

**ATTACHMENT A - CCU DEBT COLLECTION INFORMATION SYSTEM  
CONTRACT**

THIS CONTRACT is made as of this March 14<sup>th</sup>, 2013 by and between CR Software, LLC (Contractor) and the MARYLAND DEPARTMENT OF INFORMATION TECHNOLOGY (DoIT or Department).

IN CONSIDERATION of the premises and the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions

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

- 1.1 "Contract" means this Contract for a CCU Debt Collection Information System (DCIS).
- 1.2 "Contractor" means CR Software, a Wholly Owned Subsidiary of FICO, whose principal business address is [REDACTED]
- 1.3 "Contract Manager" means the individual identified in Section 1.6 of the RFP or a successor designated by the Department.
- 1.4 "Department" means the Maryland Department of Information Technology.
- 1.5 "Financial Proposal" means the Contractor's Financial Proposal dated January 17, 2013.
- 1.6 "DCIS" means Debt Collection Information System.
- 1.7 "Notice to Proceed (NTP)" means a formal written notification from the Contract Manager that the Contractor as of a date contained in the notice, shall begin performance of the Contract.
- 1.8 "Procurement Officer" means the individual identified in Section 1.5 of the RFP or a successor designated by the Department.
- 1.9 "RFP" means the Request for Proposals for CCU Debt Collection Information System, No. F50B2400052 dated June 7, 2012 and any amendments thereto issued in writing by the State.
- 1.10 "State" means the State of Maryland.
- 1.11 "Technical Proposal" means the Contractor's Technical Proposal, dated July 24, 2012, and Exceptions/Oral Presentation Clarifications dated November 5, 2012.

## 2. Scope of Work

2.1 The Contractor shall provide a Commercial-Off-The-Shelf (COTS) Debt Collection Information System (DCIS) and related services as described in Section 2 of the RFP.

These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract (Exhibit A) and Exhibits B through E, the terms of this Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A - The Contract

Exhibit B - The Contract Affidavit, executed by the Contractor and dated **February 12, 2013**

Exhibit C - The RFP, including all attachments and amendments

Exhibit D - The Contractor's Technical Proposal to the RFP

Exhibit E - The Contractor's Financial Proposal to the RFP

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of 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 Section 10, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

## 3. Time for Performance

3.1 The Contract resulting from this RFP shall be for a:

- one (1) year base period with up to 2 one-year (two 1-year) renewal options for the Post-Award Evaluation Phase which includes up to 25 software licenses;
- five (5) year base period with up to 5 one-year (five 1-year) renewal options for associated production software licenses.

At its sole discretion, the State shall have the right to exercise the renewal options for the Post-Award Evaluation Phase software licenses and production software licenses. The Contract resulting from this RFP could total up to 13 consecutive years of contract service time if all the renewal option years are exercised by the State. All prices for rates and terms as offered in Attachment E are binding on the Contractor for the term of the Contract.

## 4. Consideration and Payment

4.1 In consideration of the satisfactory performance of the Services, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates specified in Attachment B. Except with the express written consent of the Procurement Officer, total payments to the Contractor pursuant to this Contract may not exceed \$6,014,466.00 (the "NTE Amount").

4.2 The Contractor shall submit invoices as required in RFP Section 2.12. Invoices for software support and maintenance will be paid on an annual basis and prior to the beginning of the year of maintenance. Each invoice must include the Contractor's Federal Tax Identification Number which is [REDACTED]. 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, as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Manager.

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.

## 5. Patents, Copyrights, Intellectual Property

5.1. If the Contractor furnishes any design, device, material, process, or other item, which 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.

5.2. The State shall own all right, title and interest in and to all Custom Software Deliverables and all intellectual property rights subsisting therein. "Custom Software Deliverables" means all computer programs and software and all related documentation provided to the State pursuant to this Contract. Custom Software Deliverables includes, but is not limited to, application modules developed to integrate with a commercial-off-the-shelf software, maintenance updates and bug fixes, configuration files, all related documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools; all software design information (e.g., module names and functionality); and user instructions. Custom Software Deliverables excludes any Third Party Intellectual Property.

5.3. Immediately upon a Contractor's voluntary or involuntary filing of bankruptcy or any other insolvency proceeding, Contractor's dissolution, Contractor's merger with or acquisition by another company or contractor, discontinuance of support of any software or system, the Contractor shall deliver to the State (except to the extent previously provided to the State) all completed and in-process (regardless of form) Custom Software Deliverables and all Third Party Intellectual Property in accordance with the requirements set forth in the Software Escrow Agreement in Attachment O to the RFP.

