



CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

Master Agreement #: AR2479

Contractor: **DELOITTE CONSULTING LLP**

Participating Entity: **STATE OF MARYLAND**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. Scope: This addendum covers **Cloud Solutions** led by the State of *Utah* for use by state agencies and other entities of the State of Maryland authorized by that State's statutes to utilize State contracts with the prior approval of the State of Maryland Department of Information Technology ("Department").
2. Participation: This NASPO ValuePoint Master Agreement may be used by all State of Maryland entities authorized to use statewide contracts in the State of Maryland. Issues of interpretation and eligibility for participation are solely within the authority of the Department.
3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state agencies or entities are subject to the authority and prior approval of the Secretary of the Department of Information Technology or his designee.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Deloitte Consulting LLP c/o Thomas Beck
Address:	200 Renaissance Center, Ste 3900, Detroit, MI 48343-1313
Telephone:	717-608-6551
Fax:	717-412-9687
Email:	thbeck@deloitte.com

Participating Entity

Name:	State of Maryland c/o Albert G. Bullock
Address:	Department of Information Technology, 100 Community Pl. 2 nd Floor, Crownsville MD 21032
Telephone:	410-697-9403
Fax:	n/a
Email:	al.bullock@maryland.gov

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.



Please see attached Exhibit A: State of Maryland Terms & Conditions

6. Subcontractors: All contractors, dealers, and resellers authorized in the State of Maryland as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.



CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Maryland	Contractor: Deloitte Consulting LLP
Signature: 	Signature: 
Name: Albert G. Bullock	Name: Thomas Beck
Title: Assistant Secretary for Administration MD Department of Information Technology	Title: Principal
Date: 4/27/17	Date: 4/26/2017

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

EXHIBIT A – STATE OF MARYLAND TERMS & CONDITIONS

1. Definitions

The following words have the meanings indicated:

- 1.1. “COMAR” means the Code of Maryland Regulations.
- 1.2. “Contract” means the NASPO ValuePoint Cloud Solutions Participating Addendum between Contractor and the State (“Participating Addendum”) to Master Contract #AR2479 (“Master Contract”) as supplemented by these State of Maryland Terms and Conditions, inclusive of Attachment 1 (AWS Hosting), attached hereto and incorporated herein, and any Work Order issued hereunder.
- 1.3. “Contract Manager” means David Delgaudio, or a successor designated by the Department.
- 1.4. “Contractor” means Deloitte Consulting LLP, with a business address at:
100 South Charles Street 12th Floor, Baltimore, MD 21201-2713.
- 1.5. “Department” means the Department of Information Technology.
- 1.6. “eMM” means eMaryland Marketplace.
- 1.7. “Minority Business Enterprise” (MBE) means an entity meeting the definition at COMAR 21.0 1.02.01B(54), which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.8. “Procurement Officer” means Sini Jacob or a successor designated by the Department.
- 1.9. “Sensitive Data” means any personally identifiable information (PII), protected health information (PHI) or other private/confidential data as defined by Md. Code Ann., Commercial Law § 14-3501(d) and Md. Code Ann., State Govt. § 10-1301(c) received by Contractor in connection with performance of Services under this Contract.
- 1.10. “Software” means the object code version of computer programs licensed under this Contract and pursuant to individual End User License Agreements, in a form substantially similar to the license agreement for the applicable Software as attached to the Master Contract as executed by the Department and attached to the applicable Work Order (each a “EULA”). Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections provided per the EULA. 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 provided per the EULA.
- 1.11. Software-as-a-Service (SaaS) as used in this document is defined as the right provided to the State to access and use Software running on equipment operated by Contractor or its suppliers or Subcontractors, including network, servers, operating systems, and storage (“Cloud Infrastructure”). The Software is accessible from various client devices through a thin client interface such as a web browser (e.g., web-based e-mail) or a program interface. The State does not manage or control the underlying Cloud Infrastructure, but may be permitted limited user-specific application configuration settings. The Contractor is responsible for the acquisition and operation of all equipment or hardware, Software and associated network services as it pertains to the services being provided and, except as otherwise provided in a Work Order, shall keep all Software current to at least the previously released version (e.g., version “n-1”). The Contractor is responsible for network service as and to the extent specifically set forth in the applicable Work Order. Under SaaS, the technical and professional activities required for establishing, managing, and maintaining the Cloud Infrastructure and Software are the responsibilities of the Contractor.
- 1.12. “State” means the State of Maryland.

- 1.13. "Veteran-owned Small Business Enterprise" (VSBE) means a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

2. Scope of Contract

- 2.1. The Contractor shall provide products and services described in a Work Order in accordance with the requirements of this Contract and the applicable Work Order.
- 2.2. If there are any inconsistencies between the items listed below, the following order of precedence shall determine the prevailing provision.

