

# Statewide Personnel System SaaS HCM Solution Contract

THIS CONTRACT is made as of this 20<sup>th</sup> day of ~~November~~ <sup>December</sup>, 2013, by and between Oakland Consulting Group, Inc. (Contractor) and the Maryland Department of Information Technology (DoIT).

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

## 1. Definitions

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

- A. "Contract" means this Contract for a Statewide Personnel System (SPS) SaaS HCM Solution consisting of a multi-tenant, cloud, subscription-based Software as a Service (SaaS) HCM application and business analytics capabilities and optional services as described in RFP.
- B. "Contractor" means Oakland Consulting Group, Inc., whose principal business address is 9501 Sheridan Street, Suite #200, Lanham, MD 20706 and whose principal office in Maryland is 9501 Sheridan Street, Suite #200, Lanham, MD 20706.
- C. "Contract Manager" means the individual identified in Section 1.6 of the RFP or a successor designated by the Department.
- D. "Department" means the Maryland Department of Information Technology.
- E. "Financial Proposal" means Contractor's Financial Proposal Best and Final Offer dated October 15, 2013, which was clarified further by the Randy Randazzo email Tuesday, October 29, 2013 at 2:44 PM and the Randy Randazzo email Wednesday, November 6, 2013 at 6:23 PM.
- F. "Not to Exceed (NTE)" means the Contractor's Total Not to Exceed Price for providing hardware, software and other materials and performing services under this Contract.
- G. "Notice to Proceed (NTP)" means a formal written notification from the Contract Manager that the Contractor as of a date contained in the notice, shall begin performance of the Contract.
- H. "Procurement Officer" means the individual identified in Section 1.5 of the RFP or a successor designated by the Department.
- I. "RFP" means the Request for Proposals for Statewide Personnel System (SPS) SaaS HCM Solution, No. 060B3490012 dated May 22, 2013 and any amendments, clarification questions, and any written correspondence thereto issued in writing by the State.
- J. "SPS" means the Statewide Personnel System.
- K. "State" means the State of Maryland.
- L. "Technical Proposal" means the Contractor's Technical Proposal, dated July 24, 2013 and any clarification questions/answers, and any written correspondence thereto issued in writing by the Contractor.

## **2. Scope of Work**

2.1. The Contractor shall provide a Statewide Personnel System (SPS) SaaS HCM Solution consisting of a multi-tenant, cloud, subscription-based SaaS HCM solution, business intelligence and business analytic capabilities and other related services as described in the RFP.

2.2. These services shall be provided in accordance with the terms and conditions of this Contract and the Attachments to the RFP, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and the Attachments, the terms of this Contract shall control. If there is any conflict among the Attachments, the following order of precedence shall determine the prevailing provision.

Attachment A – The Contract

Attachment B - State Contract Affidavit, executed by the Contractor and dated November 18, 2013

The RFP and attachments to the RFP except for Attachment F

Attachment F – Requirements Traceability Matrices only

Contractor Technical Proposal,

Contractor Financial Proposal.

2.3. The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written Change Order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Section 11, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

## **3. Time for Performance**

The Contract resulting from this RFP shall be for a base period of five (5) years. The State shall have the sole right to exercise up to two (2), five-year renewal options at its sole option. All prices for rates and terms as offered in the Financial Proposal are binding on the Contractor for the term of the Contract.

## **4. Consideration and Payment**

4.1. In consideration of the satisfactory performance of the Contract, the State shall pay the Contractor in accordance with the terms of this Contract. Except with the express written consent of the Procurement Officer, total payments to the Contractor pursuant to this Contract may not exceed \$43,891,000 (the "NTE Amount"). Contractor shall notify the Contract Manager, in writing, at least 60 days before payments reach the NTE Amount. After notification by the Contractor, if the Procurement Officer fails to give written notice that the NTE Amount has been increased; the Contractor shall have no obligation to perform under this Contract after payments reach the NTE Amount. The cessation of

the Contractor's obligation to perform under this paragraph 4.1 is expressly conditioned on the following: that prior to the NTE Amount being reached, the Contractor shall: (i) give the notice required under this paragraph 4.1; (ii) promptly consult with the Department and cooperate in good faith with the Department to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete critical work in progress prior to the date the NTE Amount will be reached; and (iii) secure data bases, systems, platforms and/or applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

4.2. The Contractor shall submit invoices as required in Section 1.33 of the RFP. Invoices for third-party software support and maintenance will be paid on an annual basis and prior to the beginning of the year of maintenance. Each invoice must include the Contractor's Federal Tax Identification Number: [REDACTED] The Contractor's eMM identification number is 160900. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Manager.

