOIT” or the “Department”) is issuing this Request for Proposals (“RFP”) to obtain an enterprise cloud Virtual Educational Learning Management System (“VELMS”) and associated services (the “Solution”). Through the Contract, individual State executive branch agencies (each a “Requesting Agency”) can utilize the Solution furnished by the Contractor. Services necessary to deliver a Requesting Agency’s Solution instance may include functional migration of existing LMS resources; configuring the VELMS platform to suit the Requesting Agency’s needs; training for users and administrators; and maintaining and servicing the VELMS platform.
- 1.1.2 It is the State’s intention to obtain products/services, as specified in this RFP, through a Contract between the successful Offeror and the State. See Section 1.4 for contract duration information.
- 1.1.3 The Department intends to make a single award as a result of this RFP.
- 1.1.4 Award of the Contract does not authorize work or services to commence. This is a Task-Order based contract and specific Task Orders will be issued by or on behalf of a Requesting Agency to obtain services under this Contract following the process defined in Section 3.15. Each such Task Order will incorporate the scope of work appropriate for the Requesting Agency. The scope of work defined in this RFP is the work associated with Task Order 1 that the Maryland State Department of Education (MSDE) intends to issue immediately after RFP award.
- 1.1.5 Offerors, either directly or through their Subcontractor(s), must be able to provide all products/services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of Subcontractor participation in the work.
- 1.1.6 The Contract applies exclusively to all entities of the State of Maryland subject to Section 3A-302 of the State Finance and Procurement Article.
- 1.1.7 A Contract award does not assure the Contractor that it will receive all State VELMS business.

1.2 Abbreviations and Definitions

For the purposes of this RFP, the following abbreviations and terms have the meanings indicated below:

Term	Definition
Acceptable Use Policy (AUP)	A written policy documenting constraints and practices that a user must agree to in order to access a private

	network or the Internet
Access	The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource
Business Day	Monday through Friday 7:00 am – 5:00 pm (excluding State holidays) based on Eastern Standard Time (EST)
COMAR	Code of Maryland Regulations available on-line at www.dsd.state.md.us
Contract	The Contract awarded to the successful Offeror pursuant to this RFP, the form of which is attached to this RFP as Attachment A
Contract Manager	The State representative who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring the Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope
Contractor	The successful Offeror awarded the Contract
Contractor Personnel	Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP
Contractor's Point of Contact (POC)	Person designated at the time of Contract award by the Contractor as the single point of contact with the authority and knowledge to resolve contract issues.
Data Breach	The unauthorized acquisition, use, modification or disclosure of State data
Department of Information Technology (DOIT or the Department)	The unit of the Executive Branch of Maryland State government issuing the RFP.
Digital Resource (or Resource)	An object or collection of objects that assists in the learning process (e.g. a file, a topic, a course)
eCommunity	Collaborative online communities used primarily by administration and educators for sharing ideas and resources, plus timely communications on topics relevant to the community
ePortfolio	An electronic collection of artifacts, videos, audio, etc. that reflect the owner's abilities, interest and growth. ePortfolios are associated with individuals over time.

eMaryland Marketplace (eMM)	Maryland's online procurement system
Enterprise License Agreement (ELA)	The terms of service governing access to and use of the software services provided pursuant to this Contract
Fixed Price	Pricing option which places responsibility on the Contractor for the delivery of any products and the complete performance of any services in accordance with the RFP at a price that is not subject to adjustment
Handle Data	Collect, store, transmit, have access to data
Information System	A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information
Information Technology (IT)	All electronic information-processing hardware and software, including: (a) Maintenance; (b) Telecommunications; and (c) Associated consulting services
Local Time	Time in the Eastern Time zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such
Learning Tool Interoperability (LTI)	A standard way of integrating rich learning applications with platforms such as portals and an LMS
Minority Business Enterprise (MBE)	A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03
Monthly Charges	For purposes of SLA credit calculation, Monthly Charges are defined as the charges invoiced during the month of the breach for the monthly fixed services as set forth in Attachment F, Financial Proposal.
Normal State Business Hours	Normal State business hours are 7:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays
Notice to Proceed (NTP)	A written notice from the Procurement Officer that work on the Contract, project, or Task Order shall begin on a specified date. Additional NTPs may be issued by either the Procurement Officer or the Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
NTP Date	The date specified in an NTP for work on the Contract,

	project, or Task Order to begin
Offeror	An entity that submits a proposal in response to this RFP
Personally Identifiable Information (PII)	Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information
Point of Contact (POC)	The individual named as the person to coordinate on a particular topic
Procurement Officer	The State representative who is responsible for the Contract, determining scope issues and is the only State representative that can authorize changes to the Contract
Proposal	As appropriate, either or both an Offeror's Technical or Financial Proposal
Request for Proposals (RFP)	This Request for Proposals for the Department of Information Technology, including any amendments / addenda thereto
Requesting Agency	Any State executive branch unit that has ordered services or is identified as the recipient of work under a Task Order.
Security Incident	A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. "Imminent threat of violation" is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.
Security or Security Measures	The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data
Sensitive Data	Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to "personal information" under Md. Code Ann., Commercial Law § 14-3501(d) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and .information about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security

	number, date and place of birth, mother's maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
Service Level Agreement (SLA)	Measurable levels governing TO Contractor performance and establishing associated liquidated damages for failure to meet those performance standards
SLA Activation Date	The date on which SLA charges commence under a Task Order
Software	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.
Software as a Service (SaaS)	A software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. For the purposes of this RFP, the terms SaaS and PaaS are considered synonymous and the term SaaS will be used throughout this document
Solution	All services and activities necessary to fully support the VELMS as an Information System, described as services and/or products in this RFP, to include a fully operational software and hardware package, web portals, hosting services and non-technical items such as training, reporting and other manual processes. This definition of Solution includes all System Documentation developed as a result of this Contract. All Upgrades and regulatory updates shall be provided at no additional cost to the State.
State	The State of Maryland
Subcontractor	An agent, service provider, supplier, or vendor selected by the Contractor to provide subcontracted services or products under the direction of the Contractor or other Subcontractors, and including any direct or indirect Subcontractors of a Subcontractor.
System Documentation	Those materials necessary to wholly reproduce and fully operate the most current deployed version of the Solution

	<p>in a manner equivalent to the original Solution including, but not limited to:</p> <ol style="list-style-type: none"> a. The executable instructions in their high level, human readable form and a version that is in turn interpreted, parsed and or compiled to be executed as part of the computing system ("source code"). This includes source code created by the Contractor or Subcontractor(s) and source code that is leveraged or extended by the Contractor for use in the Contract. b. All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality. c. All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system. d. All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer's notes and other documentation. e. 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). f. All associated user instructions and/or training materials for business users and technical staff
Task Order Manager	The Agency representative who is responsible for preparing and managing a Task Order on behalf of a Requesting Agency
Task Order	A document that describes all specifics regarding products and/or services required by a Requesting Agency under the Contract
Total Proposal Price	The Offeror's price as submitted on Attachment F - Price Sheet, upon which the Offeror's Financial Proposal will be evaluated. (see RFP Section 5.3)
Upgrade	A new release of any component of the Solution containing major new features, functionality and/or performance improvements. An Upgrade would conventionally be indicated where the version number is changed by incrementing the numeric digits to the left of

	the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each typically be Upgrades to prior versions.
Veteran-owned Small Business Enterprise (VSBE)	A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13 and http://www.vetbiz.gov .
Working Day(s)	Same as “Business Day”

1.3 Contract Type

The Contract shall be an Indefinite Quantity Contract as defined in COMAR 21.06.03.06. Task Orders may also contain fixed price components under COMAR 21.06.03.02A(2).

1.4 Contract Duration

- 1.4.1 The Contract shall start from the date of mutual contract execution by the parties (“Effective Date”).
- 1.4.2 The Contract shall be for three (3) years from the Effective Date. The State, at its sole option, may renew the term of the Contract through two (2) additional two-year renewal options for up to a total potential Contract length of seven (7) years.
- 1.4.3 The Contractor’s obligations to pay invoices to subcontractors that provide products/services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A), shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

1.5 Procurement Officer

The sole point of contact in the State for purposes of this RFP prior to the award of a contract is the Procurement Officer as listed Key Information Summary Sheet.

DOIT may change the Procurement Officer at any time by written notice.

1.6 Contract Manager

The Contract Manager for the Contract is listed in the Key Information Summary Sheet.

DOIT may change the Contract Manager at any time by written notice.

1.7 Pre-proposal Conference .

- 1.7.1 A pre-proposal conference will be held at the time, date and location indicated on the Key Information Summary Sheet. Attendance at the pre-proposal conference is not mandatory, but all interested companies are encouraged to attend in order to facilitate better preparation of their proposals.

- 1.7.2 Seating at the pre-proposal conference will be limited to two (2) attendees per company. Attendees should bring a copy of the solicitation and a business card to help facilitate the sign-in process.
- 1.7.3 The pre-proposal conference will be summarized in writing. As promptly as is feasible subsequent to the pre-proposal conference, the attendance record and pre-proposal summary will be distributed via the same mechanism described for amendments and questions.
- 1.7.4 In order to assure adequate seating and other accommodations at the pre-proposal conference, please e-mail the Pre-Proposal Conference Response Form (Attachment E) no later than the time and date indicated on the form. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please call the Procurement Officer no later than five (5) business days prior to the pre-proposal conference. The Department will make reasonable efforts to provide such special accommodation.

1.8 eMaryland Marketplace (eMM)

- 1.8.1 eMaryland Marketplace (eMM) is an electronic commerce system administered by the Maryland Department of General Services (DGS). In addition to using other means for transmitting the RFP and associated materials, the RFP, pre-proposal conference summary and attendance sheet, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation related information will be made available via eMM.
- 1.8.2 In order to receive a contract award, a company must be registered on eMM. Guidelines can be found on the eMaryland Marketplace website at <https://emaryland.buyspeed.com/bsol/login.jsp>.

1.9 Questions

- 1.9.1 All questions shall be submitted via e-mail to the Procurement Officer no later than the date and time indicated in the Key Information Summary Sheet. Please identify in the subject line the Solicitation Number and Title. Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments and posted on eMM.
- 1.9.2 Only answers that have been answered in writing by the State can be considered final and binding.

1.10 Procurement Method

The Contract will be awarded in accordance with the Competitive Sealed Proposals procurement method as described in COMAR 21.05.03.

1.11 Proposals Due (Closing) Date and Time

- 1.11.1 Proposals, in the number and form set forth in Section 4 "Proposal Format," must be received by the Procurement Officer no later than the date and time listed on the Key Information Summary Sheet in order to be considered. To minimize Proposal duplication costs, e-mail delivery of Proposals is strongly preferred.

- 1.11.2 Requests for extension of this date or time shall not be granted. Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, Proposals received by the Procurement Officer after the due date and time shall not be considered.
- 1.11.3 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the Proposals due time and date.
- 1.11.4 Proposals delivered by facsimile shall not be considered.
- 1.11.5 Companies not responding to this solicitation are requested to submit the “Notice to Offerors/Bidders/Contractors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

1.12 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.

1.13 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror’s Proposal to meet the requirements of this RFP.

1.14 Public Information Act Notice

- 1.14.1 Offerors should give specific attention to the clear identification of those portions of their proposals that they deem to be confidential, proprietary commercial information or trade secrets and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, General Provisions Article, Title 4, Md. Code Ann.,. (Also, see RFP Section 4.2.2.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.
- 1.14.2 Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

1.15 Award Basis

A Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the products/services as specified in this RFP. See RFP Section 5 for further award information.

1.16 Oral Presentation

Offerors determined to be reasonably susceptible may be required to make oral presentations to State representatives. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then

become part of the Offeror's Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

Offerors shall be required to provide a live demonstration of the proposed Solution as part of any oral presentation.

1.17 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 180 days following the closing date for submission of proposals, best and final offers (if requested), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.18 Revisions to the RFP

- 1.18.1 If it becomes necessary to revise this RFP before the due date for Proposals, the Department shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the Department's procurement web page and through eMM. It remains the responsibility of all prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted a timely Proposal and that remain under award consideration as of the issuance date of the addenda.
- 1.18.2 Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal. Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not susceptible for award.

1.19 Cancellations

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, to waive or permit the cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

1.20 Incurred Expenses

The State will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities related to submitting a Proposal in response to this solicitation.