The applicable Work Order

Exhibit A – These State of Maryland Terms and Conditions

Exhibit B – The State Contract Affidavit dated April 26, 2017

The main body of the Participating Addendum

NASPO ValuePoint Cloud Solutions Contract #AR2479

3. Period of Performance

- 3.1. The period of performance shall start as of the date of full execution of the Participating Addendum by the parties (the "Effective Date") and end on the third anniversary of the date hereof. The State shall have the right, exercisable in its sole discretion, to renew this Agreement for up to two (2) successive terms of one (1) year each (each a "Renewal Term"). The Renewal Term(s), if any, and the Initial Term are collectively referred to herein as the "Term."
- 3.2. The Contractor shall commence service as of the date agreed to in an approved Work Order.
- 3.3. Audit, confidentiality, document retention, patents, copyrights & intellectual property (see §5), warranty, payment and indemnification obligations, limitations of liability, under this Contract and any other obligations specifically identified shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1. In consideration of the performance in accordance with the requirements of the Contract and the applicable Work Order, the Department shall promptly process a proper invoice for payment in accordance with the terms of this Contract.
- 4.2. The total payment for products and services provided under a fixed price Work Order contract or the fixed price element of a combined fixed price – time and materials Work Order contract shall be the firm fixed price submitted by the Contractor in the Work Order. For time and materials Work Orders contracts, or Work Order contracts which include both fixed price and time and materials elements, total payments to the Contractor pursuant to this Contract may not exceed \$50,000,000 (the "NTE Amount").

The Contractor shall notify the Contract Manager, in writing, at least 60 days before time and material obligations are expected to reach the NTE Amount. The Contractor shall have no obligation to perform the time and materials requirements under any Work Order under this Contract after charges reach the NTE Amount. The cessation of the Contractor's obligation to perform under this paragraph 4.2 is expressly conditioned on the following: that prior to the NTE Amount being reached, the Contractor shall: (i) give the notice required under this paragraph 4.2; (ii) promptly consult with the Department and cooperate in good faith with the Department to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete critical work in progress prior to the date the NTE Amount will be

reached; and (iii) if applicable based on the scope of the applicable Work Order, secure databases, systems, platforms and/or applications on which the Contractor is working in an industry standard manner satisfactory to the State designed to prevent damage or vulnerabilities to any of the same.

- 4.3. The Contractor shall submit invoices as described in Section 21 below. Invoices that contain both fixed price and time and material items must clearly identify the items to be either fixed price or time and material billing. Invoices for third-party Software support and maintenance will be paid on a monthly basis unless otherwise defined in a Work Order. Each invoice must include the Contractor's Federal Tax Identification Number: [REDACTED]. The Contractor's eMM identification number is [REDACTED]. 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, which is one that is not disputed in accordance with Section 4.4. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Manager. The final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.
- 4.4. In addition to any other available remedies, if the Procurement Officer disputes any invoiced amounts as a result of a failure by the Contractor to perform in accordance with the requirements of the Contract or any applicable Work Order or otherwise as contemplated by Section 21 (Invoices), then Contractor will be notified by the State in writing prior to the payment due date for such disputed amounts, and be provided a time specified by the State to cure the breach. If the breach is not cured within the time specified within the notification, the Procurement Officer may withhold such disputed amounts pending resolution of such dispute.
- 4.5. Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

5. Patents, Copyrights, Intellectual Property

- 5.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the effective date of this agreement shall belong to the party that owned such rights immediately prior to the Effective Date (Pre-Existing Intellectual Property). If the Contractor's SaaS includes any third party component, the Contractor shall obtain the necessary permission or license to permit the State to use such third party component pursuant to the terms of the applicable EULA governing the use thereof.
- 5.2. Except for 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 through the SaaS or for use in connection with the SaaS, all right, title, and interest in the intellectual property embodied in the SaaS, including the know-how and methods by which the SaaS is provided and the processes that make up the SaaS ("Contractor Technology"), will belong solely and exclusively to Contractor and its licensors and suppliers, and the Department will have no rights in any of the above except as expressly granted in this Agreement. Any SaaS Software developed by Contractor or provided through the SaaS during the performance of the Contract will also be considered Contractor Technology and belong solely and exclusively to Contractor and its licensors and the Department's use thereof will be per the terms of the applicable EULA.
- 5.3. To the extent that as a result of the Services Contractor creates deliverables for delivery to the Department as specified in the applicable Work Order to the extent they do not constitute Contractor Technology or Contractor Pre-Existing Intellectual Property or modifications to or derivatives of Contractor Technology or Contractor Pre-Existing Intellectual Property

("Deliverables"), Contractor agrees that such Deliverables shall be "works made for hire" as that term is interpreted under U.S. copyright laws and shall be owned by the Department. In the event any Deliverable is or may not be considered a work made for hire under applicable law, Contractor assigns and transfer to the Department ownership of such Deliverable upon the Department's payment therefor. To the extent that any Contractor Pre-Existing Intellectual Property or modifications or derivatives thereof are embedded in a Deliverable, Contractor grants to the Department the right to use such intellectual property in connection with its permitted use of the Deliverables.

- 5.4. Without limiting any of the Contractor's indemnification obligations under the Participating Addendum, if all or any part of the deliverable or service is held, or Contractor reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right, Contractor (after consultation with the State and at no additional cost to the State): (a) shall procure for the State the right to continue using the item or service in accordance with its rights under this Contract; (b) replace the item or service with an item that does not infringe, misappropriate or otherwise violate any third party intellectual property rights and, complies with the item's specifications, and all rights of use and/or ownership set forth in this Contract; (c) modify the item or service so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and complies with the item's or services' specifications and all rights of use and/or ownership set forth in this Contract or (d) refund any pre-paid fees for the allegedly infringing services that have not been performed or provide a reasonable pro-rata refund for the allegedly infringing deliverable or item. With the exception of (d), the foregoing provisions, together with Contractor's indemnification obligation, constitute the sole and exclusive remedy of the State, and the sole and exclusive obligation of Contractor, relating to a claim that any deliverable or service infringes, misappropriates or otherwise violates any patent, copyright or other intellectual property right of a third party.
- 5.5. Except for any Pre-Existing Intellectual Property and third-party intellectual property, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State. Notwithstanding the foregoing, the State agrees to secure all necessary rights, licenses and/or permissions to allow Contractor or its licensors or suppliers to access and use any goods, software, technical information, specifications, drawings, records, documentation, data or any other materials the State provides to the Contractor in Contractor's performance of the services or production of the deliverables.
- 5.6. Without limiting the generality of the foregoing, and, except as otherwise provided in a Work Order, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third-party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which

