**STANDARD SERVICES CONTRACT**

OTHS/EBT-14-001-S

**THE DEPARTMENT OF HUMAN RESOURCES**

ELECTRONIC BENEFITS TRANSFER SYSTEM

 **THIS CONTRACT** is made this       day of      ,      by and between the Department of Human Resources, an agency of the State of Maryland, whose primary business address is 311 W. Saratoga Street, Baltimore, Maryland 21201 (hereinafter the “Department”)and       (hereinafter “Contractor”), whose primary business address is      **.**

 **IN CONSIDERATION** of the premises and the covenants herein, the parties agree as follows:

**1. DEFINITIONS**

* 1. Contract” means this Contract for , ADPICS Number N00R4400021
	2. **Department** means the Department of Human Resources.
	3. **Financial Proposal** means the Contractor’s Price Proposal submitted in response to the RFP.
	4. **OTHS** means Office of Technology for Human Services, a unit within the Department.
	5. **Procurement Officer** means Keosha Hall, Procurement Division, Department of Human Resources, Room 946, 311 West Saratoga Street Baltimore, MD 21201; 410-767-3390; Fax: 410-333-0258, who is the person authorized to administer the Contract or make written determinations and findings with respect to the Contract.
	6. means the technical and financial response by the Contractor in response to the RFP.
	7. means the  identified in Section 1.1**.**
	8. **State** means the State of Maryland.
	9. **State Project Manager** means Joe May, ,Office of Technology for Human Services , Department of Human Resources, Room 1100 Eastern Blvd, Essex, MD 21221; 410-238-3563; Fax: 410-238-3569, or designee, who unless otherwise indicated herein is the primary point of contact relating to the services provided hereunder.
	10. **Technical Proposal** means the Contractor’s Technical Proposal submitted in response to the RFP.

**2. SCOPE OF WORK**

* 1. The Contractor shall provide deliverables, programs, goods, and services specific to the Contract in accordance with the terms and conditions hereof and the following Attachments which are incorporated as part of this Contract:

**The**

**Attachments A through II**

If there is any conflict between this Contract and the Attachments, the terms of the Contract shall govern. If there is any conflict among the Attachments, the following order of precedence shall determine the prevailing provision:

  **Attachment 1 - The RFP**

**Attachment 2 –**

 **Attachment A –** **Financial Proposal**

 **Attachment B – Bid/Proposal Affidavit**

 **Attachment C – Contract Affidavit**

* 1. 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 the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
	2. This Contract  subject to State Finance and Procurement Article, Title 18. Additional information regarding the State’s Living Wage requirement is contained in the attached Addendum entitled, “Living Wage Requirements for Service Contracts.” It has been determined that this Contract.

**3. TERM**

Unless otherwise terminated earlier as provided in this Contract, the term of this Contract shall be from \_\_\_\_\_ and continue through \_\_\_\_. The Contract also contains two 2-year Options to renew the Contract, which may be exercised at the sole discretion of the State.

**4. CONTRACTOR’S PERSONNEL**

Contractor agrees that all personnel identified in its Offer, or personnel of equal qualifications, shall be assigned to perform the terms of the Contract. Personnel described in the  may  be removed from the performance of the Contract except as provided in Section 3.28 of the RFP.

**5. CONSIDERATION AND PAYMENT**

**5.1** The consideration to be paid the Contractor shall be determined in accordance with the RFP, the Financial Proposal and the Contractor’s, if any. Any work performed by the Contractor in excess of the agreed upon price, without the prior written approval of the State Project Manager is at the Contractor’s risk of non-payment. The Contract is not to exceed (“NTE”) Insert Written Dollar Amount here       and Option amount.

* 1. **INVOICING**
1. The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required Deliverables within the time frame specified in the RFP and Contract, fails to perform in a satisfactory and timely manner, or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract.
2. Invoices must be addressed to:

**Voice:**       **Fax:**

**Email:**

All invoices must be signed and dated in addition to including the Contractor’s mailing address, the Contractor’s Federal Tax ID number, which is      , the State’s assigned contract control number, the goods/services provided, the time period covered by the invoice, the amount of requested payment and all information required by RFP Section 2.23.

1. Payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after receipt of an approved 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 applicable, are prohibited.