5.4. Pursuant to the provision of the Custom Software Deliverables by the Contractor, the Contractor shall provide to the State on such media and in such form as designated by the State (i) the source code version of the software components of the Custom Software Deliverables; (ii) the object code version of the software components of the Third Party Intellectual Property; (iii) all non-software components of the Custom Software Deliverables and Third Party Intellectual Property; and (iv) the deliverables in any other format or condition as may be set forth in the Contract.

5.5. Unless otherwise identified as Licensed Data (as defined below), the State shall own all right, title and interest in and to all data, databases and all derived data products (and all intellectual property rights subsisting therein) created, collected, manipulated, or directly purchased as part of this Contract ("State Data"). The purchasing State agency is considered the custodian of the State Data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.

5.6. Licensed and/or copyrighted data from third parties that are identified in the Contract ("Licensed Data") shall be governed by the terms and conditions identified in the Contract.

5.7. All work performed or provided by the Contractor in connection with the RFP, including any and all deliverables (including any Custom Software Deliverables, State Data, reports drawings, studies, specifications, estimates, tests, photographs, graphics, mechanical, artwork, computations, data, inventions, discoveries, developments, improvements, ideas, concepts, creative works, innovations and designs, whether or not in writing or reduced to practice, and whether or not they are patentable, including but not limited to, processes, methods, formulas, and techniques and know-how, works of authorship, trade secrets, trademarks, copyrights, and any other intellectual property) ("Work Product") will be considered "work for hire," as if the Contractor had been "hired to invent," or as having similar status in the United States or elsewhere, and therefore, all rights therein will be the property of the State. In the event any Work Product is not considered "work for hire," Contractor, on behalf of itself and its employees, agents, subcontractors and affiliates, hereby assigns to the State all rights, title, and interest in such Work Product. The Contractor shall not affix (or permit any third party to affix) any restrictive markings upon any Work Product (except as expressly directed or otherwise authorized in writing by the State) and, if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such markings. During the term of this Contract and at any time following expiration or termination for any reason of this Contract, upon the request and at the reasonable expense of the State or its nominee and for no additional remuneration, Contractor and its employees, agents, subcontractors and affiliates will take such action as the State reasonably may request to more fully evidence, protect, maintain, secure, defend, transfer, vest or confirm the State's ownership, right, title and interest in the Work Product. If Contractor or any of its employees, agents, subcontractors or affiliates fails to cooperate with or assist, execute, acknowledge, verify or deliver any such document requested by the State, Contractor hereby irrevocably appoints the State and its authorized officers and

agents as the agent and attorney-in-fact to act in place of Contractor or such employee, agent, subcontractor or affiliate, as applicable, to execute, acknowledge, verify and/or deliver any such document on such party's behalf.

5.8. Notwithstanding anything to the contrary in section 5.7, to the extent (a)(i) the Work Product incorporates any commercial-off-the-shelf software and/or any Pre-Existing Intellectual Property or (ii) any commercial-off-the-shelf software and/or Pre-Existing Intellectual Property is required to access, install, build, compile or otherwise use the Work Product and (b) such commercial-off-the-shelf software and/or Pre-Existing Intellectual Property has been identified in the Contract (such as commercial-off-the-shelf software and Pre-Existing Intellectual Property individually and collectively referred to herein as "Third Party Intellectual Property," which shall be the sole property of Contractor or its third party licensors, as applicable), Contractor hereby grants, on behalf of itself and any third party licensors, to the State a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, perpetual, worldwide right and license, with the right to sublicense, to use, execute, reproduce, display, perform, distribute copies of, modify and prepare derivative works based upon, such Third Party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended, including, but not limited to, the State's right to provide such Third Party Intellectual Property, in connection with the Work Product, to other third parties. This right and license also includes the right to make, have made, use, sell, offer to sell, import and otherwise dispose of such Third Party Intellectual Property under any patents that Contractor or any of its third party licensors owns, controls or otherwise possesses a right to grant any rights thereunder or thereto. "Pre-Existing Intellectual Property" means any program, utility or tool owned by Contractor that is in existence prior to the date of this Contract. To the extent any Third Party Intellectual Property has not been identified in the Contract, Contractor hereby grants to the State all rights to such Third Party Intellectual Property consistent with the ownership rights in the Work Product granted to the State in accordance with section 5.7.