the State has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

- 5.7. The Contractor shall report to the Department, promptly and in written detail, if all or any part of the deliverable or service is claimed, or Contractor reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right.
- 5.8. 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, Department and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.9. This Section 5 shall control over any of Contractor's obligation under Sections R20.6 and R20.7 to transfer title to the items therein specified, and Contractor shall not be obligated to transfer ownership or deliver to the State any Contractor or third party intellectual property except to the extent ownership is granted pursuant to this Section 5.

6. Indemnification

- 6.1. The Contractor's indemnification obligations, as set forth in the Master Contract, shall survive expiration of this Contract.

7. Limitations of Liability

- 7.1 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, including but not limited to personal injury; physical loss; or violations of the Patents, Copyrights, Intellectual Property sections of this Contract, as follows:
 - 7.1.1. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 5 ("Patents, Copyrights, Intellectual Property") of this Contract;
 - 7.1.2. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property caused by Contractor while engaged in the performance of this Contract; and
 - 7.1.3. In an amount not to exceed in the aggregate the NTE Amount in the event the SaaS is unusable, halts, crashes, presents unreadable data, or is inaccessible, resulting in a catastrophic impact on operation and no workaround is available, solely as a result of Contractor's Services or Deliverables ("Catastrophic Failure"), provided further that in the event of any Catastrophic Failure, Contractor shall work collaboratively with the State, and any third-party contractor engaged by the State, to resolve such failure regardless of the form of such resolution; and
 - 7.1.4. Except as otherwise agreed in an applicable Work Order, for all other claims, damages, loss, costs, expenses, suits or actions ("Claim") in any way related to this Contract or any Work Order where liability is not otherwise set forth as being "without limitation," and regardless of the basis on which the claim is made, Contractor's liability shall not exceed one times the cumulative value of all Work Orders under the Contract open on the date on which the first cause of action giving rise to a claim under the applicable Work Order accrues. 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. Notwithstanding anything to the contrary herein, neither party shall be liable to the other for any consequential, special, indirect, incidental, punitive, or exemplary

damages, regardless of whether they could have been reasonably foreseen on entry into this Contract in the event of a Claim under Section 7.1.4.

- 7.1.5. 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 the performance of services and compliance with the relevant obligations hereunder by its Subcontractors.

8. Prompt Pay Requirements

- 8.1. If the Contractor withholds payment of an undisputed amount to a subcontractor, the State, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
 - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
 - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
 - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - (e) Default Contractor for failing to perform in accordance with the requirement to promptly pay sub-contractors.
 - (f) Take other or further actions as appropriate to resolve the withheld payment.
- 8.2. An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 8.3. An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and subcontractor under this Contract, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
 - (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
 - (c) Result in liability against or prejudice the rights of the Department.
- 8.4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

9. Risk of Loss; Transfer of Title

Risk of loss for conforming supplies, equipment and materials specified as deliverables to the State hereunder shall remain with the Contractor until the supplies, equipment, materials and other deliverables are received and accepted by the State.

10. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems and Cloud Infrastructure) shall be held in confidence by the other party using no less than a reasonable degree of care. 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.

11. Exclusive Use and Ownership

Except as may otherwise be set forth in this Contract or a Work Order, 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 relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. 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 terms substantially equivalent to those of this Contract.

12. Source Code Escrow

Source code escrow does not apply to this Contract.

13. Notification of Legal Requests

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

14. Termination and Suspension of Service

- 14.1. In the event of a termination of the Contract, the Contractor shall implement an orderly return of all State data, as set forth in Section 14.2.
- 14.2. Upon termination or the expiration of the Contract, the Contractor must provide transition assistance requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor for the State as follows: (a) return to the State all State data in either the form it was provided to the State or a mutually agreed format; (b) provide the schema necessary for reading of such returned data; (c) preserve, maintain, and protect all State data for a period of up to ninety (90) days after the termination or expiration date, so that the State can ensure that all returned data is readable; (d) not delete State data until the earlier of ninety (90) days or the date the State directs such deletion; (e) after the retention period, the Contractor shall securely dispose of all State data in all of its forms, such as disk, CD/DVD, backup tape and paper; State data shall be permanently deleted and shall not be recoverable, according to NIST guidelines for media sanitization (NIST SP 800-88); and certificates of destruction shall be provided to the State; and (f) prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts. The foregoing activities shall be separately chargeable to the applicable Work Order, and the final monthly invoice for the services provided hereunder shall include all charges associated therewith.
- 14.3. The Contractor shall, unless legally prohibited from doing so, securely dispose of all State data in its systems or otherwise in its possession or under its control, in all of its forms, such as disk,

CD/DVD, backup tape and paper, when requested by the State. Data shall be permanently deleted and shall not be recoverable, according to NIST guidelines for media sanitization (NIST SP 800-88). Certificates of destruction shall be provided to the State.