**6. COSTS AND PRICE CERTIFICATION**

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

**7. CONTINGENT FEE PROHIBITION**

The Contractor warrants and certifies that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or 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 agent, any fee or any other consideration contingent on the making of this Contract.

**8. NON-AVAILABILITY OF FUNDING**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall or may, at the State’s discretion 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 non-recurring cost incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as possible after it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**9. NON-HIRING OF STATE OFFICIALS AND 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.

**10. INDEPENDENT CONTRACTOR STATUS**

The Contractor is an independent Contractor and neither the Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State or the Department. Nothing contained in this Contract is intended or should be construed as creating the relationship of co-partners, joint ventures, or an association between the State or the Department and the Contractor.

From any amount due the Contractor, there will be no deductions for federal income tax or FICA payments, or for any State income tax, or for any other purposes that are associated with any employer-employee relationship, unless required by law. Payment of federal income tax, FICA, and any State income tax is the responsibility of the Contractor.

**11. MARYLAND LAW**

The place of performance of this Contract shall be the State of Maryland. This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

**12. COMPLIANCE WITH LAWS**

The Contractor hereby warrants that:

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.
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, or the Federal Government, 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.
3. It shall comply with all applicable federal, State and local governmental laws, regulations and standards applicable to its activities and obligations under this Contract.
4. It shall comply with all applicable policies of the Department.

E. 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.

13. 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 COMAR Title 21 in effect on the date of execution of this Contract are applicable to this Contract.

**14. SUBCONTRACTING AND SUCCESSOR IN INTEREST**

**14.1** The Contractor shall not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer. The Contractor shall not assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, which may require a Contract amendment. Any such subcontract or assignment, including the terms and conditions of any such agreement, shall be subject to the unilateral determination of the Procurement Officer to protect the interest of the State. The Department shall not be responsible for the fulfillment of the Contractor’s obligation to the subcontractors.

**14.2** The Contractor shall notify the Procurement Officer, in writing, as soon as is practical, regarding its intent or at least thirty (30) days before its final decision, to merge, acquire or be acquired by another organization (novation). The Contractor shall provide the Procurement Officer with the documentation required by COMAR 21.05.02.24. If such a merger, acquisition, etc. is unacceptable to the Department, the Contract may be terminated without liability to the Department.

**14.3** The Contractor shall notify the Procurement Officer, in writing, within twenty-four (24) hours of a filing of bankruptcy and identify the Department and the State of Maryland as a secured creditor.

**15.** **PROMPT PAYMENT OF SUBCONTRACTORS**

**15.1** The Contractor shall ensure that all subcontractors, including MBE subcontractors, are promptly paid any undisputed amount to which the subcontractor is entitled. An undisputed amount is an amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, if any, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

**15.2** If the Contractor withholds payment of an undisputed amount to its subcontractors, the Department, may, at its sole option and discretion: a) refuse to 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; d) place a payment for an undisputed amount in an interest-bearing escrow account; or e) take other or further actions as appropriate to resolve the withheld payment dispute.

**15.3** 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.

**15.4** The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.

**15.5** To ensure compliance with certified MBE subcontract participation goals, and to monitor compliance with the terms of the contract, the Department shall take action to remedy noncompliance consistent with COMAR 21.11.03.13.

**15.6** 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 Section 15 herein, may not affect the rights of the contracting parties under any other provision of law, be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding, or result in liability against or prejudice the rights of the Department.

**16.** **NONDISCRIMINATION IN EMPLOYMENT**

The Contractorshall not discriminate against any employee or applicant for employment because of marital status, race, color, religion, sex, age, physical or mental disability, national origin, or sexual orientation. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination because of their race, color, religion, sex, age, physical or mental disability, national origin, or sexual orientation. The Contractor shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the State Project Manager or by the governmental agency exercising jurisdiction, setting forth the substance of this clause.

17. NONDISCRIMINATION IN PROGRAMS/AMERICANS WITH DISABLILITIES ACT COMPLIANCE

The Contractor agrees that, in providing any aid, benefit, service, program, or activity, under this Contract on behalf of the Department, it will not: (a) deny any individual the opportunity to participate in or benefit from the aid, benefit or service equal to that provided others; (b) provide a qualified individual with a disability with any aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; (c ) provide different or separate aid, benefits, or service to individuals or classes of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others; (d) deny a qualified individual with a disability the opportunity to participate as a member of any planning or advisory boards; or, (e) otherwise limit opportunity enjoyed by others receiving the aid, benefit, or service.