1.21 Protest/Disputes

Any protest or dispute related, respectively, to this solicitation or the Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

1.22 Offeror Responsibilities

- 1.22.1 The successful Offeror shall be responsible for rendering products and services for which it has been selected as required by this RFP. All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals").
- 1.22.2 If an Offeror that seeks to perform or provide the products/services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, such as but not limited to, references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.
- 1.22.3 Although experience and documentation of an Offeror's parent may be used to satisfy minimum qualifications, a parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are transferred to and shared with the Offeror, any stated intent by the parent in its guarantee of performance for direct involvement in the performance of the Contract, and the value of the parent's participation as determined by the State.

1.23 Substitution of Contractor Personnel

This section does not apply to this RFP.

1.24 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as Attachment A. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **Any exceptions will be taken into consideration when evaluating an Offeror's Proposal. The Department reserves the right to accept, negotiate or reject any exceptions.**

1.25 Bid/Proposal Affidavit

A Proposal submitted by an Offeror must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Attachment B of this RFP.

1.26 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for

informational purposes as Attachment C of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award.

1.27 Compliance with Laws/Arrearages

- 1.27.1 By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.
- 1.27.2 By submitting a response to this solicitation, the Offeror also represents that it is not in arrears in the payment of any obligations due to the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract if selected for award.

1.28 Verification of Registration and Tax Payment

- 1.28.1 Before a business entity can do business in the State of Maryland it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <https://www.egov.maryland.gov/businessexpress>.
- 1.28.2 It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of Proposals. An Offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for award.

1.29 False Statements

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

- 1.29.1 In connection with a procurement contract a person may not willfully:
- a. Falsify, conceal, or suppress a material fact by any scheme or device.
 - b. Make a false or fraudulent statement or representation of a material fact.
 - c. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- 1.29.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.
- 1.29.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

1.30 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form can be downloaded at:

http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf.

1.31 Prompt Payment Policy

This procurement and the Contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor must comply with the prompt payment requirements outlined in the Contract, Sections 31 "Prompt Pay Requirements" (see Attachment A), should an MBE goal apply to this RFP. Additional information is available on GOSBA's website at: <http://www.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

1.32 Electronic Procurements Authorized

- 1.32.1 Under COMAR 21.03.05, unless otherwise prohibited by law, a primary procurement unit may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 1.32.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 1.32.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bs/>), and electronic data interchange.
- 1.32.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section 1.32.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:
1. The Procurement Officer may conduct the procurement using eMM or e-mail, to issue:
 - a. the RFP and requests for best and final offers
 - b. any amendments
 - c. pre-Proposal conference documents

- d. questions and responses
 - e. communications regarding the solicitation or Proposal to any Offeror or potential offeror
 - f. notices of award selection or non-selection
 - g. the Procurement Officer's decision on any solicitation protest or Contract claim
2. An Offeror or potential Offeror may use e-mail to:
- a. ask questions regarding the solicitation
 - b. reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer
 - c. submit a "No Bid/Proposal Response" to the solicitation
3. The Procurement Officer, the Contract Manager, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section 1.32.5 of this subsection, utilizing e-mail, or other electronic means if authorized by the Procurement Officer or Contract Manager.

1.32.5 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

- a. filing of protests;
- b. filing of Contract claims;
- c. submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications); or
- d. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

1.32.6 Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Manager.

1.33 Minority Business Enterprise (MBE) Participation Goal

There is no MBE subcontractor participation goal for this procurement.

1.34 Living Wage Requirements

1.34.1 Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 et al. The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.

- 1.34.2 If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>
- 1.34.3 Additional information regarding the State's living wage requirement is contained in Attachment G. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (Attachment G-1) with their Proposals. If an Offeror fails to complete and submit the required documentation, the State may determine an Offeror to not be responsible under State law.
- 1.34.4 Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.
- 1.34.1 The Offeror shall identify in the Proposal the location from which services will be provided.
- NOTE: Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change.**

1.35 Federal Funding Acknowledgement

The Contract does not contain federal funds.

1.36 Conflict of Interest Affidavit and Disclosure

- 1.36.1 Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (Attachment I) and submit it with their Proposal. All Offerors are advised that if a Contract is awarded as a result of this solicitation, the Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to Attachment I Conflict of Interest Affidavit and Disclosure.
- 1.36.2 Additionally, contractors have an ongoing obligation to ensure that any necessary personnel or subcontractor personnel have completed such agreements prior to providing services under individual Task Orders issued under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 1.36.3 Contractors should be aware that the State Ethics Law, Md. Code Ann., General Provisions Article, Title 5, might limit the selected Contractor's ability to participate in future related procurements, depending upon specific circumstances.

- 1.36.4 By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.

1.37 Non-Disclosure Agreement

All Offerors are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as Attachment J. This Agreement must be provided within five (5) Business Days of notification of recommended award; however, to expedite processing, it is suggested that this document be completed and submitted with the Proposal.

1.38 HIPAA - Business Associate Agreement

A HIPAA Business Associate Agreement is not required for this procurement.

1.39 Non-Visual Access

- 1.39.1 By submitting a Proposal, the Offeror warrants that the information technology offered under the Proposal: (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; (3) 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 (4) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access. The Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access will not increase the cost of the information technology by more than five percent (5%). For purposes of this solicitation, 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.

- 1.39.2 The Non-visual Access Clause noted in COMAR 21.05.08.05 and referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations, which can be found at: www.doit.maryland.gov, keyword: NVA.

1.40 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

1.41 Veteran-Owned Small Business Enterprise Goals

There is no Veteran-Owned Small Business Enterprise (VSBE) subcontractor participation goal for this procurement.

1.42 Location of the Performance of Services Disclosure

The Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as Attachment N. The Disclosure must be provided with the Proposal.

1.43 Department of Human Resources (DHR) Hiring Agreement

This solicitation does not require a DHR Hiring Agreement.

1.44 Purchasing and Recycling Electronic Products

This section does not apply to this solicitation.

1.45 Contract Extended To Include Other Non-State Governments or Agencies

For the purposes of an information technology or telecommunications procurement, pursuant to sections 3A-401(b) and 13-110 of the State Finance and Procurement Article of the Annotated Code of Maryland, county, municipal, State entities that are not subject to DoIT's authority, including State non-executive branch entities, and non-State governments or agencies may purchase from the Contractor goods or services covered by this Contract at the same maximum prices to which the State would be subject under the resulting Contract. All such purchases:

- (1) shall constitute Contracts between the Contractor and that government, agency or organization;
- (2) For non-State entities, shall not constitute purchases by the State or State agencies under this Contract;
- (3) For non-State entities, shall not be binding or enforceable against the State; and
- (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State entity.

1.46 No-Cost Extensions

In accordance with BPW Advisory 1995-1, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

2 COMPANY AND PERSONNEL QUALIFICATIONS

2.1 Offeror Minimum Qualifications

To be considered reasonably susceptible for award, an Offeror must provide proof with its Proposal that the following Minimum Qualifications have been met:

- 2.1.1 The Offeror shall have at least two (2) years of experience providing LMS solutions where at least one client has a minimum of 10,000 active accounts, and where at least one client uses the LMS for K-12 classroom-style training. The Offeror shall provide with its Proposal three references from within the past five (5) years that are able to attest to the Offeror's satisfaction of the foregoing requirement.
- 2.1.2 The proposed Solution has an eCommunity capability for non-student use.
- 2.1.3 The proposed Solution has a "grade book" capability (See **Section 3.3.12.k.**)

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3 SCOPE OF WORK

3.1 Background and Purpose

The purpose of this solicitation is to obtain an enterprise, state-of-the-art cloud VELMS and associated services that, among other capabilities, is suitable for K-12 use.

As stated in Section 1, MSDE intends to issue Task Order 1 in alignment with the requirements outlined in this Scope of Work, to include the functional migration of current LMS resources, configuring the platform to suit MSDE's needs, training for users and administrators, and maintaining and servicing the Solution.

Offeror shall be able to perform all requirements as detailed in Section 3 of the RFP.

It is not the State's intention to purchase a Solution still under development. The Solution acquired by the State shall be operational and generally available by the due date of the Proposal.

3.2 Agency / Project Background

3.2.1 DoIT is issuing and will manage this Contract. An individual Requesting Agency will designate a TO Procurement Officer and a TO Manager for the Requesting Agency's work.

3.2.2 MSDE (Task Order 1)

3.2.3 MSDE is dedicated to supporting a world-class educational system that prepares all students for college and career success in the 21st century. With excellent stewardship from our divisions, MSDE oversees State and federal programs that support the needs of a diverse population – students, teachers, principals, and other educators –throughout Maryland.

3.2.4 MSDE, through its Instructional Technology and School Library Media Program (ITSLM) collaborates with local school systems, institutions of higher education, and other organizations to increase and encourage the effective integration of technology into teaching and learning in all schools.

A. As part of MSDE's Division of Curriculum, Research, Assessment and Accountability (DCRAA), ITSLM provides whole online courses, digital resources, blended learning opportunities, and eCommunities through the coordination and administration of the current SaaS implemented LMS. Student and professional development online courses are offered on a semester basis. MSDE promotes and supports student courses and district professional learning courses delivered online via the LMS. Blended learning courses are also offered through a combination of face-to-face and online sessions that utilize interactive communication tools. MSDE provides support and services for educators, students, and other educational stakeholders within Maryland's 24 local educational agencies and other affiliated institutions such as universities within the University System of Maryland, for example, Towson University and Maryland Public Television.

B. The current LMS supports teaching and learning for educational stakeholders. It includes courses, resources, modules, eCommunities, public information, multi-

media resources, announcements, professional learning communities, discussion boards, and ePortfolios (see **3.3.12**). Stakeholders include staff, educators, parents, students, and the public.

- C. The current LMS integrates a 3rd party registration system and interfaces with Maryland's eCommerce solution, NIC Commerce, for payment processing.
- D. MSDE is using approximately 100 courses, 65 eCommunities, and corresponding resources in the current LMS. Over 4,000 additional Resources (e.g., links to lessons plans, links to websites, other elements that can be utilized in a course or otherwise for teaching/learning), including approximately 20 modules (which are a subset of courses) are hosted. Approximately 75 of the Resources have been meta-tagged and are located in the LMS.
- E. MSDE timelines and constraints:

MSDE's priority for migration is as follows: student courses and supporting administration capabilities, professional development courses and capabilities, eCommunities, followed by other Resource conversion.

3.3 General Requirements

3.3.1 Required Project Policies, Guidelines and Methodologies

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting information technology projects, which may be created or changed periodically. It is the responsibility of the Contractor to ensure adherence and to remain abreast of new or revised laws, regulations, policies, standards and guidelines affecting project execution. These may include, but are not limited to:

- A. The State of Maryland System Development Life Cycle (SDLC) methodology at: www.DoIT.maryland.gov - keyword: SDLC;
- B. The State of Maryland Information Technology Security Policy and Standards at: www.DoIT.maryland.gov - keyword: Security Policy;
- C. The State of Maryland Information Technology Non-Visual Standards at: <http://doit.maryland.gov/policies/Pages/ContractPolicies.aspx>
- D. The Web Content Accessibility Guidelines (WCAG) 2.0 Level AA (December 2008) at <https://www.w3.org/WAI/WCAG20/glance/>
- E. Digital Learning: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.04.15.04.htm>
- F. Accessibility: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.04.15.07.htm>
- G. Section 508 of US Rehabilitation Act
- H. Family Educational Rights and Privacy Act (FERPA),
- I. Children's Internet Protection Act (CIPA),
- J. Child's Online Protection Act (COPA),
- K. Child Pornography Prevention Act (CPPA),
- L. Health Insurance Portability and Accountability Act (HIPAA)

M. Payment Card Industry (PCI) Data Security Standards (DSS) for electronic payments at: https://www.pcisecuritystandards.org/security_standards/index.php.

3.3.2 Any Contractor Personnel provided under this RFP shall maintain any required professional certifications for the duration of the resulting Contract.

3.3.3 Contract Transition-In Requirements

Contractor shall schedule and hold a kickoff meeting within 10 Business Days of Effective Date to review the scope of services and appropriate communication channels with the Contract Manager.

3.3.4 Transition-Out Requirements

3.3.4.1 Contract Transition-Out

3.3.4.2 The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to assisting each Requesting Agency to close out and transition each open Task Order.