- 14.4. During any period of service suspension pursuant to R22.5, the Contractor shall not take any action to intentionally erase any State data.
- 14.5. The State shall be entitled to any post-termination assistance generally made available with respect to the services.

15. Data Center Audit

A SOC 2 Audit applies to this Contract.

The Contractor and/or Subcontractor(s) shall engage a third party to perform an independent audit of, and prepare a Type 2 service organization controls report with respect to, its data centers' controls relevant to security and availability, at least annually at its expense, and provide a redacted version of the audit report (or a report designed to provide similar information) upon request, which report shall not be disclosed, or referred to in any communication, to any person or entity other than Client. The Contractor and/or Subcontractor(s) may remove its proprietary information from the redacted version.

16. Change Control and Advance Notice

The Contractor shall give advance notice to the State of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance.

Contractor may modify the functionality or features of the SaaS at any time, provided that the modification does not materially degrade the functionality of the SaaS service.

17. Redundancy, Data Backup and Disaster Recovery

The Contractor must maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Contractor's processing capability and the availability of hosted services, in each case throughout the base period, and any option periods and at all times in connection with its required performance of those services. Any force majeure provisions of this Contract do not limit the Contractor's obligations under this "Redundancy, Data Backup and Disaster Recovery" Contract provision.

18. Effect of Contractor Bankruptcy

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to (i) a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property that constitute Deliverables to which the State would have ownership of pursuant to Section 5.3 of this Contract, and the same, if not already in the State's possession, shall be promptly delivered to the State, and (ii) request assignment of any applicable third party license(s) for the SaaS or Software being provided under the applicable Work Order; unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

19. Parent Company Guarantee (If Applicable)

Parent Company Guarantee does not apply to this Contract.

20. Work Order Process

- A. Products/Services will be purchased via a Work Order process. Work shall not begin in advance of a fully executed Work Order. A Work Order may be issued for either fixed price or time and materials (T&M) pricing.
- B. The Contract Manager shall issue a Work Order Request to the Contractor to provide services or products that are within the scope of this Contract. The Contract Manager shall deliver the Work Order Request to the Contractor through DoIT's current ITSM platform, which at the time of this agreement is ServiceNow. All workflow (approvals, NTP issuance, deliverables, work acceptance, etc.) shall be tracked in the ITSM platform.
- C. The Work Order Request will include:
 - 1. Technical requirements and description of the service or products needed,
 - 2. Performance objectives and/or deliverables, as applicable,
 - 3. Due date and time for submitting a response to the request, and
 - 4. Required place(s) where work must be performed.
 - 5. Any additional terms and conditions appropriate to the scope of the Work Order.
- D. The Contractor shall respond to the Contract Manager within a reasonable amount of time and include at a minimum, if applicable:
 - 1. A response that details the Contractor's understanding of the work,
 - 2. A price to complete the Work Order Request using the format provided in the Work Order,
 - 3. A description of proposed resources required to perform the requested tasks, with Contract labor categories listed in accordance with the NASPO ValuePoint Contract,
 - 4. An explanation of how tasks shall be completed. This description shall include proposed subcontractors and related tasks,
 - 5. State-furnished information, work site, and/or access to equipment, facilities, or personnel, and
 - 6. The proposed personnel resources, including any subcontractor personnel, to complete the task.
- E. For a T&M Work Order, the Contract Manager will review the response and will confirm the proposed labor rates are consistent with this Contract. For a fixed price Work Order, the Contract Manager will review the response and will confirm the proposed prices are acceptable.
- F. The Contract Manager may contact the Contractor to obtain additional information, clarification or revision to the Work Order, and will provide the Work Order to the Procurement Officer for a determination of compliance with the Contract and a determination whether a change order is appropriate. Written Procurement Officer approval is required before Work Order execution by the State.

- G. Personnel performing services onsite at a State facility basis on any type of Work Order shall be approved by the Contract Manager. The Contractor shall furnish resumes of such proposed personnel specifying the labor category(ies) proposed. The Contract Manager shall have the option to interview the proposed personnel and, in the event of an interview or not, shall notify the Contractor of acceptance or denial of the personnel.
- H. The Contractor shall commence services as of the date provided in a written notice to proceed, which date shall be consistent with any service commencement dates set forth in the applicable approved Work Order.

21. Invoices

All invoices shall be submitted by the Contractor monthly, or as otherwise set forth in the applicable Work Order and shall include, at the minimum, the following information:

- a. Name and address of the Department or 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. Contract/Work Order/Purchase Order # being billed

Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information. Invoicing for Deliverable based work shall be accompanied by signed notice(s) of acceptance for such invoices submitted for payment.

For Fixed Price Deliverable based work orders payment will only be made upon completion and acceptance of the deliverables as defined in approved Work Orders.

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.

TIME SHEET SUBMISSION AND ACCEPTANCE

For work performed on a time and materials basis, within three (3) business days after the 15th and last day of the month, the Contractor shall submit a semi-monthly timesheet for the preceding half month providing data for all resources provided under the Contract.