The Contractor agrees further to not utilize criteria or methods of administration that have the effect of subjecting anyone to discrimination on the basis of disability, or have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the Department’s program with respect to individuals with disabilities.

**18.** **CONFIDENTIALITY AND SAFEGUARDING** **CLIENT INFORMATION**

Except in accordance with a court order, neither party shall use or disclose any information concerning a recipient of the services provided under this Contract for any purposes not directly connected with the administration of such services, except upon written consent of the other party and the recipient or his/her responsible parent, guardian, or legal representative or as required by §§ 10-611, et seq., State Government Article and Human Services Article §§ 1-201 to 1-205, Maryland Annotated Code and COMAR 07.01.07.

Nothing in this Contract shall prevent the Department or the Contractor from using and disclosing statistical data derived from information concerning a recipient of the services provided under this Contract so long as that statistical data does not identify any recipient of such services.

**19. DELAYS AND EXTENSIONS OF TIME**

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions may 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 State contract, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or the delays of a subcontractor or supplier arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor, subcontractor, or suppliers.

**20. INDEMNIFICATION**

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

**20.2** The State has no obligation to provide legal counsel or defense to the Contractoror 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 theContractor or its subcontractors as a result of or relating to the Contractor’s obligations under this Contract.

**20.3** The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractoror its subcontractors as a result of or relating to the Contractor’s obligations under this Contract. The State shall only be liable up to the amount for which it is found liable under the Maryland Tort Claims Act, §§ 12-101, *et seq.*, State Government Article, Annotated Code of Maryland.

**20.4** The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractoror its subcontractors regarding any matter resulting from or relating to the Contractor’s obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor’s performance under this Contract.

**21. SUSPENSION OF WORK**

The Procurement Officer 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 State may determine to be appropriate for the benefit of the Department.

**22. 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 Procurement Officer shall determine that such termination is in the best interest of the State. The State will ensure that the Contractor is paid for all reasonable, allowable and allocable costs associated with the termination of this Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by COMAR 21.07.01.12A (2).

**23. TERMINATION FOR DEFAULT**

If the Contractor fails to fulfill its obligation 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 Procurement Officer shall give the Contractor thirty (30) days prior written notice of such default, and if the Contractor has not submitted a corrective action plan within seven (7) days and cured such default within the thirty (30) day period, the Procurement Officer may, by written notice, within five (5) days after expiration of this period, terminate the Contract. 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 the 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 determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**24. DISPUTES**

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

**25.** **MERGER, AMENDMENTS, AND/OR MODIFICATIONS**

This Contract, together with the Attachments attached hereto and incorporated herein by reference, represents the complete, entire, total and final Contract between the Department and theContractor.No other understanding or representation, oral or written, regarding the subject matter of this Contract, shall be deemed to exist or to bind the Department and theContractor hereto, and any such understanding or representation existing prior to the execution of this Contract is hereby specifically and entirely superseded thereby. The Department and theContractor expressly reserve the right to amend, alter, vary, modify or waive any provision of this Contract provided only that:

A. Such amendment, alteration, variation, modification, or waiver must first be approved in writing by the Procurement Officer, subject to any additional approvals required by State law; and

B. After the provisions of (a) above have been fully satisfied, such amendment, alteration, variation, modification, or waiver shall be valid only when reduced to a writing which has been duly signed by each and every signatory to the original of this Contract or, in the alternative, to any and all legal successors to the aforesaid signatories.

The parties hereby expressly acknowledge the possibility of changes in Federal regulations applicable to the Contract. The State will not be responsible for any expenses incurred by any Contractor due to changes or mandates in Federal and State laws and regulations.

**25.1** The parties expressly reserve the right to extend the term of the Contract, without additional cost to the State beyond the NTE amount identified in Section 5.1 herein and for services provided beyond the original term of the Contract, provided the extension is for a reasonable, limited, and defined time, and provided that the scope of work under the extension is the same as the original Contract. It is also agreed that all such modifications shall be reduced to writing, signed by the parties, and may be subject to approval by the Board of Public Works.