3.3.4.3 Task Order Transition-Out Requirements

The Contractor shall support end-of-Task Order transition efforts with technical and project support to include but not be limited to:

- A. Updated Solution documentation and all other System Documentation shall be provided to the Requesting Agency as requested.
- B. Data shall be made available to the Requesting Agency, in Learning Tool Interoperability (LTI) or other standard industry format acceptable to the State. Any archived data shall be furnished to the Requesting Agency at this time in an industry format. All data shall be made available at no additional charge to the State.
- C. Contractor shall furnish all stored courses, administrative records and course history as-delivered to students, along with gradebooks and student-furnished materials.
- D. Contractor shall furnish the last full backup of data and Solution configuration and last incremental back up for each backup period length stored by the Contractor.

3.3.4.4 Return and Maintenance of State Data

- A. Upon termination or the expiration of the Contract Term, the Contractor shall: (a) return to the State all State data in either the form it was provided to the Contractor or in a mutually agreed format along with the schema necessary to read such data; (b) preserve, maintain, and protect all State data until the earlier of a direction by the State to delete such data or the expiration of 90 days (“the retention period”) from the date of termination or expiration of the Contract term; (c) after the retention period, the Contractor shall securely dispose of and permanently delete all State data in all of its forms, such as disk, CD/DVD, backup tape and paper such that it is not recoverable, according to National Institute of Standards and Technology (NIST)-approved methods with certificates of destruction to be provided to the State; and (d) prepare an accurate accounting from which the State may reconcile all outstanding accounts. The final monthly invoice for the services provided hereunder shall include all charges for the 90-day data retention period.

- B. During any period of service suspension, the Contractor shall maintain all State data in its then existing form, unless otherwise directed in writing by the Contract Manager.
- C. In addition to the foregoing, the State shall be entitled to any post-termination/expiration assistance generally made available by Contractor with respect to the services.
- D. Access to any data or configurations of the furnished product and/or services shall be available after the expiration of the Contract as described in this Section.

3.3.5 Export, Backup, Disaster Recovery (DR), and Data

3.3.5.1 Export/Import

- A. The Contractor shall, at no additional cost or charge to the State, in an industry standard/non-proprietary format:
 - 1) perform a full or partial import/export of State data within 24 hours of a request; or
 - 2) provide to the State the ability to import/export data at will and provide the State with any access and instructions which are needed for the State to import or export data.
- B. Any import or export shall be in a secure format per the Security Requirements.

3.3.5.2 Backup

- A. The Contractor shall perform backups of the web, application, and database servers on a regular basis. This shall include, as a minimum, weekly incremental backups and full monthly backups of all volumes of servers.
- B. Weekly backups shall be retained for one month, and monthly backups shall be retained for two (2) years, by the Contractor until the end of each respective Task Order.

3.3.5.3 Data Retention

The Contractor shall store five (5) years of courses, administrative records and course history as-delivered to students, along with gradebooks and student-furnished materials, as determined by the course end date. *Offerors to describe how historical data older than five years shall be removed.*

3.3.5.4 Disaster Recovery

The Contractor must maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and confidential information, Contractor's processing capability and the availability of hosted services.

- A. Solution shall come back online within 24 hours.
- B. Solution shall be restored with less than 8 hours' loss of data.
- C. Contractor shall describe in its Proposal its disaster recovery approach, including an explanation how the data will be recoverable.
- D. Offeror shall furnish to the Contract Manager and update on an annual basis a Disaster Recovery Plan for the services and Solution offered. The Disaster Recovery Plan shall detail the steps and processes employed by the Contractor as well as the features and

characteristics which will ensure compliance with the security requirements of this Contract. If any Disaster Recovery Plan information, including procedures, are different based on a Task Order, Contractor shall furnish such differences to the respective TO Manager.

3.3.5.5 Data Ownership and Access

- A. Data, databases and derived data products created, collected, manipulated, or directly purchased as part of a RFP shall become the property of the State. The Requesting Agency is considered the custodian of the data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.
- A. Public jurisdiction user accounts and public jurisdiction data shall not be accessed, 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 the Contract, including as necessary to perform the services hereunder or (4) at the State's written request.
- B. The Contractor shall limit access to and possession of State data to only Contractor Personnel whose responsibilities reasonably require such access or possession and shall train such Contractor Personnel on the confidentiality obligations set forth herein.
- C. 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.
- D. The Contractor shall not use any information collected in connection with the services furnished under this Contract for any purpose other than fulfilling such services.

3.3.5.6 Provisions in Sections 3.3.5.1, 3.3.5.3, and 3.3.5.5 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of Sections 3.3.5.1-3.3.5.5 (or the substance thereof) in all subcontracts.

3.3.6 Contractor-supplied Hardware, Software, and Materials

3.3.6.1 Solution shall be accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email) or a program interface.

3.3.6.2 The State shall be permitted limited user-specific application configuration settings by role.

3.3.6.3 The Contractor is responsible for the acquisition and operation of all hardware, software and network support related to the services being provided, and shall keep all software current.

3.3.6.4 The Contractor shall furnish all Upgrades, security and regulatory updates, and fixes at no additional cost.

3.3.7 Custom Software

3.3.7.1 As described in the sample Contract (Attachment A), the State shall solely own any custom software, including, but not limited to application modules developed to integrate with any COTS, source-codes, maintenance updates, documentation, and configuration files, when developed under this Contract.

3.3.7.2 Upon a Contractor's voluntary or involuntary filing of bankruptcy or any other insolvency proceeding, Contractor's dissolution, Contractor's discontinuance of support of any software or system, the Contractor shall convey to the State all rights, title, and interests in all custom software, licenses, software source codes, and all associated System Documentation that comprises any solutions furnished under the Contract. These rights include, but are not limited to, the rights to use, and cause others to use on behalf of the State, said software, software documentation, licenses, software source codes, and System Documentation.

3.3.7.3 Custom Source Code

3.3.7.4 For all custom software provided to the State pursuant to any Contract, the Contractor shall either provide the source code directly to the State in a form acceptable to the State, or deliver two copies of each software source code and System Documentation to a State-approved escrow agent at no additional cost to the State following the terms set forth in the sample contract (Attachment A) and in **Section 3.3.8** below.

3.3.7.5 The State shall have the right to audit custom software source code and corresponding software source code documentation for each software product that comprises the solution as represented by the Contractor. This audit shall be scheduled at any time that is convenient for the parties to be present. The State shall be provided with software or other tools required to view all software source code.

3.3.7.6 The Contractor shall provide the current source code and documentation for all custom software to the State at the time of Contract termination.

3.3.8 Source Code Escrow

3.3.8.1 Source Code Escrow does not apply to this Contract.

3.3.9 Data

3.3.9.1 Data, databases and derived data products created, collected, manipulated, or directly purchased as part of a Task Order shall become the property of the State. The Requesting Agency is considered the custodian of the data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.

3.3.9.2 Licensed and/or copyrighted data shall be governed by the terms and conditions identified in the Contract or the license.

3.3.10 Travel Reimbursement

There shall be no reimbursement for travel.

3.3.11 MSDE One-Time Startup (Fixed Price)

- A. The Contractor shall configure and implement the Solution for MSDE as part of a one-time system startup commencing on the NTP Date for Task Order 1 at the price furnished in the Financial Proposal.
- B. The Contractor shall develop a migration strategy that minimizes risk, and focuses on delivery of student courses first, should multiple production deployments be required.
- C. The Contractor shall furnish and update a project schedule for all system start-up activities until the system is deployed into production environment and accepted by MSDE.
- D. The Contractor shall follow a change control process for all configurations Solution customizations. Offerors shall describe the change control process the Offeror intends to follow, and shall furnish the change control procedures after Contract award.
- E. The Contractor shall furnish a Testing Plan to indicate how individual components will be verified as fully functional, including containing no broken links, appropriate user access, and correct navigation. Solution Testing shall include demonstration of eCommerce integration and User Acceptance Testing to be performed by MSDE.
- F. The Contractor shall demonstrate, early in the system start-up period, Solution's compliance with accessibility requirements as listed in Section 3.3.1. *Offeror to describe how it will demonstrate accessibility compliance.*
- G. The Contractor shall furnish a Training Plan to indicate how training for MSDE staff will be performed prior to production deployment.
- H. The Contractor shall migrate all existing courses, resources, eCommunities, and other content from the existing LMS to the Solution. All content shall be error-free. *Offerors shall furnish an explanation of each of the processes involved and/or tools available for the migration, and how accuracy will be ensured.*
 - a. The Contractor shall migrate five (5) years of data and materials.
 - b. The Contractor shall migrate backed up data such that the information can be retrieved in the event of a failure.
 - c. Migration of courses shall include all content, navigation, and functionality, confirming that the migrated courses (including all of: templates, active courses, historical courses) are fully functional.
 - d. Migrate a master course – a migrated master course shall follow the same structure and layout “look and feel, sections created as in the existing LMS.
- I. Registration capabilities shall be fully operational, with all historical and currently-registered users migrated into the Solution.
- J. As part of system start-up the Contractor shall create templates with MSDE's branding and style.
- K. The Contractor shall furnish in-person training for MSDE staff, MSDE VELMS administrators (a total of approximately 12 people) prior to production deployment. Such training shall include system administration and train-the-trainer knowledge transfer for all Solution capabilities.

- L. Training shall be complete, and supporting documentation (including tutorials, webinars, other materials) shall be available 30 days before scheduled production deployment.
- M. The Contractor shall furnish online training for any individuals not available during in-person training, covering substantially the same topics as for the in-person training.
- N. Monthly Charges shall not be invoiced until successful production deployment and acceptance has occurred, as determined by MSDE.
- O. The Contractor shall schedule a Task Order kickoff meeting within 10 days of Task Order NTP. At the kickoff, the Contractor shall furnish an updated Project Schedule describing the activities for the Contractor, the State, and any third parties for fully transitioning to the Contractor's Solution.

3.3.12 FUNCTIONAL / BUSINESS / PRODUCT REQUIREMENTS

Contractor shall provide an VELMS Solution to: manage instructional content, administer courses, furnish course registration, perform student assessments, track students' progress toward learning goals, report student progress and grades, and other capabilities of course delivery including but not limited to:

- a. Course syllabus editing and display during a course
- b. The ability to access, customize and copy:
 - 1. course templates (a basic set of course structures that incorporate MSDE branding and other basic structural elements, which are used to construct master courses and individual courses)
 - 2. master courses (courses that have been created with default MSDE content, and in which individual educators have limited permissions to edit for a specific delivery instance), and
 - 3. eCommunities.
- c. The ability to schedule course content release/access based on:
 - 1. Standard scheduled course progression for all students
 - 2. Unscheduled or updated schedule release based on instructor input (adaptive release) for the entire class, and
 - 3. Unscheduled or updated schedule release based on instructor input for an individual student, which may include presenting content to a student based on a student's demonstrated competency in the subject matter (competency-based learning).
- d. Course registration capabilities, including wait listing and communication with enrolled and waitlisted students. *Offeror to describe course registration capabilities, including any customization options for the proposed Solution.*
- e. Development tools for creating additional courses that follow industry standards and are non-proprietary. *Offeror to describe its out-of-the-box course formats and tailoring vs. capabilities (including ease of use) for creating and maintaining ad hoc course formats.*

- f. The ability to create, manage, and upload courses greater than 500Mb up to at least a maximum of 3 Gb. Offerors shall describe any capabilities to allocate course data size maximums across courses to reduce the cost to the State since courses vary greatly in size
- g. Multiple language support for the entire Solution including UTF8 compliance. Offerors shall describe the language support offered including which languages are supported out of the box, and which portions of the Solution is automatically translated into the selected language (e.g., navigation buttons, menu options, input from localized keyboard)
- h. Multiple, interactive assessment and quiz format options
- i. Assessment reporting at multiple levels, including at the individual, departmental or institutional level
- j. Automated course testing and scoring
- k. Online grading tools or “grade book” that allows scoring of grades, letter/percentage grades and qualitative comments; in addition, capability for computing automatically current weighted and overall scores
- l. A repository for student course work (e.g. “dropbox” or shared folders)
- m. A tool for electronically gathering, storing, reviewing and presenting student work products over time and over multiple courses (“ePortfolio”). Ability for students to publish a link to the portfolio that is accessible with no system access required
- n. Copyright management for citations used with permission and linked to objects housed in Solution
- o. Content version control
- p. Customizable curriculum management for instructors
- q. Content creation, spell check, link check for internal and external resources
- r. Whiteboard capability
- s. Discussion boards including nested boards with replies to posts
- t. Blog tools for course, individual and journaling
- u. Group work/collaboration space
- v. Rich media support
- w. Ability for users to write private notes (instructors and students) in designated areas of courses (e.g. course content display and assignments)
- x. Notation input and display for specific disciplines (e.g. science, math and music)
- y. Wiki or wiki like tool(s) for courses and eCommunities
- z. Open APIs for the addition of third-party and home-grown tools, systems and integrations
- aa. Solution shall provide access to historical records according to user roles and permissions
- bb. The ability to deliver course content with a variety of audio and video content
- cc. Ability to record and publish instructor’s lectures
- dd. Real-time chat/instant messaging

- ee. Synchronous and asynchronous communication capabilities
- ff. Students and instructors can interact with each other in both a visual, audio and text manner (i.e, web conferencing). *Offerors shall describe native web-conferencing capabilities, integration of native capabilities into course delivery, and third-party web-conferencing integration capabilities*
- gg. Global, content and advanced search capabilities across the repository, eCommunities, courses, and other elements. *Offerors shall describe any meta tagging capabilities offered*
- hh. Content sharing/reuse of content, and
- ii. Off-line work capability with synchronization of content back to LMS when online.