At a minimum, each semi-monthly timesheet shall show:

- A. Title: "Time Sheet for xxxxx"
- B. Issuing company name, address, and telephone number
- C. For each employee /resource:

1. Employee / resource name
2. For each Period ending date, e.g., "Period Ending: mm/dd/yyyy" (Periods run 1st through 15th and 16th through last day of the month.
 - a) Tasks completed that week and the associated deliverable names and ID#s
 - b) Number of hours worked each day
 - c) Total number of hours worked that Period
 - d) Period variance above or below 40 hours
 - e) Annual number of hours planned under the Contract
 - f) Annual number of hours worked to date
 - g) Balance of hours remaining
 - h) Annual variance to date (Sum of periodic variances)
- D. Signature and date lines for the Contract Manager
- E. Time sheets shall be submitted to the Contract Manager prior to invoicing. The Contract Manager shall sign the timesheet to indicate authorization to invoice.

T&M INVOICE SUBMISSION PROCEDURE

- A. This procedure, applicable only to work performed on a time and materials basis, consists of the following requirements and steps:
- B. A proper invoice shall identify Department of Information Technology as the recipient and contain the following information: date of invoice, Contract number, Work Order number, deliverable description, deliverable number (e.g., "3.8.4.1.") if applicable, period of performance covered by the invoice, a total invoice amount, and a Contractor point of contact with telephone number.
- C. The Contractor shall email the original of each invoice, to the Department of Information Technology to the Contract Manager.
- D. 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 Work Order. In no event shall any invoice be submitted later than 120 calendar days from the Contract termination date.

FIXED PRICE INVOICE SUBMISSION PROCEDURE

- A. This procedure, applicable only to work performed on a fixed price basis, consists of the following requirements and steps:
- B. A proper invoice shall identify Department of Information Technology as the recipient and contain the following information: date of invoice, Contract number, Work Order number, deliverable description, deliverable number (e.g., "3.8.4.1.") if applicable, period of performance covered by the invoice, a total invoice amount, and a Contractor point of contact with telephone number.
- C. The Contractor shall email the original of each invoice for each deliverable being invoiced to the Department of Information Technology to the Contract Manager.
- D. 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 120 calendar days from the Contract termination date. Any final monthly invoice shall include all charges for data retention.

For the purposes of this Contract an amount will not be deemed due and payable to the extent:

- A. The amount invoiced is inconsistent with the Contract and/or the applicable Work Order.
- B. The invoice has not been received by the party or office specified in the Contract.
- C. The invoice or performance is in dispute in accordance with Section 4.4.
- D. Where payment is tied to acceptance, the item or services have not been accepted.
- E. The quantity of items delivered is less than the quantity ordered.
- F. Such amount corresponds to items or services that do not meet the quality requirements of the applicable Work Order
- G. If the Work Order provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule.
- H. The Contractor has not submitted documentation reasonably required for the Procurement Officer to substantiate the charges incurred under the contract.

R20. General Terms and Conditions – Mandatory Clauses

R20.1. Pre-Existing Regulations

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

R20.2. Maryland Law Prevails

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

R20.3. Multi-year Contracts contingent upon Appropriations

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

R20.4. Cost and Price Certification

R20.4.1. The Contractor, by submitting cost or price information certifies that, to the best of

its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

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

R20.4.2. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

R20.5. Contract Modifications

The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract and applicable Work Order. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. Pursuant to COMAR 21.10.04, the Contractor must assert in writing its right to an adjustment under this section and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Section 23.8, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

R20.6. Termination for Default

(1) The State may, subject to the provisions of paragraph (3) of this Section R20.6, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances: (a) If the Contractor fails to perform within the time specified herein or any extension thereof; or (b) If the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the procurement officer may authorize in writing) after receipt of notice from the procurement officer specifying such failure.

(2) In the event the State terminates this Contract in whole or in part as provided in paragraph (1) of this clause, the State may procure substitute performance upon terms and in whatever manner the procurement officer may deem appropriate, and the Contractor shall be liable to the State for any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

(3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and

without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

(4) If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this Contract does not contain a clause providing for termination for convenience of the State, the Contract shall be equitably adjusted to compensate for such termination and the Contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes."

(5) If this Contract is terminated as provided in paragraph (1) of this clause, the State, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the State, in the manner, at the times, and to the extent, if any, directed by the procurement officer, (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the State; and the Contractor shall, upon direction of the procurement officer, protect and preserve property in the possession of the Contractor in which the State has an interest. Payment for completed supplies delivered to and accepted by the State shall be at the Contract price. Payment for manufacturing materials delivered to and accepted by the State and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and procurement officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes." The State may withhold from amounts otherwise due the Contractor hereunder such sum as the procurement officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(6) The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

(7) As used in paragraph (3) of this clause, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

R20.7. Termination for Convenience

(1) 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. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

(2) After receipt of a Notice of Termination, and except as otherwise directed by the procurement officer, the Contractor shall:

- (a) stop work as specified in the Notice of Termination;
- (b) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the Contract as is not terminated;
- (c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (d) assign to the State, in the manner, at times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the procurement officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- (f) transfer title and deliver to the State, in the manner, at the times, and to the extent, if any, directed by the procurement officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the State;
- (g) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (f) above; provided, however, that the Contractor (i) may not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the State to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the procurement officer may direct;
- (h) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (i) take any action that may be necessary, or as the procurement officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

The Contractor shall submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer, and may request the State to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the State shall accept title to these items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the procurement officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made before final settlement.

