

MARYLAND DEPARTMENT OF INFORMATION TECHNOLOGY ("DOIT")

Mandatory Terms and Conditions

UNDER GSA Contract No GS-35F-0247V

THIS CONTRACT is made as of this 30TH day of APRIL, 2014 by and between Cornerstone OnDemand, Inc. (Master Contractor) and the MARYLAND DEPARTMENT OF INFORMATION TECHNOLOGY (DoIT).

1. Time for Performance

- a. The Contractor shall provide services, equipment and software in accordance with this Contract. The term of this Contract is for a period of three (3) years beginning on May 15, 2014 and ending on May 14, 2017, unless terminated earlier as provided in this Contract.

2. Scope. This Contract includes and incorporates by reference the GSA Contract No GS-35F-0247V.

3. Pursuant to ¶ 552.238-79 of the GSA Contract, the following provisions are made part of this Contract:

- a. The State may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the State 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 the 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.
- b. The Contractor's Federal Tax Identification Number ("FEIN") is [REDACTED]
Contractor will not assess late payment fees for up to ninety (90) days unless a billing dispute between the State and Contractor remains unresolved. The State will use electronic funds transfer to pay the Contractor pursuant to this Contract unless the State's Comptroller's Office grants the Contractor an exemption. See application form <http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>.
- c. In consideration of the satisfactory performance of this Contract, the State shall pay the Contractor in accordance with the terms of this Contract. Except with the express written consent of the Procurement Officer, total payments to the Contractor pursuant to this Contract shall not exceed \$851,654.04. The State shall not make final payment under the Contract until after certification is received from the Comptroller of the State that all taxes due and payable under this Contract have been paid. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.
- d. 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.

- e. **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; provided, 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 the Code of Maryland Regulations ("COMAR") 21.07.01.12A(2).
- f. **Termination for Cause.** 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.
- g. **Non-availability of Funding.** If the Maryland 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, the Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract 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 Contract for each succeeding fiscal period beyond the first. In the event moneys sufficient to make all payments under the Agreement is not budgeted and appropriated by the State, the State shall terminate services prior to the end of the fiscal period without being assessed an early termination fee. Notwithstanding the foregoing, the State shall be responsible for all charges incurred up to and including the date of termination.
- h. **Records and Audits.** Contractor agrees to retain and maintain copies of records pertaining to the price of Services rendered and products delivered to the State for three years after close out of this Contract and final payment by DOIT under this Contract or any applicable statute of limitations, whichever is longer. The Contractor shall, upon request by the DOIT, make available copies of documents reasonably needed by the State, including, but not limited to itemized billing documentation containing the dates and work performed by the Contractor and its subcontractors under the Contract. A thirty (30) day notice via formal written communication, at minimum, is required prior to Contractor making available copies of these documents to the DOIT. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees reasonably available and assisting the

auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

- i. **Invalid Term or Condition.** If any provision appearing in this Contract is determined by a court or other governmental authority to cause the State to bestow a right or incur an obligation that is beyond its legal authority to bestow or incur, then that provision shall be deemed of no effect.
- j. **Indemnification:**
 - A. The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract, the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
 - B. The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
 - C. The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract. The Contractor shall report to the Procurement Officer, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data or products delivered under this Contract.
 - D. The Contractor is, to the fullest extent permitted by law, responsible for all damage to life and property due to its activities, or those of its agents, employees, or subcontractors, in connection with its performance under this Contract, and is responsible for all work, both permanent and temporary, until all services under this Contract are declared accepted by the State.
 - E. The Contractor shall, to the fullest extent permitted by law, indemnify and save harmless and defend the State and all of its representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work performed under this Contract, either by the Contractor or any subcontractor, or their employees, agents, or representatives. This responsibility is not to be deemed as a waiver of any immunity which may exist in any action against the State.
- k. **Risk of Loss; Transfer of Title.** Risk of loss for conforming supplies, equipment and materials specified as deliverables to the State hereunder shall remain with the Contractor until the supplies, equipment, materials and other deliverables are accepted by the State, as evidenced by a written statement of acceptance from the State to the Contractor that expressly specifies the supplies, equipment, materials and other deliverables that are subject to such acceptance.
- l. **Non-Hiring of Employees.** No official or employee of the State, as defined under State Government Article, 15-102 whose duties as such official or employee include matters relating to or affecting the subject matter of this Participating 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.

- m. **Disputes.** This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland 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 contract the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.
- n. **Maryland Law.** This Contract, and any dispute, claim or controversy relating thereto shall, in all respects, shall be construed, interpreted, and enforced, and governed by and under according to the laws of the State of Maryland. The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or the any software license acquired hereunder. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.
- o. **Commercial Nondiscrimination.** 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 or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this 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. The Contractor shall include the above Commercial Nondiscrimination clauses, or similar clauses approved by DOIT, in all subcontracts. As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, 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 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.

- p. **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.
- q. **Cost and Price Certification.** By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid or offer. 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 bid or offer, was inaccurate, incomplete, or not current.
- r. **Contingent Fee Prohibition.** 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 this agreement, and that it 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.
- s. **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.
- t. **Financial Disclosure.** 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 the State certain specified information to include disclosure of beneficial ownership of the business.
- u. **Political Contribution Disclosure.** Contractor shall comply with the Election Law Article, Sections 14-101 through 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.
- v. **Representations.** Contractor hereby represents and warrants that: it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified; 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

of this Contract; it shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and, 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.

- w. **No Waiver.** Nothing in this Contract shall be construed to waive the State's rights, including but not limited to the State's sovereign or federal immunity or under applicable laws.
- x. **Delays and Extensions of Time.** The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of Services under this Contract. Time extensions shall 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.
- y. **Notice:** The Procurement Officer for this Contract is:

Name:	Michael Meinel
Address:	45 Calvert Street, #442 Annapolis, MD 21401-1907
Telephone:	410.260-7179
e-mail:	Michael.meinel@maryland.gov

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

This Contract sets forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. It is expressly understood that the Agreement which is incorporated into this Contract by reference in § 1 is a separate agreement between Contractor and the Federal Government is not amended by this Contract, and remains in full force and effect in accordance with its terms. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Contract, shall not be added to or incorporated into this Contract, by any subsequent Contract or otherwise and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Contract shall prevail and govern in the case of any such inconsistent or additional terms.

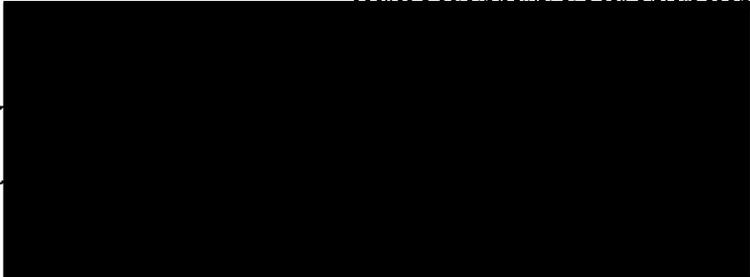
IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

Cornerstone OnDemand, Inc.



4/17/14
Date

STATE OF MARYLAND
DEPARTMENT OF INFORMATION TECHNOLOGY



30 April 2014
Date

April 30, 2014
Date

Witness

Approved for form and legal sufficiency this 24th day of April, 2014.



APPROVED BY BPW: 4/30/14
(Date)

5-1T
(BPW Item #)