3.3.12.1 Additional Product Requirements

- A. Offerors may propose open source software; however, the Offeror must provide operational support for the proposed software as part of its Proposal.
- B. Offeror shall be authorized to furnish the proposed products/services. Offerors proposing to resell services of another entity must be authorized by such other entity (See RFP **Section 4.2.4**).
- C. No international processing for State Data: As described in **Section 3.4 Security Requirements**, Offerors are advised that any processing or storage of data outside of the continental U.S. is prohibited.
- D. Offerors shall clearly indicate which features are part of the base offering and which include additional charges.
- E. Consistent expiration dates: A PO for a service already being delivered to the Requesting Agency under this Contract shall terminate on the same calendar day as the prior product/service. As appropriate, charges shall be pro-rated.
- F. Any Contract award is contingent on the State's agreement to any applicable terms of use. Agreement to applicable terms must occur during the Proposal evaluation process and any other agreement submitted under **Section 4.2.4.A** of this RFP. Such agreed upon terms of use shall apply consistently across services ordered under the Contract. Such agreed upon terms of use shall be applicable to the State's use of the offering during the term of the Contract.
- G. No auto-renewal of services: The Contractor shall not establish any auto-renewal of services beyond the period identified in Contract documents. In addition to any notices of renewal sent to the Office, Contractors shall ensure notices of renewal are sent to the e-mail address designated by the Contract Manager.
- H. In addition to any notices of renewal sent to the Requesting Agency, Contractors shall email notices of renewal to the e-mail address designated by the Contract Manager.

- 3.3.13 The State may purchase standard add-on capabilities made generally available to Contractor's other customers, including third party courses, via purchase order as described in **Section 3.14**. Such offerings shall be pre-authorized by the Contract Manager as described in **Section 3.16**. Custom content development is out of scope for this RFP.

3.3.14 Registration Payment Processing (Option)

At the sole option to the State, the Contractor shall furnish payment processing capabilities for collecting fees for course registration. Note that such payment processing capabilities incur additional security obligations.

3.3.15 TECHNICAL REQUIREMENTS

- a. Offerors may propose open source software; however, the Offeror must provide operational support for the proposed software.
- b. Technical Support
 1. Contractor shall furnish technical support services encompassing all technical environments (e.g., production, test) to include but not be limited to tier 2 and above help desk support during Normal State Business Hours, where tier 2 support means limited MSDE personnel escalate technical questions to Contractor.
 2. Contractor shall furnish a mechanism to report severe issues such as outages on a 24/7 basis.
- c. Contractor shall furnish the following:
 1. Ability to turn on or off the ability to send and receive emails external to the Solution based on user role and instructor-granted permissions
 2. Single sign-on capability using active directory credentials
 3. Two factor authentication or identity confirmation questions for self-service account resets
 4. Industry standards compliance: SCORM, LTI, HTML5, Instructional Management System (IMS), common cartridge
 5. Functions with commonly and currently used school system browsers, e.g. Mozilla, Firefox, IE, Chrome, Edge, Opera
 6. Content migration capabilities from (out of) the Solution
 - a. Ability to export and import resources from other LMS platforms (e.g., Common Cartridge, etc.)
 7. Integration with a Requesting Agency's content/resource repository (Amazon Inspire or other repository type). *Offerors to describe their capabilities and integration components.*
 8. Meet accessibility standards as listed in **Section 3.3.1**
 9. Meet relevant security and privacy laws as listed in **Sections 3.3.1 and 3.4**
 10. Ability to support 20,000 active users (learners and courses) with capability to increase as necessary
 - i. Active user (with respect to learners and courses): someone who is currently enrolled in a course that has started and not ended
 - ii. Inactive user (with respect to learners and courses): someone who is enrolled in a course that has not yet started, someone who was enrolled in a course that has ended

- iii. Contractor shall furnish a role that can be associated as Parental user, where the role has read-only access to specifically identified users. Such parental user role shall not be considered an active user
- 11. Ability to support unlimited eCommunities participants, with no unique charge per participant
- 12. Course content upload not limited in size to include internal storage of multi-media course content
- 13. Ability to copy data (e.g. courses) and maintain integrity (e.g., links, clean copies)
- 14. Ability to integrate materials from third party course content providers
- 15. Ability to integrate with third party providers (e.g., payment processing)
 - i. At a minimum, the Solution shall have the capability to integrate with the State's preferred payment processing vendor, currently NIC.
- 16. Solution shall provide the capability for synchronous, interactive learning sessions where
- 17. Authorization and access via pre-defined roles (e.g., course content creators, consumers, students, instructors). Roles shall include both Requesting Agency system administrators and local administrators (an administrator with a subset of permissions for an organizational unit defined in the LMS), and
- 18. Flexible, programmable and multiple user roles at course and system levels. Multiple roles include different functional capabilities for the same user (e.g., an administrator may be a student in another area).
- d. Contractor shall furnish a Staging, Test, and Production environments for course development. The Staging environment will be used for system users developing course content; to facilitate third party development of course materials, certain users in the Staging environment may not be issued licenses in either Test or Production.

3.3.16 NON-FUNCTIONAL, NON-TECHNICAL REQUIREMENTS

- A. Ongoing support and additional training shall be provided throughout the term of the Contract. All training materials, user manuals and other content shall be available electronically, to include but not be limited to:
 - a. Ongoing online training/tutorials for new Requesting Agency staff
 - b. Online role-based training for learners, and instructors/course developers, and
 - c. Help resources documented online.
- B. Contractor shall provide documentation on any configuration the Contractor performed on its products/services to produce/maintain the Requesting Agency's iteration of the Solution.
- C. Contractor shall provide user and system administration documentation for the Solution, including instructions for any administration or configuration that the Request Agency can perform on the Solution.
- D. For any documentation or training materials, the State shall have the right to distribute and/or reprint such documentation or training materials as needed.

3.3.17 REPORTING (After Go-Live)

The Contractor shall furnish to the Requesting Agency the following reports. The Contractor shall also provide the ability for the Requesting Agency to retrieve such reports from the Solution:

- A. Monthly reports to include system performance and usage due the first workday of each month.
- B. Quarterly reports to include quality assurance (technical support requests, their status, and resolution times), due the first workday of every third month from the date of the notice to proceed.
- C. Annual reports to include system performance and usage and other analytics as requested, due July 1 each year.
- D. Ad-hoc reports upon request

3.4 Security Requirements

The following requirements are applicable to the Contract:

3.4.1 Employee Identification

- A. Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each such Contractor Personnel shall provide additional photo identification.
- B. Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
- C. Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion, that said Contractor Personnel has not adhered to the Security requirements specified herein.
- D. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

3.4.2 Security Clearance / Criminal Background Check

- 3.4.2.1 Contractor shall complete a criminal background check prior to any individual Contractor Personnel performing services under the Contract.
- 3.4.2.2 Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Manager. The Contract Manager reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Manager as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.
- 3.4.2.3 The cost of complying with all security requirements specified herein are the sole responsibility and obligation of the Contractor and no such costs shall be passed through to or reimbursed by the State or any of its agencies or units.

3.4.3 On-site Security Requirement(s)

- A. For the conditions noted below, Contractor Personnel may be barred from entrance or leaving any site until such time that the State's conditions and queries are satisfied.
- 1) Contractor Personnel may be subject to random security checks when entering and leaving State secured areas. The State reserves the right to require Contractor Personnel to be accompanied while in secured premises.
 - 2) Some State sites, especially those premises of the Department of Public Safety and Correctional Services, require each person entering the premises to document and inventory items (such as tools and equipment) being brought onto the site, and to submit to a physical search of his or her person. Therefore, Contractor Personnel shall always have available an inventory list of tools being brought onto a site and be prepared to present the inventory list to the State staff or an officer upon arrival for review, as well as present the tools or equipment for inspection. Before leaving the site, the Contractor Personnel will again present the inventory list and the tools or equipment for inspection. Upon both entering the site and leaving the site, State staff or a correctional or police officer may search Contractor Personnel. Depending upon facility rules, specific tools or personal items may be prohibited from being brought into the facility.
- B. Any Contractor Personnel who enters the premises of a facility under the jurisdiction of the Requesting Agency may be searched, fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the Requesting Agency.
- C. Further, Contractor Personnel shall not violate Md. Code Ann., Criminal Law Art. Section 9-410 through 9-417 and such other security policies of the agency that controls the facility to which the Contractor Personnel seeks access. The failure of any of the Contractor Personnel to comply with any provision of the Contract is sufficient grounds for the State to immediately terminate the Contract for default.

3.4.4 Information Technology

- A. The Contractor shall:
- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below (see **Section 3.4.5**);
 - 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and
 - 3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

3.4.5 Data Protection and Controls

- A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) to be provided or used in connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.
- B. To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):
- 1) Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in test and/or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements listed in **Section 3.4.5**.
 - 2) Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides <https://www.cisecurity.org/>, Security Technical Implementation Guides (STIG) <http://iase.disa.mil/Pages/index.aspx>, or similar industry best practices to reduce the Contractor/subcontractor’s systems’ surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible and/or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor/subcontractor’s system configuration files.
 - 3) Ensure that State data is not comingled with non-State data through the proper application of compartmentalization security measures.
 - 4) Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.
 - 5) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
 - 6) Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), “Security Requirements for Cryptographic Modules”, FIPS PUB 140-2:

<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>

<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>

- 7) Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology's Information Security Policy.
- 8) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The State shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.
- 9) Ensure system and network environments are separated by properly configured and updated firewalls.
- 10) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems from unsolicited and unauthenticated network traffic.
- 11) By default "deny all" and only allow access by exception.
- 12) Review at least annually the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- 13) Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to this Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 days following the earlier of vulnerability's identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The State shall have the right to inspect the Contractor's policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- 14) Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- 15) Ensure State data is not processed, transferred, or stored outside of the United States ("U.S."). The Contractor shall provide its services to the State and the State's end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel 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 Contractor Personnel to access State data remotely only as required to provide technical support.

- 16) Ensure Contractor's Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. The Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the Contract Manager to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.
- 17) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.
- 18) Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The State shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.

3.4.5.1 Access to Security Logs and Reports

The Contractor shall provide reports to the State in a mutually agreeable format.

Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to this Contract.

3.4.6 Security Plan

- A. The Contractor shall protect State data according to a written security policy ("Security Plan") no less rigorous than that of the State, and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.
- B. The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the Contract.
- C. The Security Plan shall address compliance with the PCI DSS for payment card processing).
- D. If any Security Plan information, including procedures, are different based on a Task Order, Contractor shall furnish such differences to the respective TO Manager.

3.4.7 PCI Compliance

3.4.7.1 Contractor shall at all times comply, and ensure compliance with, all applicable Payment Card Industry ("PCI") Data Security Standards ("DSS"), including any and all changes thereto. Contractor shall provide the Requesting Agency with documented evidence of compliance to PCI DSS within 30 days of a Requesting Agency request.

3.4.7.2 The Contractor shall annually furnish to the State evidence of the PCI Security Standards Council's (SSC) acceptance or attestation of the Contractor's conformance to the relevant PCI DSS requirements by a third party certified to perform compliance assessments.

3.4.7.3 The Contractor shall ensure that the scope of the annual SOC 2 Type II Report specified under **Section 3.13** includes testing to confirm the PCI assessment results.