(3) After receipt of a Notice of Termination, the Contractor shall submit to the procurement officer his termination claim, in the form and with certification prescribed by the procurement officer. This claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the

procurement officer, upon request of the Contractor made in writing within the one-year period or authorized extension thereof. However, if the procurement officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(4) Subject to the provisions of paragraph (3), the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

(5) In the event of the failure of the Contractor and the procurement officer to agree as provided in paragraph (4) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4):

(a) for completed supplies or services accepted by the State (or sold or acquired as provided in paragraph (2)(g) above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges;

(b) the total of:

(i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (5)(a) hereof;

(ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (2)(e) above, which are properly chargeable to the terminated portion of the Contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above); and

(iii) a sum, as profit on (i) above, determined by the procurement officer to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(c) the reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably

necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this Contract.

The total sum to be paid to the Contractor under (a) and (b) of this paragraph shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the State shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (5)(a) and (b)(i) above, the fair value, as determined by the procurement officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer pursuant to paragraph (2)(g).

(6) Costs claimed, agreed to, or determined pursuant to (3), (4), (5) and (11) hereof shall be in accordance with COMAR 21.09 (Contract Cost Principles and Procedures) as in effect on the date of this Contract.

(7) The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes," from any determination made by the procurement officer under paragraph (3), (5), or (9) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (3) or (9) hereof, and has failed to request extension of the time, he shall have no right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph (3), (5), or (9) hereof, the State shall pay to the Contractor the following: (a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer, or (b) if an appeal has been taken, the amount finally determined on such appeal.

(8) In arriving at the amount due the Contractor under this clause there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract, (b) any claim which the State may have against the Contractor in connection with this Contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the State.

(9) If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.

(10) The State may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the procurement officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the State upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the procurement officer by reason of the

circumstances.

(11) Unless otherwise provided for in this Contract, or by applicable statute, the Contractor shall from the effective date of termination until the expiration of three years after final settlement under this Contract preserve and make available to the State at all reasonable times at the office of the Contractor but without direct charge to the State, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or, to the extent approved by the procurement officer, reproductions thereof.

R20.8. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

R20.9. Living Wage

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

R20.10. Non-Hiring of Employees

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

R20.11. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, sexual orientation, sexual identity, ancestry, or disability of a qualified person with a disability, sexual orientation, or any otherwise unlawful use of characteristics; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

R20.12. Commercial Non-Discrimination

R20.12.1. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the

basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- R20.12.2. As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

R20.13. Subcontracting and Assignment

- R20.13.1 The Contractor may not subcontract any portion of the products or 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 State, each at the State's sole and absolute discretion. Any such subcontract or assignment shall include the terms of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to any subcontractors.

- R20.13.2. Subcontractor Disclosure
The Contractor shall identify all of its strategic business partners related to products or services provided under this Contract, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

R20.14. Minority Business Enterprise Participation

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

R20.15. Reserved

R20.16. Veteran Owned Small Business Enterprise Participation

There is no VSBE subcontractor participation goal for this procurement.

R20.17. Security Requirements and Incident Response

- R20.17.1. The Contractor agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State and Department of Information Technology information security policy, currently found at <http://doit.maryland.gov/Publications/DoITSecurityPolicy.pdf>, in each case to the extent applicable to Contractor in performing the Services hereunder. Contractor shall limit access to and possession of Sensitive Data to only employees whose responsibilities reasonably require such access or possession and shall train such employees on the Confidentiality obligations set forth herein. Any resulting impacts from changes to such laws and polies will be addressed through a change order under the applicable Work Order.
- R20.17.2. The Contractor agrees to notify the Department in accordance with R20.17.3 when any Contractor system that may access, process, or store State data or State systems is subject to an unintended access or attack. Unintended access or attack means a compromise by a computer malware, malicious search engine, credential compromise or unauthorized access by an individual or automated program due to a failure to secure Contractor's system in accordance with the terms of this Contract or adhere to security procedures required by this Contract.
- R20.17.3. The Contractor further agrees to notify the Department within twenty-four (24) hours of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Manager, Department chief information officer and Department chief information security officer.
- R20.17.4. The Contractor agrees to notify the Department within twenty four (24) hours if there is an unintended access or attack to Contractor's product.
- R20.17.5. If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Department within one (1) business day after Contractor's discovery of such use or disclosure and thereafter all reasonably available information the State (or State Department) requests concerning such unauthorized use or disclosure.
- R20.17.6. The Contractor, within one day of discovery, shall report to the Department any improper or non-authorized use or disclosure of Sensitive Data. Contractor's report shall identify, to the extent known:
- (a) the nature of the unauthorized use or disclosure;
 - (b) the Sensitive Data used or disclosed,
 - (c) who made the unauthorized use or received the unauthorized disclosure;
 - (d) Where the improper or non-authorized use or disclosure was made by Contractor:
 - (i) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
 - (ii) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure; and
 - (e) such other information, including a written report, as reasonably requested by

the State.

- R20.17.7. The Contractor shall protect Sensitive Data according to a written security policy no less rigorous than that of the State. The Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of Sensitive Data. In the event of an unauthorized release of Sensitive Data by Contractor in breach of the terms of this Contract that requires notification under applicable law, the Contractor agrees to assume responsibility for the cost of informing all such individuals in accordance with and as required by applicable law and to reimburse and hold harmless the State (or Department) and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach requiring the notification.
- R20.17.8 Upon request, the Contractor shall disclose all of its non-proprietary security processes and technical limitations to the State.
- R20.17.8. This Section shall survive expiration or termination of this Contract.

R20.18. Security Incident or Data Breach Notification

The Contractor shall inform the State of any security incident or data breach as required by R20.17.