**26. FINANCIAL DISCLOSURE**

The Contractor shall comply with the provisions of §13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other contracts 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 thirty (30) days of the time when the aggregate value of these contracts, leases or other contracts reaches $100,000, file with the Secretary of State of Maryland a list that contains the name and addresses of: any resident agent of the business; each officer of the business; and if, known, each person who has beneficial ownership of the business.

**27. POLITICAL CONTRIBUTION DISCLOSURE**

The Contractor shall comply with §§ 14-101 through 14-108, Election Law Article, Annotated Code of Maryland, which requires that every person that enters into contracts, leases or other contracts with the State, a county, or an incorporated municipality, or their agencies, during any 12-month period in which the person receives in the aggregate $100,000 or more, shall file with the State Administrative Board of Election Laws 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 Administrative Board of Election Laws:

 A. 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

 B. If the contribution is made after the execution of a lease or 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.

**28. RETENTION OF RECORDS**

The Contractor shall retain all books, records, and documents in any way relating to this Contract, including documents that reflect all direct or indirect costs expended in the performance of this Contract for a period of no less than after the date of final payment by the State, or any applicable statute of limitations, whichever is longer.

**29. RIGHTS TO RECORDS**

**29.1** The Contractor agrees that all documents and materials, including, but not limited to, reports, work papers, studies, computations, tests, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. To the extent that the Contractor incorporates any of its materials, reports or data into the documents and materials delivered under any Deliverable, the Contractor hereby grants to the State a royalty-free, non-exclusive right to use such Contractor’s information solely for the State’s use and that of its agents.

**29.2** Notwithstanding anything to the contrary in this Contract, Contractor shall have the right to retain a copy of all its work papers and administrative records but shall not be entitled to use such documents except for the benefit of the State or the Contractor’s internal record keeping requirements. The Contractor shall not affix any restrictive markings upon any data and, if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

**29.3** At any time during normal business hours, and as deemed necessary by the State, the Contractor agrees that the State or any of its duly authorized representatives shall have access to and the right to audit any supporting document, including but not limited to all of the records stated above, for a period of after completion of the Contract, final payment by the State, or any applicable statute of limitations, whichever is longer. The Contractor shall permit the State to make excerpts or transcripts from the photocopies of all such records the State auditor deems appropriate. The Contractor further agrees that the independent CPA or firm hired by the Contractor will allow the Department to examine any of the working papers considered or used in preparing the audit for the time period detailed above. The Contractor shall give the State or any of its duly authorized representatives explicit authorization to review and copy any records maintained by another government agency which are related to the expenditures incurred by the Contractor in the performance of services under this Contract or in compliance with this Contract and applicable laws and regulations. These agencies may include, but are not limited to, the Comptroller of the Treasury, State Department of Assessments and Taxation, and State Unemployment Insurance Fund. The Contractor acknowledges that the Department is authorized by it to review and copy any such records, and hereby certifies that its execution of this Contract is evidence of this authorization and may be construed by these agencies as authorizing the release of any such records to the Department upon the request of the Department, with no further written authorization from the Contractor being necessary.

**29.4** The State, or its employees, agents or designees, including auditors in the Office of Inspector General, may make unannounced visits to the Contractor’s facility at any time. In all other instances, the Contractor shall make its facility available for inspection or visits by the State upon two (2) business days notice.

**30. LOSS OF DATA**

In the event of loss of any data or records necessary for the performance of this Contract, where such loss is due to the error or negligence of the Contractor, subcontractors, or agents, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data or records on a schedule set by the State Project Manager.

**31. CONTINGENT FEE PROTECTION**

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

**32. COMMERCIAL NONDISCRIMINATION**

**32.1** 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 Agreement and may result in termination of this Agreement, 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.

**32.2** The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all sub-contracts.

**32.3** As a condition of entering into this Contract, upon the **Commission on Civil Rights** request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract.  Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State’s Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that 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.

**33.** **PURCHASE AND TREATMENT OF ASSETS**

 A. Contractor shall obtain written approval of the Department for any purchase of assets with funds paid under this Contract, excluding ordinary office supplies, except that such is not required with regard to purchase of assets described in the Attachment(s) attached hereto.