3.4.8 Security Incident Response

A. The Contractor shall notify the Department in accordance with **Section 3.4.8 B-C** when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:

- 1) notify the Department within twenty-four (24) hours of the discovery of an Security Incident by providing notice via written or electronic correspondence to the Contract Manager, Department chief information officer and Department chief information security officer;
- 2) notify the Department within two (2) hours if there is a threat to Contractor's Solution as it pertains to the use, disclosure, and security of State data; and
- 3) provide written notice to the Contract Manager within one (1) Business Day after Contractor's discovery of unauthorized use or disclosure of State data and thereafter all information the State or Department requests concerning such unauthorized use or disclosure.

B. Contractor's notice shall identify:

- 1) the nature of the unauthorized use or disclosure;
- 2) the State data used or disclosed,
- 3) who made the unauthorized use or received the unauthorized disclosure;
- 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
- 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- 6) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

C. 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.

3.4.9 Data Breach Responsibilities

If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:

- 1) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
- 2) Cooperate with the State to investigate and resolve the data breach;
- 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach;
- 4) 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;
- 5) If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State 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.

3.4.9.1 Additional security requirements may be established in a Task Order.

3.4.9.2 The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards.

3.4.9.3 Provisions in **Sections 3.4.4 – 3.4.9** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Sections 3.4.1-3.4.9** (or the substance thereof) in all subcontracts.

3.5 Labor Categories and Qualifications

THIS SECTION IS NOT APPLICABLE TO THIS RFP.

3.6 Performance and Personnel

3.6.1 Work Hours

- A. Business Hours Support: The collective assigned Contractor Personnel shall support Normal State Business Hours, Monday through Friday except for State holidays, Service Reduction days, and Furlough days observed by the Department.
- B. Non-Business Hours Support: After hours support may be necessary to respond to IT Security emergency situations. Additionally, services may also involve some evening and/or weekend hours performing planned activities in addition to core business hours. .

3.7 Problem Escalation Procedure

- 3.7.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- 3.7.2 The Contractor shall provide contact information to the Contract Manager, as well as to other State personnel, as directed should the Contract Manager not be available.
- 3.7.3 The Contractor must provide the PEP to the Contract Manager no later than ten (10) Business Days after notice of recommended award. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- A. The process for establishing the existence of a problem;
 - B. The maximum duration that a problem may remain unresolved at each level in the Contractor's organization before automatically escalating the problem to a higher level for resolution;
 - C. Circumstances in which the escalation will occur in less than the normal timeframe;
 - D. The nature of feedback on resolution progress, including the frequency of feedback to be provided to the State;
 - E. Identification of, and contact information for, progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
 - F. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
 - G. A process for updating and notifying the Contract Manager of any changes to the PEP.
- 3.7.4 Nothing in this section shall be construed to limit any rights of the Contract Manager or the State which may be allowed by the Contract or applicable law.

3.8 Service Level Agreement (SLA)

- 3.8.1 A "Problem" is defined as any situation or issue reported via a help desk ticket that is related to the system operation that is not an enhancement request.
- 3.8.2 "Problem resolution time" is defined as the period of time from when the help desk ticket is opened to when it is resolved.
- 3.8.3 The Contractor shall:
- A. Meet the Problem response time and resolution requirements (see **3.8.6.1**).
 - B. Provide a monthly report to monitor and detail response times and resolution times.
 - C. Log Problems into the Contractor-supplied Problem tracking software and assign an initial severity (High, Medium or Low as defined in **3.8.6.1**).

- D. Respond to and update all Problems, including recording when a Problem is resolved and its resolution. Appropriate Requesting Agency personnel shall be notified when a Problem is resolved.
- E. The Requesting Agency shall make the final determination regarding Problem severity.
- F. Contractor shall review Problems with Requesting Agency personnel to establish the remediation plan and relevant target dates.

3.8.4 The Offeror shall furnish service level targets offered for this Task Order and describe how the targets are measured, any credits offered should the service level measures not be met, and how the State can verify the service level.

3.8.5 The Offeror shall describe how service level performance is reported to the State.

3.8.6 SLA Activation Date

Service level targets set forth herein shall be in effect beginning with the commencement of monthly services after completion and State acceptance of any initial startup activities. Contractor shall comply with all performance measurements, and shall also ensure compliance by its Subcontractors.

3.8.6.1 Problem Response Definitions and Times

Service Priority	Response Time	Resolution Time	Response Availability	Work Outage	Users Affected
Emergency	Less than 15 minutes	Within 2 hours of first report	24 hours per day, seven days per week	Major portions of the Solution are inaccessible Solutions or users are unable to work, or to perform some portion of their job.	Users or internal Solution functionalities are impaired. Includes administrators, facilitators and students
High	Less than 30 minutes	Within 4 hours after first report	24 hours per day, seven days per week	Major portions of the Solution are inaccessible Solutions or users are unable to work, or to perform some portion of their job.	Affects the majority of users to include administrators, facilitators and students
Normal	Within 2 hours	Within 1 day (24 hours) after first report. If the outage is not resolved a resolution plan must be	Mon-Fri, 7AM-5 PM	Specific non-critical features are not operating as specified Solutions or users are unable to perform a small portion of their job, but are able to	Affects a number of users

Service Priority	Response Time	Resolution Time	Response Availability	Work Outage	Users Affected
		in place.		complete most tasks.	
Low	Within 2 hours	Within 3 days (72 hours) after first report. If the outage is not resolved a resolution plan must be in place.	Mon-Fri, 7AM-7 PM	Lower priority features that can be done manually are not operating as specified Often a request for service with ample lead time.	Affects a number of users

3.9 Deliverables

3.9.1 Deliverable Submission

- 3.9.1.1 For every deliverable, the Contractor shall request the Contract Manager confirm receipt of that deliverable by sending an e-mail identifying the deliverable name and date of receipt.
- 3.9.1.2 For every deliverable, the Contractor shall submit by e-mail an Agency Deliverable Product Acceptance Form (DPAF), provided as Attachment R, to the Contract Manager in MS Word (2007 or greater).
- 3.9.1.3 Unless specified otherwise, written deliverables shall be compatible with Microsoft Office and Microsoft Project versions 2007 or later. At the Contract Manager's discretion, the Contract Manager may request one hard copy of a written deliverable.
- 3.9.1.4 A standard deliverable review cycle will be elaborated and agreed-upon between the State and the Contractor. This review process is entered into when the Contractor completes a deliverable.
- 3.9.1.5 For any written deliverable, the Contract Manager may request a draft version of the deliverable, to comply with the minimum deliverable quality criteria listed in Section 3.9.3. Drafts of each final deliverable, except status reports, are required at least one week in advance of when the final deliverables are due (with the exception of deliverables due at the beginning of the project where this lead time is not possible, or where draft delivery date is explicitly specified). Draft versions of a deliverable shall comply with the minimum deliverable quality criteria listed in **Section 3.9.3**.

3.9.2 Deliverable Acceptance

- 3.9.2.1 A final deliverable shall satisfy the scope and requirements of this RFP for that deliverable, including the quality and acceptance criteria for a final deliverable as defined in Section 3.9.4 Deliverable Descriptions/Acceptance Criteria.

3.9.2.2 The Contract Manager shall review a final deliverable to determine compliance with the acceptance criteria as defined for that deliverable. The Contract Manager is responsible for coordinating comments and input from various team members and stakeholders. The Contract Manager is responsible for providing clear guidance and direction to the Contractor in the event of divergent feedback from various team members.

3.9.2.3 The Contract Manager will issue to the Contractor a notice of acceptance or rejection of the deliverable in the DPAF (Attachment R). Following the return of the DPAF indicating “Accepted” and signed by the Contract Manager, the Contractor shall submit a proper invoice in accordance with the procedures in **Section 3.12**. The invoice must be accompanied by a copy of the executed DPAF or payment may be withheld.

3.9.2.4 In the event of rejection, the Contract Manager will formally communicate in writing any deliverable deficiencies or non-conformities to the Contractor, describing in those deficiencies what shall be corrected prior to acceptance of the deliverable in sufficient detail for the Contractor to address the deficiencies. The Contractor shall correct deficiencies and resubmit the corrected deliverable for acceptance within the agreed-upon time period for correction.

3.9.3 Minimum Deliverable Quality

The Contractor shall subject each deliverable to its internal quality-control process prior to submitting the deliverable to the State.

- a. Each deliverable shall meet the following minimum acceptance criteria:
- b. Be presented in a format appropriate for the subject matter and depth of discussion.
- c. Be organized in a manner that presents a logical flow of the deliverable’s content.
- d. Represent factual information reasonably expected to have been known at the time of submittal.
- e. In each section of the deliverable, include only information relevant to that section of the deliverable.
- f. Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.
- g. Meets the acceptance criteria applicable to that deliverable, including any State policies, functional or non-functional requirements, or industry standards.
- h. Contains no structural errors such as poor grammar, misspellings or incorrect punctuation.

A draft written deliverable may contain limited structural errors such as incorrect punctuation, and shall represent a significant level of completeness toward the associated final written deliverable. The draft written deliverable shall otherwise comply with minimum deliverable quality criteria above.

3.9.4 Deliverable Descriptions / Acceptance Criteria (MSDE – Task Order 1)

The Contractor may suggest other subtasks, artifacts, or deliverables to improve the quality and success of the assigned tasks.

ID #	Deliverable Description	Acceptance Criteria	Due Date / Frequency
3.9.4.1	Initial Project Planning meeting (kick-off)	<p>Held within 10 days of NTP</p> <p>Includes updated Project Schedule presented to Contract Manager during the meeting</p> <p>Microsoft Project schedule or comparable document demonstrating tasks, task estimates, resource assignments, migration schedule and dependencies for both MSDE and Contractor Personnel, with tasks no less than 8 hours and no greater than 80 hours.</p>	<p>Initial Delivery: NTP+ 10 days</p> <p>Updates: Weekly</p>
3.9.4.2	Training Plan	In MS Word format	As identified in Approved Project Schedule
3.9.4.3	Testing Plan	In MS Word format	As identified in Approved Project Schedule
3.9.4.4	Change Control Procedures	In MS Word format	As identified in Approved Project Schedule
3.9.4.5	Training	<p>Upon conclusion of all initial user training as accepted by Contract Manager</p> <p>Training tutorials available for non-attendees</p> <p>Face-to-face training completed for system roles</p> <p>Web-based training available</p>	Completed 30 days prior to scheduled production deployment according to project schedule
3.9.4.6	Production deployment of Solution	<p>Solution is fully configured, tested and all data migrated into production, to include but not be limited to:</p> <ol style="list-style-type: none"> 1. Student Course migration 2. Professional Development course migration 3. User migration 4.eCommunities migration 5. Modules migration 6. Registration data is migrated and registration 	As identified in Approved Project Schedule

		capability functional	
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3.10 Work Order Process

THIS SECTION IS NOT APPLICABLE TO THIS RFP.

3.11 Insurance Requirements

- 3.11.1 Any insurance furnished as a condition of this Contract shall be issued by a company authorized to business in this State.
- 3.11.2 The recommended awardee must provide a certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this Section 3.11 “Insurance Requirements,” within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts the TO Contractor shall update certificates of insurance annually, or as otherwise directed by the TO Contract Manager.
- 3.11.3 The following type(s) of insurance and minimum amount(s) of coverage are required:
- 3.11.3.1 General Liability - The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.11.3.2 Errors and Omissions/Professional Liability - The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
- 3.11.3.3 Cyber Security / Data Breach Insurance - The Contractor shall maintain Cyber Security / Data Breach Insurance in the amount of ten million dollars (\$10,000,000) per occurrence. The coverage must be valid in at all locations where work is performed or data or other information concerning the State’s claimants and/or employers is processed or stored.
- 3.11.3.4 Worker’s Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act.
- 3.11.4 State Inclusion on Insurance - The State shall be listed as an additional insured on all policies with the exception of Worker’s Compensation Insurance and Professional Liability Insurance. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Manager, by certified mail, not less than 45 days’ advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Manager receives a notice of non-renewal, the Contractor shall provide the Contract Manager with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.

3.11.5 Subcontractor Insurance

The Contractor shall require that any subcontractors providing products/services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Manager with the same documentation as is required of the Contractor.

3.12 Invoicing

3.12.1 Additional invoicing instructions may be furnished in a Task Order.

3.12.2 All invoices shall be submitted by the Contractor within 30 days of delivery of products/services and shall include, at the minimum, the following information:

- a. Name and address of the Requesting Agency being billed
- b. Contractor name
- c. Products(s) and/or service(s) purchased listed separately including the amount for each individual charge (i.e., 5 – ABC Hardware @ \$2,000 Total \$10,000.00, 2 - CD Training @ \$100.00 Total \$200.00, Installation one-time cost \$300.00)
- d. Supporting Documentation
- e. E-mail address/phone number of Contractor's POC
- f. Remittance address
- g. Federal taxpayer identification or (if owned by an individual) Contractor's social security number
- h. Invoice period, invoice date, invoice number and amount due; and
- i. Purchase Order # being billed

3.12.3 For items of work for which there is one-time pricing (see **Attachment F** – Financial Proposal Form) those items shall be billed in the month following the acceptance of the work by the Requesting Agency.