- R20.18.1. Incident Response: The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.
- R20.18.2. Security Incident Reporting Requirements: The Contractor shall report a security incident to the appropriate State-identified contact to the extent required by R20.17.
- R20.18.3. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach by Contractor in violation of the terms of this Contract that affects the security of any State content that is subject to applicable data breach notification law, the Contractor shall, to the extent required by R20.17: (1) promptly notify the appropriate State-identified contact, and (2) take commercially reasonable measures to address the data breach in a timely manner.

R20.19 Data Breach Responsibilities

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

- R20.19.1. Intentionally Left Blank
- R20.19.2. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate State-identified contact in accordance with R20.17. The Contractor shall (1) cooperate with the State to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- R20.19.3. Unless otherwise stipulated, if a data breach is a direct result of the Contractor's breach of its Contract obligations to (i) encrypt Sensitive Data or (ii) otherwise

safeguard Sensitive Data, the Contractor shall bear the reasonable costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others to the extent required by R20.17; (3) a credit monitoring service to the extent providing such service is required by State or federal law; (4) a means for affected individuals to obtain information; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this Contract's limitation of liability.

R21 Data Protection

R21.1 Data Ownership

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

R21.2 Loss of Data

Except as otherwise agreed to in a Work Order, (a) 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 restoring such lost data to a recent backup in the manner and on the schedule reasonably set by the Contract Manager, and (b) the Contractor shall ensure that all data is backed up and is recoverable by the Contractor. In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in Section 20.17.

Protection of data and personal privacy (as further described and defined in section 20.17) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the following conditions:

- R21.2.1 The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures designed to safeguard against unauthorized access, disclosure or theft of Sensitive Data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Sensitive Data and non-public data of similar kind.
- R21.2.2 All State data provided to or collected by Contractor in the performance of this contract shall remain property of the State.
- R21.2.3 All Sensitive Data shall be encrypted in accordance with Section R22.3.
- R21.2.4 Unless otherwise stipulated, the Contractor shall encrypt all non-public data in accordance with Section R22.3. The State shall identify data it deems as non-public data to the Contractor.
- R21.2.5 At no time shall any data or processes that belong to the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- R21.2.6 The Contractor shall not use any information collected in connection with the service issued under this Contract for any purpose other than fulfilling the service.

R22 Other Mandatory Items

R22.1 Data Location

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

R22.2 Import and Export of Data

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

R22.3 Encryption of Data at Rest

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

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

If the functions to be performed in accordance with this Contract constitute Business Associate functions as defined in HIPAA, the parties agree to execute a mutually agreed business associate agreement as required by HIPAA regulations at 45 C.F.R. §164.501.

R22.5. Suspension of Work

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State. Notwithstanding anything to the contrary elsewhere in this Contract, (i) Contractor shall not be obligated to retain any personnel on this engagement during any suspension period lasting longer than thirty (30) days, and (ii) upon recommencement of the services following any such suspension, Contractor may use personnel other than those performing the services immediately prior to the start of the suspension period.

R22.6. Nonvisual Accessibility Warranty

R22.6.1. The Contractor warrants that the information technology to be provided under the Contract and specified in the applicable Work Order as being subject to this requirement:

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

- R22.6.2. The Contractor further warrants that the cost, if any, of modifying any such information technology for compatibility with software and hardware used for non-visual access does not increase the cost of the information technology by more than five percent. For purposes of this Contract, the phrase "equivalent access" means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

R22.7. Compliance with Laws/Arrearages

The Contractor hereby represents and warrants that:

- R22.7.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- R22.7.2. 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;
- R22.7.3. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to Contractor in its performance of the activities and obligations under this Contract; and,
- R22.7.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

R22.8 Contingent Fee Prohibition

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

R22.9. Delays and Extensions of Time

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

R22.10. Financial Disclosure

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

include disclosure of beneficial ownership of the business.

R22.11 Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

R22.12 Retention of Records

R22.12.1. The Contractor and Subcontractors shall retain and maintain all records and documents in any way relating to this Contract ("Records") for three (3) years after final payment by the State under this Contract, or any applicable statute of limitations, prevailing federal or State law or regulation, or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. The Contractor shall, upon request by the Department, provide a copy of Records, 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 (for work performed on a time and materials basis). 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 set forth in R23, below and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance. All Records related in any way to the Contract are to be retained for the entire time provided under this section.

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

R23. Right to Audit

R23.1

The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or Subcontractors' performance under this Contract as described in R23. In this agreement, an audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract.

R23.2

Upon three (3) business days' notice, Contractor and/or Subcontractors shall provide the State

reasonable access during normal business hours to the Records to verify conformance to the terms of this Contract. The State shall be permitted to conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting/audit firm, solely at the State's election. The State shall have the right to copy, at its own expense, any Record related to the services performed pursuant to this Contract.

R23.3

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

R23.4

The right to audit shall include subcontractors in which goods or services are subcontracted by Contractor and/or Subcontractors and that provide essential support to the services provided to the State under this Contract. Contractor and/or Subcontractors shall ensure the State has the right to audit with any lower tier subcontractor.