5.9. Subject to the terms of section 27, Contractor will defend, indemnify, and hold harmless the State, including, but not limited to, the Department and its agents, officers, and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any claim the Work Product or any Third Party Intellectual Property infringes, misappropriates or otherwise violates any third party intellectual property rights. Contractor will 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, which consent may be withheld in the State's sole and absolute discretion. Contractor will be entitled to control the defense or settlement of such claim (with counsel reasonably satisfactory to the State), provided that the State will, upon requesting indemnification hereunder: (a) provide reasonable cooperation to Contractor in connection with the defense or settlement of any such claim, at Contractor's expense; and (b) be entitled to participate in the defense of any such claim. Contractor's obligations under this section will not apply to the extent any Third Party Intellectual Property infringes, misappropriates or otherwise violates any third party intellectual rights as a result of modifications made by the State in violation of the license granted to the State pursuant to section 5.8; provided that such infringement, misappropriation or violation would not have occurred absent such modification.

5.10. Without limiting Contractor's obligations under section 5.8, if all or any part of the Work Product or any Third Party Intellectual Property is held, or Contractor or the State reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right, Contractor (after consultation with the State and at no cost to the State): (a) will procure for the State the right to continue using the item in accordance with its rights under this Contract; (b) replace the item with an item that does not infringe, misappropriate or otherwise violate any third party intellectual property rights and, in the State's sole and absolute determination, complies with the item's specifications, and all rights of use and/or ownership set forth in this Contract; or (c) modify the item so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and, in the State's sole and absolute determination, complies with the item's specifications and all rights of use and/or ownership set forth in this Contract.

5.11. 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 and/or the Work Product, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State.

5.12. Contractor, on behalf of itself and its subcontractors, hereby agrees not to incorporate, link, distribute or use any third party software or code in conjunction with any Work Product in such a way that: (a) creates, purports to create or has the potential to create, obligations with respect to any State software (including any deliverable hereunder), including without limitation the distribution or disclosure of any source code; or (b) grants, purports to grant, or has the potential to grant to any third party any rights to or immunities under any State intellectual property or proprietary rights. Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall incorporate, link, distribute or use, in conjunction with the Work Product, any code or software licensed under the GNU General Public License ("GPL"), Lesser General Public License ("LGPL"), Affero GPL ("AGPL"), European Community Public License ("ECPL"), Mozilla, or any other open source license, in any manner that could cause or could be interpreted or asserted to cause any State software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or any other open source software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or such other open source license.

5.13. 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 being inconsistent with the intent to not cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

5.14 In connection with services provided under the Contract, the Contractor may create, acquire or otherwise have rights in, and may, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Contractor Technology"). To the extent that any Contractor Technology is contained in any of the Contract deliverables including any derivative works, the Contractor grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Contractor Technology in connection with the Contract deliverables for the State's purposes.

## 6. Rights to Records

6.1 The Contractor agrees that all documents and materials, including but not limited to, 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.

6.2 The Contractor agrees that at all times during the term of this Contract and thereafter, the works created 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 under this Contract are not works for hire for the State, and the Contractor has not explained and justified, to the State's complete satisfaction, why it should not relinquish, transfer, and assign all of its right, title, and interest to the State for that deliverable, the Contractor 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.

6.3 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 data delivered under this Contract.

6.4 The Contractor shall not affix any restrictive markings upon any data and, if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## 7. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. 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 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.

## 8. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act, omission, or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating 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 is recoverable by the Contractor.

## 9. Non-Hiring of Employees

No official or employee of the State as defined under State Government Article Section 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## 10. 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 the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## 11. Maryland Law



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

#### 12. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any 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.

#### 13. 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 this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

#### 14. 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 a Contract under 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 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 the Contract for each succeeding fiscal period beyond the first.

#### 15. 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.

#### 16. 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 COMAR 21.07.01.12 (A) (2).

#### 17. Delays and Extensions of Time

The Contractor agrees to perform the work under this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

#### 18. 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 or Contract Manager may determine to be appropriate for the convenience of the State.

#### 19. 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.

## 20. 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 agreement 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.

## 21. Political Contribution Disclosure

The Contractor shall comply with the Election Law Article, Sections 14-101 through 14-108, of the 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 under 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.

## 22. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including by way of example only, the Procurement Officer or the Procurement Officer's designee, and the Contract Manager or the Contract Manager's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. The Contractor shall, upon request by the State, surrender all and every copy of documents needed by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. The Contractor shall not be compensated for providing any such cooperation and assistance. This section shall survive expiration of this Contract.

## 23. Compliance with Laws

The Contractor hereby represents and warrants that:

23.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

23.2 It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

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

23.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

#### 24. 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 the financial proposal. 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 the financial proposal, was inaccurate, incomplete, or not current.