3.12.4 For items of work for which there is annual pricing (see **Attachment F** – Financial Proposal Form), those items shall be billed in equal monthly installments for the applicable Contract year in the month following the performance of the services.

3.12.5 Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information. Invoicing shall be accompanied by signed notice(s) of acceptance for all invoices submitted for payment. Payment of invoices will be withheld if a signed DPAF (Attachment R) is not submitted.

3.12.6 Payment will only be made upon completion and acceptance of the deliverables as defined in the Task Order (or **Section 3.9** for Task Order 1). Monthly Charges for system usage (e.g., licenses) shall be invoiced until the fully migrated, operational Solution is approved by the Requesting Agency. Subsequent payments shall be equal monthly installments of the annual pricing provided on **Attachment F**.

- 3.12.7 The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- 3.12.8 Invoicing shall be submitted monthly.
- 3.12.9 Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date. Any final monthly invoice shall include all charges for data retention.
- 3.12.10 For the purposes of this Contract an amount will not be deemed due and payable if:
- A. The amount invoiced is inconsistent with the Contract.
 - B. The proper invoice has not been received by the party or office specified in the Contract.
 - C. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract.
 - D. The item or services have not been accepted.
 - E. The quantity of items delivered is less than the quantity ordered.
 - F. The items or services do not meet the quality requirements of the Contract
 - G. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule.
 - H. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met.
 - I. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the contract concerning performance under the contract and compliance with its provisions.

3.13 SOC 2 Type II Audit Report

- 3.13.1 This clause applies to the Contractor and Subcontractors who host the implemented Virtual Educational Learning Management System for the State. The Contractor and/or Subcontractors who provide services that handle Sensitive Data (see Handle definition in 1.2) for the VELMS must also comply with this clause, assuming the Contractor and/or Subcontractor receives copies of any data for use in providing services, including any system and/or user acceptance testing of the new Solution and any provided data that contains Sensitive Data.
- 3.13.2 The Contractor shall have an annual audit performed by an independent audit firm of the Contractor and/or Subcontractors’ handling Sensitive Data and/or the Department’s critical functions, which is identified as the VELMS and shall address all areas relating to information technology security and operational processes. These services provided by the Contractor and/or Subcontractors that shall be covered by the audit will collectively be referred to as the “Information Functions and/or Processes.” Such audits shall be performed in accordance with audit guidance: *Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2)* as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time,

or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the “Guidance”) as follows:

- 3.13.2.1 The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the “SOC 2 Report”). The initial SOC 2 Report audit shall be scheduled and completed within a timeframe to be specified by the State and submitted to the Contract Manager. All subsequent SOC 2 audits that are arranged after this initial audit shall be performed on an annual basis and shall be submitted to the Contract Manager by February 28th for the preceding calendar year.
- 3.13.2.2 The SOC 2 Report shall report on the description of the Contractor and/or Subcontractors’ system and controls and the suitability of the design and operating effectiveness of controls over the Information Functions and/or Processes relevant to the following trust principles: Security, Availability, and Confidentiality as defined in the aforementioned Guidance. The SOC 2 Report should also report on the suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes to meet the requirements of the contract, specifically the security requirements identified in Section 3.4. Security, Confidentiality and Privacy
- 3.13.2.3 The audit scope of each year’s SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Confidentiality, Processing Integrity, and Privacy) to accommodate any changes to the Contractor’s and/or Subcontractors’ environment since the last SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and/or Processes through changes to the Contract; or, due to changes in information technology or operational infrastructure implemented by the Contractor and/or Subcontractors. The Contractor and/or Subcontractors shall ensure that the audit scope of each year’s SOC 2 Report engagement shall accommodate these changes by including in SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- 3.13.2.4 The scope of the SOC 2 Report shall include work performed by any Subcontractors that provide essential support to the Contractor and/or essential support to the Information Functions and/or Processes provided to the Department under the Contract. The Contractor shall ensure the audit includes all of these Subcontractor(s) in the performance of the SOC 2 Report.
- 3.13.2.5 All SOC 2 Reports, including those of the Contractor and/or Subcontractor, shall be performed at no additional expense to the Department.
- 3.13.2.6 The Contractor and/or Subcontractors shall promptly provide a complete copy of the final SOC 2 Report to the Contract Manager upon completion of each annual SOC 2 Report engagement.
- 3.13.2.7 The Contractor shall provide to the Contract Manager, within 30 calendar days of the issuance of each annual final SOC 2 Report, a documented corrective action plan which addresses each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or Subcontractors along with the date(s) when each remedial action is to be implemented.

- 3.13.2.8 If the Contractor and/or Subcontractors currently have an annual information security assessment performed that includes the operations, systems, and repositories of the products/services being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor and/or Subcontractors' current information security assessments are acceptable in lieu of the SOC 2 Report.
- 3.13.2.9 If the Contractor and/or Subcontractors fail during the Contract term to obtain an annual SOC 2 Report by the date specified in **3.13.2.1**, the Department shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and/or Processes being provided by the Contractor and/or Subcontractors. The Contractor and/or Subcontractors agree to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the support and cooperation to the independent audit firm that is required to perform the SOC 2 Report. The Department will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.
- 3.13.3 Provisions in **Sections 3.13.1 – 3.13.2** shall survive expiration or termination of the Contract. Additionally, the Contractor and shall flow down the provisions of **Sections 3.13.1-3.13.2** (or the substance thereof) in all subcontracts.

3.14 Purchase Order Procedures

- 3.14.1 Contractors proposing to resell third-party offerings such as course content must be authorized by the entity at the time of Purchase Order.
- 3.14.2 The Contractor must certify it is authorized to provide the software and/or services as of the date of the Purchase Order;
- 3.14.3 For courses offered, the Contractor (or Offeror if included in Proposal) shall indicate which courses have been approved by MSDE as content appropriate for educational use within the State. Task order 1 courses must be MSDE approved to be available in the VELMS. *Note that approval is not a pre-requisite to offering a course under this Contract, but courses with MSDE approval will have broader Statewide potential use.*

3.14.4 Purchase Order Content

The Requesting Agency will submit a Purchase Order to the Contractor. As an example, each Purchase Order may contain the following information:

- a. Requesting Agency;
- b. Point of Contact;
- c. Description of the required software;
- d. Delivery requirements;
- e. Invoicing instructions;
- f. Required date for submission of quotation;
- g. Subscription period
- h. Subscription start date, if applicable
- i. Whether the data will contain Sensitive Data, and any associated requirements.

- j. Whether the purchase is to be pro-rated to co-terminate with other, existing services this Contractor is furnishing.

3.15 Task Order Procedures

3.15.1 Procedure for Awarding a Task Order

- A. Upon receipt of a Task Order request, the Contractor shall, no later than the requested response date and time, provide a response including the proposed prices. As an example, the response may provide the following:
 - a. Explanation of how the Contractor intends to meet the requirements of the Task Order;
 - b. The Contractor must certify it is authorized to provide the software and/or services as of the date of the response;
 - c. Proposed price in accordance with Attachment F plus any fixed price for startup according to the Task Order scope of work; and
 - d. Description of procedures required to access and enable services.
- B. As part of the evaluation, the State will evaluate the Contractor's response, including to confirm the pricing is no greater than that permitted under the Contract, and make a determination whether to award the Task Order.
- C. In the event the Requesting Agency determines to award the Task Order, the Requesting Agency will initiate and deliver a purchase order (PO) to the Contractor. Contractors take note: A PO must be approved by DoIT for a PO to be considered valid.

3.15.2 Delivery of Software and Services

Delivery of goods and services included shall be initiated only upon issuance of a PO authorized by DoIT.

- 3.15.3 For requirements in this RFP referring to specific services provided under a Task Order, the term Contract Manager and Procurement Officer shall be construed to mean TO Manager and TO Procurement Officer, respectively, as applicable.

3.16 Additional Offerings

- 3.16.1.1 As described in **Section 3.3.13**, the Contractor may add additional standard offerings throughout the life of the Contract. For each new offering, the Contractor must submit a description of the proposed offering and the associated pricing schedule.
- 3.16.1.2 When the offering to be added is from a third party, Contractor must demonstrate authorization to resell in accordance with **4.2.4.A**. Once authorization has been confirmed by DoIT, the offering will be added to Contractor's list of available offerings.
- 3.16.1.3 Contractor shall also include with the proposed offering any licenses the State is expected to accept for use of the offering. Acceptance of the offering is conditioned on the State's agreement to any such terms of use.
- 3.16.1.4 Requests to add new offerings shall be submitted to the Contract Manager for consideration. Approved requests will be added to the Contractor Offerings Matrix.

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4 PROPOSAL FORMAT

4.1 Two-Part Submission

Offerors shall submit Proposals in separate volumes:

- a) Volume I – TECHNICAL PROPOSAL
- b) Volume II – FINANCIAL PROPOSAL

4.2 Volume I – Technical Proposal

Note: Provide no pricing information in the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

4.2.1 Format of Technical Proposal

The Technical Proposal will include all items detailed below. In addition to the following instructions, responses in the Offeror's Technical Proposal must reference the RFP's organization and section numbering (ex. "Section 3.2.1 Response"). This proposal organization will allow direct mapping between Offeror responses and RFP requirements by Section number and will aid in the evaluation process.

4.2.2 The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

4.2.2.1 Title Page and Table of Contents (Submit under TAB A)

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

4.2.2.2 Claim of Confidentiality (If applicable, submit under TAB A-1)

Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror's Financial Proposal. The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included (see Section 1.14 "Public Information Act Notice").

4.2.2.3 Transmittal Letter (Submit under TAB B)

A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to its Proposal and the requirements as stated in this RFP. The Transmittal Letter should include the following:

- A. Name and address of the Offeror;
- B. Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- C. Solicitation Title and Solicitation Number that the Proposal is in response to;

- D. Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- E. Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- F. Offeror's eMM number;
- G. Offeror's MBE certification number (if applicable);
- H. Acceptance of all State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.2.2.4); and
- I. Acknowledgement of all addenda to this RFP issued before the Proposal due date.

4.2.2.4 Executive Summary (Submit under TAB C)

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

If the Offeror has taken no exceptions to the requirements of this RFP, the Executive Summary shall so state. Acceptance or rejection of exceptions is within the sole discretion of the State. If there are no assumptions, the Offeror shall so state.

4.2.2.5 Minimum Qualifications Documentation (If applicable, Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 2 "Offeror Minimum Qualifications."

4.2.2.6 Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)

- A. The Offeror shall address each Scope of Work requirement (Section 3) in its Technical Proposal and describe how its proposed products/services, including the products/services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work requirement shall include an explanation of how the work will be performed. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible. The response shall address each requirement in Section 3 of this RFP in order, and shall contain a cross reference to the RFP requirement.
- B. The Offeror shall give a definitive description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology and techniques to be used by the Offeror in providing the required products/services as outlined in RFP Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

- C. The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.
- D. Product Requirements
- G. Offerors may propose open source software; however, the Offeror must provide operational support for the proposed software.
- C. Details for each offering: The Offeror shall provide the following information for each offering:
- 1) Offering Name
 - 2) Offeror relationship with manufacturer (e.g., manufacturer, reseller, partner)
 - 3) Manufacturer
 - 4) Short description of capability
 - 5) Version (and whether version updates are limited in any way)
 - 6) License type (e.g., user, CPU, node, transaction volume)
 - 7) Subscription term (e.g., annual)
 - 8) License restrictions, if any
 - 9) Operational support offered (e.g., customer support, help desk, user manuals online or hardcopy), including description of multiple support levels (if offered), service level measures and reporting
 - 10) Continuity of operations and disaster recovery plans for providing service at 24/7/365 level
 - 11) Ability of the offering to read and export data in existing State enterprise data stores
 - 12) Any processing or storage of data outside of the continental U.S.
 - 13) Any limitations or constraints in the offering, including any terms or conditions (e.g., terms of service, ELA, AUP, professional services agreement, master agreement) – see also Section 4.2.4 Additional Required Submissions.
 - 14) Compatibility with the State's existing Single Sign-On system, SecureAuth;
 - 15) APIs offered, and what type of content can be accessed and consumed.
 - 16) Update / upgrade roadmap and procedures, to include: planned changes in the next 12 months, frequency of system update (updates to software applied) and process for updates/upgrades.
 - 17) Frequency of updates to data services, including but not limited to, datasets provided as real-time feeds, and datasets updated on a regular basis (e.g., monthly, quarterly, annually, one-time).
 - 18) What type of third party assessment (such as a SOC 2 Type II audit) is performed, the nature of the assessment (e.g., the trust principles and scope of assessment), and whether the results of the assessment pertinent to the State will be shared with the State. See **also section 3.13.**

- 19) Offeror shall describe its security model and procedures supporting handling of State data. If more than one level of service is offered, the Offeror shall describe such services. Include, at a minimum:
- a) procedures for and requirements for hiring staff (such as background checks),
 - b) any non-disclosure agreement contractor personnel sign,
 - c) whether the service is furnished out of the continental U.S.,
 - d) Certifications such as FedRAMP,
 - e) Third party security auditing, including Fisma,
 - f) Published Security Incident reporting policy, and
 - g) Cybersecurity insurance, if any, maintained.