4.3. In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

## **5. Patents, Copyrights, Intellectual Property**

5.1. If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

5.2. Notwithstanding anything to the contrary in this Contract, to the extent (i) work performed or provided by the Contractor in connection with this Contract (the Work Product) or (ii) Pre-Existing Intellectual Property (other than a computer's operating system, supported internet browser, browser accessibility software or hardware if needed by the user, and software required to access a commonly-available data transmission tool or export format) is required to access, install, build, compile or otherwise use the Work Product (such Pre-Existing Intellectual Property individually and collectively referred to herein as "Third-party Intellectual Property," which shall be the sole property of Contractor or its third-party licensors, as applicable), Contractor hereby grants, on behalf of itself and any third-party licensors, to the State a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right to sublicense, to use, execute, reproduce, display, perform, distribute copies of internally, modify and prepare derivative works based upon, such Third-party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended. "Pre-Existing Intellectual Property" means any program, utility or tool owned by Contractor or its third-party licensors that was created by Contractor or its third-party licensors independently from its performance of this Contract and not solely using funds from this Contract.

5.3. 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.

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

5.5. Without limiting the generality of the foregoing, neither Contractor nor any of its Subcontractors shall use any software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its Subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third-party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any software or technology shall be construed as being inconsistent with the intent to not cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

## **6. Source Code Escrow**

6.1. The State will be named as a beneficiary under the escrow agreement ("Escrow Agreement") between Contractor and its Escrow Agent during the term of this Contract. The Escrow Agreement shall govern the maintenance and release of such source code, and Contractor agrees to update, enhance, or otherwise modify such escrowed source code promptly upon each release of a new version of the Contractor's SaaS solutions. Contractor agrees to pay the costs of State being a named beneficiary for the term of this Contract. State shall treat the Source Code as Contractor's Confidential Information. Under all circumstances, the Source Code shall remain the property of Contractor, and the State shall only use the Source Code in conjunction with, and to maintain the software to operate the Service consistent with (including, but not limited to confidentiality provisions and usage restrictions) and through the end of the term of this Contract, and for no other purpose.

6.2. In the event that the Escrow Agent either ceases providing escrow services to Contractor or Contractor determines in its reasonable business judgment that the Escrow Agent is no longer providing acceptable services, Contractor may replace the Escrow Agent with another escrow agent, using an agreement which provides the State with rights no less advantageous than those in the Escrow Agreement.

6.3. Contractor shall inform the State of the availability of a source code escrow for any third party SaaS or software solutions it provides to the State.

6.4. In addition to the rights and obligations contained in the Software Escrow Agreement referenced in Section 6.1, the State shall have the option to exercise its rights to have the escrowed software released by the Neutral party to the State's possession if the Contractor is unable or unwilling to provide the services in accordance with this Contract. This condition will be considered met if after repeated email and phone requests by the State for service, the State makes a request for service in writing to the Contractor to its designated point of contact to its last known address served by certified signed receipt required mail delivery by U.S. Post Office, and the contractor remains unresponsive meaning that they are unable to acknowledge message receipt, unwilling or otherwise unable to satisfy the service request under this Contract for a period longer than 45 days from attempt to deliver the written request.

## **7. Rights to Records**

The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

## **8. Confidentiality**

Confidentiality obligations are in Attachment S to the RFP.

## **9. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act, omission, or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and is recoverable by the Contractor.

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

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

## **11. 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 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.

## **12. Maryland Law**

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

## **13. Nondiscrimination in Employment**

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

## **14. Contingent Fee Prohibition**

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

## **15. Non-availability of Funding**

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

## **16. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

## **17. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A) (2).

## **18. Delays and Extensions of Time**

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

## **19. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer or Contract Manager may determine to be appropriate for the convenience of the State.

## **20. Pre-Existing Regulations**

In accordance with the provisions of § 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.