#### 25. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided 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, any such approvals to be in the State's sole and absolute subjective discretion; provided however, a Contractor may assign monies receivable under a Contract after due notice to the State. Any such subcontract or assignment shall include the terms of Sections 8, and 10 through 23 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

#### 26. Indemnification

26.1 The Contractor shall hold harmless and indemnify the State against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

26.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

26.3 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.

26.4 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. In the event that a claim, suit, or action is made or filed against the State as a result of or relating to the Contractor's performance under this Contract, the Contractor agrees to assume the defense of any and all such suits and pay the costs and expenses incidental hereto, subject to the right of the State to provide additional legal counsel at the State's own expense. This section shall survive expiration of this Contract.

## 27. Limitation of Liability

For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable 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;
- C. For all other claims, damages, loss, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form, Contractor's liability per claim shall not exceed five (5) times the total amount of the Contract out of which the claim arises. Third party claims arising under Section 26 ("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 26 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 26.

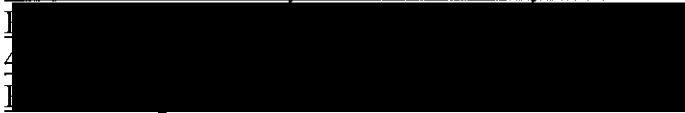
## 28. Administrative

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

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

If to the State:           State of Maryland  
                                  Department of Information Technology  
                                  Donna Ziegenhein, Procurement Officer  
                                  45 Calvert Street  
                                  Annapolis, MD 21401-1907

If to the Contractor: CR Software, a Wholly Owned Subsidiary of FICO



29. 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 received by the State. Title of all such deliverables passes to the State upon receipt by the State, subject to the State's acceptance and payment for the same in accordance with the terms of this Contract.

30. Nonvisual Accessibility Warranty

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

31. Commercial Nondiscrimination

A. 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.

B. The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the State in all subcontracts.

C. 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, 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, 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 is 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.

## 32. Prompt Pay Requirements

32.1 If a 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:

32.1.1 Not process further payments to the contractor until payment to the subcontractor is verified;

32.1.2 Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

32.1.3 Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;

32.1.4 Place a payment for an undisputed amount in an interest-bearing escrow account;  
or

32.1.5 Take other or further actions as appropriate to resolve the withheld payment.

32.2 An "undisputed amount" means an amount owed by a contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include (a) retainage which had been withheld and is, by the terms of the agreement between the contractor and subcontractor, due to be distributed to the subcontractor and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

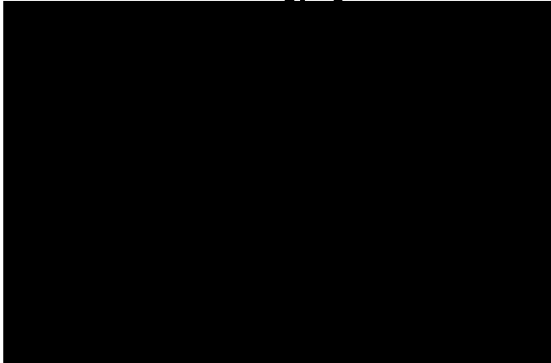
- 32.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:
  - 32.3.1 Affect the rights of the contracting parties under any other provision of law;
  - 32.3.2 Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
  - 32.3.3 Result in liability against or prejudice the rights of the Department.
- 32.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- 32.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
  - 32.5.1 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.
  - 32.5.2 This verification may include, as appropriate:
    - 32.5.2.1 Inspecting any relevant records of the contractor;
    - 32.5.2.2 Inspecting the jobsite; and
    - 32.5.2.3 Interviewing subcontractors and workers.
    - 32.5.2.4 Verification shall include a review of:
      - 32.5.2.4.1 The contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
      - 32.5.2.4.2 The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
  - 32.5.3 If the Department determines that a contractor is in noncompliance 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.
  - 32.5.4 If the Department determines that a 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:
    - 32.5.4.1 Terminate the contract;
    - 32.5.4.2 Refer the matter to the Office of the Attorney General for appropriate action; or



- 32.5.4.3 Initiate any other specific remedy identified by the Contract, including the contractual remedies required by this directive regarding the payment of undisputed amounts.
- 32.5.5 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.

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

CONTRACTOR



MARYLAND DEPARTMENT OF  
INFORMATION TECHNOLOGY



Approved for form and legal sufficiency this 14<sup>th</sup> day of March 2013.



Assistant Attorney General

APPROVED BY BPW: 3-6-13  
(Date)

1-IT  
(BPW Item #)