4.2.2.7 Offeror Qualifications and Capabilities (Submit under TAB F)

The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- A. The number of years the Offeror has provided the similar services;
- B. The number of clients/customers and geographic locations that the Offeror currently serves;
- C. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- D. The Offeror's process for resolving billing errors; and
- E. An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

4.2.2.8 References (Submit under TAB G)

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the products/services specified in this RFP. References used to meet any Offeror Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided products/services within the past five (5) years and shall include the following information:

- A. Name of client organization;
- B. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- C. Value, type, duration, and description of products/services provided.

The Department reserves the right to request additional references or utilize references not provided by an Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance.

4.2.2.9 List of Current or Prior State Contracts (Submit under TAB H)

Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing products/services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

- A. The State contracting entity;
- B. A brief description of the products/services provided;
- C. The dollar value of the contract;
- D. The term of the contract;
- E. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- F. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

4.2.2.10 Financial Capability (Submit under TAB I)

An Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror may supplement its response to this Section by including one or more of the following with its response:

- A. Dunn and Bradstreet Rating;
- B. Standard and Poor's Rating;
- C. Lines of credit;
- D. Evidence of a successful financial track record; and
- E. Evidence of adequate working capital.

4.2.2.11 Certificate of Insurance (Submit under TAB J)

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.11. See Section 3.11.11 for the required insurance certificate submission for the apparent awardee.

4.2.2.12 Subcontractors (Submit under TAB K)

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project.

4.2.2.13 Legal Action Summary (Submit under TAB L)

This summary shall include:

- A. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- B. A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- C. A description of any judgments against the Offeror within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and
- D. In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

4.2.3 Additional Required Technical Submissions (Submit under TAB M)

The following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 4.2.2.

For e-mail submissions, submit one (1) copy of each with original signatures. For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

- A. Completed Bid/Proposal Affidavit (Attachment B).
- B. Completed Maryland Living Wage Requirements Affidavit of Agreement (Attachment G-1).
- C. Completed Conflict of Interest Affidavit and Disclosure (Attachment I).
- D. Completed Location of the Performance of Services Disclosure (Attachment N).

4.2.4 Additional Required Submissions (Submit under Tab N)

- A. Offerors shall furnish any and all agreements the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror's services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP.
 - a. a) For each service, hardware or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.
 - b. A Letter of Authorization shall be on letterhead or through the provider's e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:
 1. Third-party POC name and alternate for verification

2. Third-party POC mailing address
 3. Third-party POC telephone number
 4. Third-party POC email address
 5. If available, a Re-seller Identifier
- B. Description of technical risk of migrating existing VELMS system
- C. Disaster Recovery and Security Model description
- D. Implementation Schedule - Offeror shall provide the proposed implementation schedule with its Proposal
- E. Service Levels and Credits offered – Offeror shall provide a table of service levels offered with its service, identify how these levels are measured and reported, and any credits offered if the service levels are not met.

4.3 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in Attachment F. The Offeror shall complete the Price Sheet only as provided in the Price Sheet Instructions and the Price Sheet itself.

4.4 Proposal Packaging

DoIT/MSDE strongly desires e-mail delivery of Proposals.

- 4.4.1 Separate e-mails will be submitted for the Technical and Financial proposals. The subject lines of the e-mails shall be: Volume I - Technical Proposal for 060B8400016 - Virtual Educational Learning Management System (VELMS) and Volume II - Financial Proposal for 060B8400016 - Virtual Educational Learning Management System (VELMS) respectively. Each e-mail shall contain the submission documents detailed in section 4.
- 4.4.2 The Technical Proposal e-mail(s) shall be in Microsoft Word format (version 2007 or greater). Provide no pricing information in the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II). A second version of Volume I in searchable Adobe .pdf format shall be submitted to support Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 1.14 “Public Information Act Notice”).
- 4.4.3 The Financial Proposal e-mail shall include one file attachment containing all submission documents detailed in section 4.3, with password protection. MSDE will contact Offerors for the password to open each file. Each file shall be encrypted with the same password. A second electronic version of Volume II in searchable Adobe .pdf format shall be submitted to support Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 1.14 “Public Information Act Notice”). Each .pdf format shall be packaged with the appropriate Volume.
- 4.4.4 MSDE can only accept e-mails that are less than or equal to a certain size. If a submission exceeds this size, split the submission into two or more parts and include the appropriate part number in the subject (e.g., part 1 of 2) after the subject line information above.

- 4.4.5 An Offeror wishing to deliver a hard copy (paper) Proposal shall contact the Procurement Officer for instructions.

4.5 Proposal Delivery

- 4.5.1 Offerors may submit proposals by hand or by electronic means as described below to the address provided in the Key Information Summary Sheet.
- A. Electronic means includes e-mail, as requested by the Procurement Officer. If the Proposal is to be submitted electronically, it must be submitted in MS Word, Excel and PDF formats. Any single e-mail must be no more than 8 Mb in size (See Sections 4.4 for additional labeling and packaging instructions).
- 4.5.2 The Procurement Officer must receive all Technical and Financial Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. If submitted via e-mail, the date and time of submission is determined by the date and time of arrival in the Procurement Officer's e-mail box. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.

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5 EVALUATION CRITERIA AND PROCEDURE

5.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The Department reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

5.2 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub-criteria within each criterion have equal weight.

5.2.1 Offeror's Technical Response to RFP Requirements and Work Plan (See RFP § 4.2.2.6)

The State prefers an Offeror's response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

- a. Suitability for K-12 online classroom-style training
- b. Quality and completeness of the registration capability
- c. Extent to which the Solution complies with accessibility standards and requirements
See RFP § 3.3.1
- d. Extent to which the Solution offered integrates with and exports to industry-standard formats
- e. Offeror's prior experience with and maturity of initial system start-up activities, including migration from an existing system

5.2.2 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 4.2.2.8 – 4.2.4)

- a. Technical support capabilities offered
- b. Advantageousness of Service Level Metrics, reporting on service levels, and credits furnished when service levels not met
- c. Quality of training materials offered after production deployment

5.2.3 Technical Risk of Migration (See RFP § 4.2.3)

5.2.4 Maturity of DR/Security model (See RFP § 4.2.4)

5.2.5 Content and reasonableness of 3rd party licenses

5.3 Financial Proposal Evaluation Criteria

- 5.3.1 All Qualified Offerors (see Section 5.5.2.4) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on Attachment F - Price Sheet.
- 5.3.2 For proposals submitted via e-mail, MSDE will contact Offerors for the password to access financial proposal data. MSDE will only contact those Offerors with proposals that are reasonably susceptible for award. Offerors that are unable to provide a password that opens the financial submission will be deemed not susceptible for award; subsequent submissions of content will not be allowed.

5.4 Reciprocal Preference

- 5.4.1 Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. COMAR 21.05.01.04 requires that procuring units apply a reciprocal preference under the following conditions:
- 5.4.1.1 The most advantageous offer is from a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the products/services required under this RFP is in another state.
- 5.4.1.2 The other state gives a preference to its resident businesses through law, policy, or practice; and
- 5.4.1.3 The preference does not conflict with a Federal law or grant affecting the procurement Contract.
- 5.4.1.4 The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

5.5 Selection Procedures

- 5.5.1 General
- 5.5.1.1 The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The CSP method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.
- 5.5.1.2 In either case (i.e., with or without discussions), the State may determine an Offeror to be not responsible and/or an Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, that Offeror's Financial Proposal will be returned if the Financial Proposal is unopened at the time of the determination.

5.5.2 Selection Process Sequence

- 5.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule (Attachment M-1) is included and is properly completed, if there is a VSBE goal.
- 5.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
- 5.5.2.3 Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.
- 5.5.2.4 The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- 5.5.2.5 When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

5.5.3 Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive equal weight with financial factors.

5.6 Documents Required upon Notice of Recommended Award

Upon receipt of notice of recommended award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- A. Contract (Attachment A),
- B. Contract Affidavit (Attachment C),
- C. Non-Disclosure Agreement (Attachment J),
- D. Evidence of meeting insurance certificate requirements (See Section 3.11)
- E. PEP (See Section 3.7), within ten (10) Working Days

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RFP ATTACHMENTS

ATTACHMENT A – Contract

This is the sample contract used by the Department. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommended award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon mutual Contract execution, a fully-executed copy will be sent to the Contractor.

ATTACHMENT B – Bid/Proposal Affidavit

This Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT C – Contract Affidavit

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommended award.

ATTACHMENT D – Minority Business Enterprise Forms

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D1-A through D-5. Attachment D-1A must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed non-responsive and rejected. Within 10 Working Days of receiving notification of recommended award, the Offeror must submit Attachments D-2, D-3A, D-3B and, if the Offeror has requested a waiver of the MBE goal, usually Attachment D-1C.

ATTACHMENT E – Pre-Proposal Conference Response Form

It is requested that this form be completed and submitted as described in Section 1.7 by those potential Offerors that plan on attending the Pre-Proposal Conference.

ATTACHMENT F – Financial Proposal Instructions and Price Sheet

The Price Sheet must be completed and submitted with the Financial Proposal.

ATTACHMENT G – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement

Attachment G-1 Living Wage Affidavit of Agreement must be completed and submitted with the Technical Proposal.

ATTACHMENT H – Federal Funds Attachment

If required (see Section 1.35), these Attachments must be completed and submitted with the Technical Proposal as instructed in the Attachments.

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure

If required (see Section 1.36), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT J – Non-Disclosure Agreement

If required (see Section 1.37), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommended award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT K – HIPAA Business Associate Agreement

If required (Section 1.38), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommended award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT L – Mercury Affidavit

If required (see Section 1.40), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms

If required (see Section 1.41), these Attachments include the VSBE Attachments M-1 through M-4. Attachment M-1 must be completed and submitted with the Technical Proposal. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommended award.

ATTACHMENT N – Location of the Performance of Services Disclosure

If required (see Section 1.42), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement

If required (see Section 1.43), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommended award.

ATTACHMENT P – Non-Disclosure Agreement (Offeror)

If required (see Section 1.37), this Attachment is to be completed and submitted prior to viewing any documentation set aside in a reading room in advance of the RFP due date.

ATTACHMENT Q – Agency Deliverable Product Acceptance Form (DPAF)

If required, this Attachment is to be completed upon deliverable acceptance by the State.

ATTACHMENT A - CONTRACT

Department of Information Technology (DoIT)
“Virtual Educational Learning Management System”
060B8400016

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 20__ by and between _____ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND Department of Information Technology (“DoIT” or the “Department”).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is _____ and whose principal office in Maryland is _____, whose Federal Employer Identification Number or Social Security Number is _____, and whose eMaryland Marketplace vendor ID number is _____.
- 1.3 “Financial Proposal” means the Contractor’s Financial Proposal dated _____, as modified by any Best and Final Offer thereto.
- 1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “RFP” means the Request for Proposals for Virtual Educational Learning Management System, Solicitation # 060B8400016, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated _____, as modified by any Best and Final Offer thereto.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 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 perform in accordance with this Contract and Exhibits A-D, 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

Exhibit B – The Contract Affidavit, executed by the Contractor and dated _____.

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

- 2.2 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.
- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance

The term of this Contract begins on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until _____ ("Initial Term").

- 3.2 In its sole discretion, the Department shall have the option, at its sole discretion, to extend the Contract for two (2), successive two-year renewal terms (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).
- 3.3 The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 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; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.
- 3.5 In the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. No funds may be added to the Contract in connection with any such extension.