24. Administrative Information

24.1. Procurement Officer and Contract Manager

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

24.2. Notices

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

If to the State:

David Delgaudio, DoIT Cloud Services
State of Maryland Department of IT
100 Community Pl, Suite 2.221
Phone Number: 410-697-9413
E-Mail: dave.delgaudio@maryland.gov

With a copy to:

Sini Jacob
State of Maryland Department of IT
100 Community Pl, Suite 2.333
Phone Number: 410-697-9677
E-Mail: sini.jacob@maryland.gov

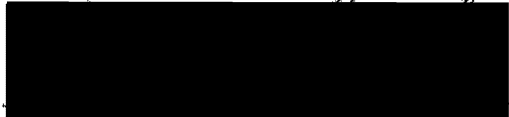
If to the Contractor:

Deloitte Consulting LLP
100 South Charles Street 12th Floor
Baltimore, MD 21201-2713
Attn: Mark Wiggins, Managing Director
410-507-4289 E-Mail- mawiggins@deloitte.com

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

CONTRACTOR

DELOITTE CONSULTING LLP

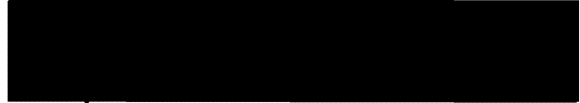


By: Thomas Beck
Title: Principal

Date: April 26, 2017

STATE OF MARYLAND

DEPARTMENT OF INFORMATION TECHNOLOGY



By: ALBERT G. BULLOCK
Title: ASSISTANT SECRETARY

Date 4/27/17

Approved for form legal sufficiency this
27th day of April, 2017.

Howard J. Barr
Assistant Attorney General

APPROVED BY BPW: 4/26/17
(Date)

5-IT
(BPW Item #)

ATTACHMENT 1

to

EXHIBIT A (STATE OF MARYLAND TERMS & CONDITIONS)

AWS Hosting

In addition to the terms and conditions in Exhibit A, the terms and conditions set forth in this Attachment will apply to any Work Order where AWS hosting is included as part of the Services thereunder.

(a) State acknowledges and agrees that Deloitte Consulting will be contracting with Amazon Web Services, Inc. ("AWS"), an independent commercial public cloud infrastructure provider, as a vendor to provide the AWS cloud-computing platform and tools ("AWS Platform") as part of the Services in the applicable Work Order. State agrees that AWS shall not be deemed a subcontractor under the terms of the Contract.

(b) By entering into the Work Order, State acknowledges that its use of the AWS Platform is subject to AWS's access policy currently located at <https://s3.amazonaws.com/Reseller-Program-Legal-Documents/AWS+Access+Policy.pdf>, as it may be updated by AWS from time to time, and as may be made available on any successor or related site designated by AWS ("AWS Public Sector Access Policy"), a copy of the current version is attached to the NASPO Master Contract as Schedule E. State hereby accepts the terms of the AWS Public Sector Access Policy.

(c) State acknowledges that aspects of, or changes to, the functionality of the AWS Platform is outside of Deloitte Consulting's direct control. In the event the AWS Platform experiences an availability, performance, or security failure solely as a result of an outage, malfunction, unavailability of, or change by AWS to an AWS Platform component (a "failure"): (i) Deloitte Consulting shall coordinate with AWS and State to monitor status on resolving any such issue and Deloitte Consulting will work collaboratively with State to develop a mutually agreeable resolution to address the impact of such failure; (ii) to the extent AWS provides a credit/payment to Deloitte Consulting as a result, Deloitte Consulting shall apply such amount against amounts due to Deloitte Consulting for the Services; and (iii) Deloitte Consulting shall not be in breach of any of its obligations as a result of such failure. The foregoing shall not relieve Deloitte Consulting from responsibility for any other aspects of the Services, such as the functionality of the hosted solution, nor from responsibility for Deloitte Consulting not having properly installed or configured any AWS Platform components in accordance with the Contract or the applicable Work Order. Notwithstanding anything to the contrary herein, all rights and remedies to which Contractor is entitled in the event of a failure shall flow through to the State.

(d) State Items, once uploaded to the AWS Platform, will be subject to any security control measures to be implemented as agreed to by the parties to the applicable Work Order and the confidentiality and data security obligations set forth in Exhibit A (including, without limitation, R.20.17, R.20.18, R.20.19 and R.21.2) will not apply to such State Items on the AWS Platform. However, this shall not relieve Deloitte Consulting from responsibility for any other aspects of the SaaS offering, including, without limitation, not having properly installed or configured any AWS Platform components, or relieve Deloitte Consulting of its data breach notification obligations in Sections R.20.17, R.20.18, R.20.19 and R.21.2. Deloitte Consulting shall promptly notify State of any unauthorized third-party access to any State Items.

“State Items” shall mean any State-provisioned application or other software provided to Deloitte Consulting for installation or uploading onto the AWS Platform as part of the Services (“State Software”) and any State-provisioned machine images, data, text, audio, video, images or other content that is provided to Deloitte Consulting for installation or uploading onto the AWS Platform as part of the Services, or that State or any of its end user (a) runs on any State Software hosted on the AWS Platform, (b) uploads to any State Software hosted on the AWS Platform, or (c) causes to interface with the AWS Platform.

(e) In lieu of an order to comply with any inspection under the Contract of the AWS Platform or the AWS data center facilities, servers, networking equipment and hosting software systems, State may review AWS’s then current Authorization Package (i.e., the applicable SSP, SAP, SAR, POA&M and ConMon Report) by submitting a request for such Authorization Packaged directly, in accordance with the applicable FedRamp process. In addition, notwithstanding anything to the contrary, State’s audit rights set forth in the Contract shall not extend to AWS’s books and records.