## **21. 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 agreement with the State or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

## **22. Political Contribution Disclosure**

The Contractor shall comply with the Election Law Article, §§ 14-101 through 14-108, of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two (2) calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

## **23. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three (3) years after final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including by way of example only, the Procurement Officer or the Procurement Officer's designee, and the Contract Manager or the Contract Manager's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. The Contractor shall, upon request by the State, surrender all and every copy of documents needed by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance. This section shall survive expiration of this Contract.

## **24. Compliance with Laws**

The Contractor hereby represents and warrants that:

- A. 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;



- B. 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;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **25. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of the financial proposal. The price under this Contract and any Change Request/Order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of the financial proposal, was inaccurate, incomplete, or not current.

## **26. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer; provided however, a Contractor may assign monies receivable under a Contract after due notice to the State. Any such subcontract or assignment shall include the terms of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

## **27. Indemnification**

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

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

27.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract. In the event that a claim, suit or action is made or filed against the State as a result of or relating to the Contractor's performance under this Contract, the Contractor agrees to assume the defense of any and all such suits and pay the costs and expenses

incidental hereto, subject to the right of the State to provide additional legal counsel at the State's own expense. This section shall survive expiration of this Contract.

## **28. Limitation of Liability**

For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

- A. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 5 ("Patents, Copyrights, Intellectual Property") of this Contract;
- B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- C. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract 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 twenty-five million dollars (\$25 Million) for the base five-year period and shall not exceed twenty-five million dollars (\$25 Million) for each optional renewal five-year period out of which the claim arises. Third-party claims arising under Section 27 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third-party claims arising under Section 27 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 27.

## **29. Administrative**

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

## **30. Notices**

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

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

If to the Contractor:   June Findlay\_  
                                  9501 Sheridan Street \_#200\_\_\_\_  
                                  Lanham, MD 20706\_\_\_\_\_

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

Risk of loss for conforming supplies, equipment, and materials specified as deliverables to the State hereunder shall remain with the Contractor until the supplies, equipment, materials, and other deliverables are received by the State. Title of all such deliverables passes to the State upon receipt by the State, subject to the State's acceptance and payment for the same in accordance with the terms of this Contract.

### **32. Non-Visual Accessibility Warranty**

The Contractor warrants that the information technology offered under the proposal (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access. The Contractor further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access does not increase the cost of the information technology by more than five percent. For purposes of this Contract, the phrase "equivalent access" means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Contractor warrants that the information technology offered under this Contract is in compliance with Section 508 of the U.S. Rehabilitation Act and other identified standards for effective use of information technology for persons with visual impairments. The SaaS solution shall be accessed via the internet and the State is responsible for providing adaptive technology for devices which will be used to access the internet.

### **33. Commercial Nondiscrimination**

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

33.2. The Contractor shall include the above Commercial Non-Discrimination clause, or similar clause approved by the State in all subcontracts.

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

#### **34. Prompt Pay Requirements**

33.1 If a contractor withholds payment of an undisputed amount to its subcontractor, the State, at its option and in its sole discretion, may take one or more of the following actions:

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

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

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

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

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

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

34.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:

34.3.1 Affect the rights of the contracting parties under any other provision of law;

34.3.2 Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or

34.3.3 Result in liability against or prejudice the rights of the Department.

34.4 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.

34.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

34.5.1 Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.

This verification may include, as appropriate:

34.5.1.1 Inspecting any relevant records of the contractor;

34.5.1.2 Inspecting the jobsite; and

34.5.1.3 Interviewing subcontractors and workers.

34.5.1.4 Verification shall include a review of:

34.5.1.4.1 The contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and

34.5.1.4.2 The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.

34.5.2 If the Department determines that a contractor is in noncompliance with certified MBE participation goals, then the Department will notify the contractor in writing of its findings, and will require the contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

34.5.3 If the Department determines that a contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:

34.5.3.1 Terminate the contract;

34.5.3.2 Refer the matter to the Office of the Attorney General for appropriate action; or

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

34.5.4 Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

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

OAKLAND CONSULTING GROUP, INC.

 (SEAL)


By:

11/18/2013

Date

  
Witness/Attest

MARYLAND DEPARTMENT OF  
INFORMATION TECHNOLOGY


  
By: Secretary

20 Dec 2013

Date

  
Witness

Approved for form and legal sufficiency this 10<sup>th</sup> day of December 2013.

  
Assistant Attorney General

APPROVED BY BPW:  
(BPW Item #)

7-IT

DEC 18, 2013 (Date)