4. Consideration and Payment

- 4.1 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.

For time and materials Contracts, IDIQ Contracts, or Contracts which include either or both a time and materials or IDIQ element(s), total payments to the Contractor pursuant to this Contract for the time and materials and IDIQ portion(s) may not exceed \$_____ (the "NTE Amount"), which includes \$_____ for the Initial Term and \$_____ for the Renewal Term(s).

Contractor shall notify the Contract Manager, in writing, at least sixty (60) days before payments reach the NTE Amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a)

promptly consult and work 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 State-defined critical work in progress prior to the date the NTE Amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or applications on which the Contractor is working in an industry standard manner so as to prevent damage or vulnerabilities to any of the same due to the existence of any such unfinished work.

- 4.2 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.

- 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. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest

(including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- 5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 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 as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

7. Patents, Copyrights, and Intellectual Property

- 7.1. 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”). If any design, device, material, process, or other item provided by Contractor is 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.
- 7.2 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) materials created by Contractor or its Subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property 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 Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. 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.

- 7.3. Subject to the terms of **Section 10**, Contractor shall indemnify and hold harmless the State and its agents 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 the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights.
- 7.4. Contractor's obligations under this section will not apply to an infringement based on (i) modifications made by the State which were not approved in writing by Contractor, (ii) the failure of the State to use any corrections or modifications made available by Contractor that would have rendered the use non-infringing, (iii) use by the State of the software or service in combination 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 unless Contractor knew or should have known of such infringement.
- 7.5. Without limiting Contractor's obligations under Section 5.3, if an infringement claim occurs, or if Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing so long as functionality are not adversely affected.
- 7.6. Except as otherwise provided herein, 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.
- 7.7. 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.
- 7.8. 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.
- 7.9. 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.

8. Confidential or Proprietary Information and Documentation

- 8.1 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 the implementation of regulations promulgated pursuant thereto, 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. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, 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. 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.
- 8.2 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.

9. Loss of Data

- 9.1 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 Manager. 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, and/or applications with which the Contractor is working hereunder.
- 9.2 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 3.4**.
- 9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.4) 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 **RFP Section 3.4**

10. Indemnification

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its 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 attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its Subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State 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 rights or interests, without the State's prior written consent.
- 10.2. The State has 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.

- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process (unless prohibited by law from providing notice) or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall promptly notify the State of such receipt providing the State 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. 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.

11. 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.

12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, 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 thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier.

Contemporaneously with or within thirty (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.

13. Maryland Law Prevails

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 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 purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 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.

14. 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.

15. 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, bona fide agent, bona fide salesperson, or commercial selling agency 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, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-Availability of Funding

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 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 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.

17. 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 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.

18. 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 21.07.01.12A(2).

19. Delays and Extensions of Time

- 19.1 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.
- 19.2 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.

20. 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.

21. 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.

22. 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.

23. 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 website: http://www.elections.state.md.us/campaign_finance/index.html.

24. Retention of Records

- 24.1 The Contractor and Subcontractors shall retain and maintain all records and documents in any way relating 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.
- 24.2 This provision shall survive expiration of this Contract.

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. 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 adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.

- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy any record related to the services performed pursuant to the Contract. 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 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.
- 25.3 The right to audit shall include any of the Contractor's Subcontractors including but not limited to any lower tier Subcontractor(s). The Contractor and/or Subcontractor(s) shall ensure the Department has the right to audit such Subcontractor(s).

26. 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.

27. Cost and Price Certification

- 27.1 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 the date of its Proposal.
- 27.2 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 of its Proposal, was inaccurate, incomplete, or not current.

28. Subcontracting; 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 Procurement Officer, each at the State's sole and absolute 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.

29. Limitations of Liability

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its Subcontractors, agents or employees as follows:

- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 5 “Patents, Copyrights, Intellectual Property”) of this Contract;
- (b). Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor’s liability shall not exceed the total value of the a Task Order or Purchase Order that is impacted or \$1,000,000, whichever is greater. 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 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. The above limitation of liability is per incident.
- (d) 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 all Subcontractors shall be held to be agents of Contractor.

29.2 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.

29.3. 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.

30. Commercial Nondiscrimination

30.1 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, 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, 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 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.

30.3 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.

- 30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Department, in all subcontracts.

31. Prompt Pay Requirements

- 31.1 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.

- 31.2 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, 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.

- 31.3 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 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.

- 31.4 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 MBE program.

- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, 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:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing Subcontractors and workers.

Verification shall include a review of the:

- i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE Subcontractors and the reason for nonpayment; and

- ii. 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:
 - i. Terminate the Contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. 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.

32. 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.

33. 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 Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

34. 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, following which, title shall pass to the State.

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. Miscellaneous

36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.

36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.

36.4 This Contract 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.

37. Contract Manager and Procurement Officer

37.1 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 the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Manager may authorize in writing one or more State representatives to act on behalf of the Contract Manager in the performance of the Contract Manager's responsibilities. The Department may change the Contract Manager at any time by written notice to the Contractor.

37.2 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 by written notice to the Contractor.

38. 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:

Valerie Emrich
MSDE
200 West Baltimore Street
Baltimore, MD 21201
Phone Number: 410-767-0382
E-Mail: Valerie Emrich
e-mail: valerie.emrich@maryland.gov

With a copy to:

June Dwyer
MSDE
200 West Baltimore Street
Baltimore, MD 21201
Phone: 410-767-0116

e-mail: june.dwyer@maryland.gov

If to the Contractor:

Attn: _____

Parent Company Guarantor

Contact: _____

Attn: _____

39. Parent Company Guarantee (If applicable)

39A (Corporate name of Contractor’s 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 Contractor’s 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 subjective discretion. (Corporate name of Contractor’s Parent Company) further agrees that if the State brings any claim, action, lawsuit or proceeding against (Contractor), (Corporate name of Contractor’s Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

40. 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 DHMH Policy 02.06.07.

SIGNATURES ON NEXT PAGE

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

Contractor

State of Maryland

Department of Information Technology (DoIT)

By: _____

By: _____

Or designee:

Date

PARENT COMPANY (GUARANTOR) (if applicable)

By:

By:

Date

Date

Approved for form and legal sufficiency
this ____ day of _____, 20__.

Assistant Attorney General

APPROVED BY BPW: _____

(Date) (BPW Item #)

ATTACHMENT B - BID/PROPOSAL AFFIDAVIT**A. AUTHORITY**

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or 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, disability, or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects 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.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/Proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/Proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal.

B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
 - (a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure act; and
- (ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure act; and
- (ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure act; and
- (ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14 above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any

public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

_____.

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

_____.

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/Proposal that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury,

the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: _____

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the bid or proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package or service in connection with the marketing, offering for sale, or sale of such item or service.

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of

the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT C - CONTRACT AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — domestic or foreign;
- (2) Limited Liability Company — domestic or foreign;
- (3) Partnership — domestic or foreign;
- (4) Statutory Trust — domestic or foreign;
- (5) Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID
Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID
Number: _____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13 221, Annotated Code of Maryland, which require 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 the 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.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will 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, 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: (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.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - The dangers of drug and alcohol abuse in the workplace;
 - The business's policy of maintaining a drug and alcohol free workplace;
 - Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

Abide by the terms of the statement; and

Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

Take appropriate personnel action against an employee, up to and including termination; or

Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 201____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT D - MINORITY BUSINESS ENTERPRISE FORMS

The Minority Business Enterprise (MBE) subcontractor participation goal for this solicitation is 0%.

ATTACHMENT E - PRE-PROPOSAL CONFERENCE RESPONSE FORM

Solicitation Number 060B8400016

Virtual Educational Learning Management System (VELMS)

A Pre-proposal conference will be held at 10:00 am on September 20, 2017 at 200 West Baltimore Street, Baltimore, MD 21201. Please return this form by September 15, 2017, advising whether or not you plan to attend.

Return this form to the Procurement Officer via e-mail:

June Dwyer

MSDE

200 West Baltimore Street

Baltimore, MD 21201

E-mail: june.dwyer@maryland.gov

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 1.7 “Pre-proposal conference”):

Signature

Title

Name of Firm (please print)

ATTACHMENT F - FINANCIAL PROPOSAL PRICING INSTRUCTIONS

Attachment F is provided as a separate Excel document for your convenience.

ATTACHMENT G - LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B(3) or C below.
 - (3) Service contracts for the following:
 - (a) Services with a Public Service Company;
 - (b) Services with a nonprofit organization;
 - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan

area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.

G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.

H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.

I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.

J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/> and clicking on Living Wage for State Service Contracts.

ATTACHMENT G-1 Maryland Living Wage Requirements Affidavit of Agreement

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland’s Living Wage Law for the following reasons (check all that apply):

___ Bidder/Offeror is a nonprofit organization

___ Bidder/Offeror is a public service company

___ Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000

___ Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract Is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. _____(initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

___ The employee(s) proposed to work on the contract will spend less than one-half of the employee’s time during any work week on the contract

___ The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or

___ The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative _____ Date _____

Title _____

Witness Name (Typed or Printed) _____

Witness Signature _____ Date _____

(submit with Bid/Proposal)

ATTACHMENT H - FEDERAL FUNDS ATTACHMENT

This solicitation does not include a Federal Funds Attachment.

ATTACHMENT I - CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

(submit with Bid/Proposal)

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder/Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Bidder/Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The Bidder/Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder/Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder/Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____

(Authorized Representative and Affiant)

ATTACHMENT J - NON-DISCLOSURE AGREEMENT (CONTRACTOR)

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through (Department of Information Technology) (the “Department”), and _____ (the “Contractor”).

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Virtual Educational Learning Management System (VELMS) Solicitation # 060B8400016; and

WHEREAS, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the State deems confidential information (the “Confidential Information”).

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, Confidential Information means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all personally identifiable information (PII) (including but not limited to personal information as defined in Md. Ann. Code, State Govt. § 10-1301(c)) and protected health information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or who will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from

falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. Contractor shall, at its own expense, return to the Department all Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
 - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
 - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
 - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
 - f. The Recitals are not merely prefatory but are an integral part hereof; and
 - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Contractor: _____

MSDE

By: _____ (SEAL)

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and

_____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____

(Signature)

TITLE: _____

(Authorized Representative and Affiant)

ATTACHMENT K - HIPAA BUSINESS ASSOCIATE AGREEMENT

This solicitation does not require a HIPAA Business Associate Agreement.

ATTACHMENT L - MERCURY AFFIDAVIT

This solicitation does not include the procurement of products known to likely include mercury as a component.

ATTACHMENT M - VETERAN-OWNED SMALL BUSINESS ENTERPRISE

The Veteran-Owned Small Business Enterprise (VSBE) subcontractor participation goal for this solicitation is 0%.

ATTACHMENT N - LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE

(submit with Bid/Proposal)

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No. _____, the following disclosures are hereby made:

- 1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:
 - ___ have plans
 - ___ have no plans

to perform any services required under the resulting Contract outside of the United States.

- 2. If services required under the contract are anticipated to be performed outside the United States by either the Bidder/Offeror or its proposed subcontractors, the Bidder/Offeror shall answer the following (attach additional pages if necessary):
 - a. Location(s) services will be performed:

- b. Reasons why it is necessary or advantageous to perform services outside the United States:

The undersigned, being an authorized representative of the Bidder/Offeror, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

Date: _____

Bidder/Offeror Name: _____

By: _____

Name: _____

Title: _____

Please be advised that the Department may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

ATTACHMENT O - DHR HIRING AGREEMENT

This solicitation does not require a DHR Hiring Agreement.

Attachment P - NON-DISCLOSURE AGREEMENT (OFFEROR)

A Non-Disclosure Agreement (Offeror) is not required for this procurement.

ATTACHMENT Q - AGENCY DELIVERABLE PRODUCT ACCEPTANCE FORM

Agency Name: Department of Information Technology

RFP Title: Virtual Educational Learning Management System (VELMS)

Contract Manager: Valerie Emrich

To: Contractor Name

The following deliverable, as required by Project Number (RFP #): 060B8400016 has been received and reviewed in accordance with the RFP.

Title of deliverable: _____

RFP Contract Reference Number: Section # _____

Deliverable Reference ID # _____

This deliverable:

Is accepted as delivered.

Is rejected for the reason(s) indicated below.

REASON(S) FOR REJECTING DELIVERABLE:

OTHER COMMENTS:

Contract Manager Signature

Date Signed