 B. Title to all property purchased by the Department shall remain in the Department. Title to all property acquired by the Contractor at a cost of over five hundred ($500) dollars including purchase by lease-purchase agreement for the cost of which the Contractor is to be reimbursed under this Contract, shall immediately vest in the Department upon (i) issuance for use of such property in the performance of this Contract, or (ii) reimbursement of the cost thereof by the Department, whichever occurs first.

 C. The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation of the Department’s property so as to assure its full availability and usefulness for the performance of this Contract.

 D. The Department’s property shall, unless otherwise provided herein, or approved in writing by the Department, be used only for the performance of this Contract.

 E. In the event that the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Department’s property, it shall use the proceeds to repair, renovate, or replace the Department’s property involved, or shall credit such proceeds against the cost of the work covered by the Contract, or shall otherwise reimburse the Department as directed by the Department.

 F. At the conclusion of the term of this Contract, the Contractor shall deliver to the Department a listing of all the Department’s property purchased hereunder, showing the following information as to each property item:

 (i) Description of the property;

 (ii) Manufacturer’s serial number or other identification number;

 (iii) Acquisition date and cost;

 (iv) Source of the property;

 (v) Percentage of Federal funds used in acquisition of the property; and

 (vi) Location, use and condition of the property.

**33.1** Upon termination of the Contract, the Department may require the Contractor to deliver to the Department any property specifically produced or acquired for the performance of this Contract.

**34. ADMINISTRATIVE**

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

**34.2 Notices.** Unless otherwise indicated,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: If to the Contractor:**

|  |  |  |
| --- | --- | --- |
|       |  |       |
|       |  |       |
|       |  |       |
|       |  |       |
|       |  |       |

**35. TECHNICAL ASSISTANCE AND CONSULTATION**

The Department shall furnish the Contractor with such technical assistance and consultation by the Department’s staff as is reasonably necessary to assure satisfactory performance in providing the services required by this Contract and be it readily available elsewhere.

The use of funds under this Contract by the Contractor to hire consultants shall require the prior approval by the Department’s designated Procurement Officer, of any such arrangement and the proposed work plan of the consultant(s) involved.

**36. PUBLICITY**

The Contractor, if providing direct services to the Department’s clients, agrees to include an acknowledgement of funding received from the Department under this Contract in any and all related publications. “Related Publications” are not limited to publications funded under the Contract.

**37. DRUG AND ALCOHOL FREE WORKPLACE**

The Contractorshall maintain a drug and alcohol free workplace, in accordance with COMAR 21.11.08, Drug and Alcohol Free Work Place.

**38. TRANSPARENCY ACT COMPLIANCE**

This Contract **is** governed by the provisions of the Federal Funding accountability and Transparency Act of 2006, Pub. L. 109-282, as amended (Transparency Act).

1. Compliance. The Contractor agrees that it will comply with all Transparency Act requirements applicable to this Contract, including modifications or additional requirements that may be imposed by law, future guidance and clarifications of Transparency Act requirements.
2. Conflict of Laws. The Contractor agrees that to the extent Transparency Act requirements conflict with State requirements, the Transparency Act requirements shall control.
3. Enforceability. The Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of federal funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.
4. Contractor Identification. All Contractors are required to maintain a valid Dun & Bradstreet Data Universal Numbering System (DUNS) number and current registration in the Central Contractor Registry (CCR) prior to award. The registration procedure for the CCR can be found at [**www.ccr.gov**](http://www.ccr.gov). Contractors can request a DUNS number or modification to an existing DUNS record by using the online webform process at <http://fedgov.dnb.com/webform> (for US and International locations) or they can call 866-705-5711. The toll free number is for US locations only. Registrants will be asked for their entity name, address, city, state, country, postal code, highest ranking individual’s name and title, line of business, number of employees and legal structure (corporation, non-profit, etc.) and socio-economic data (veteran owned, woman owned, etc.). If the webform is used, their mailing address area, SIC code and annual revenue data lines, but these are optional.
5. The Contractor is required to submit the following information required for reporting:
6. Name of entity receiving award
7. Amount of award
8. Funding agency
9. NAICS code for contracts / CFDA program number for grants
10. Award title descriptive of the purpose of the funding action
11. Location of the entity and place of performance (including congressional district)
12. Unique identifier of the entity and its parent; and
13. Total compensation and names of top five executives, as

 applicable.

**39. NON-VISUAL ACCESSIBILITY WARRANTY**

The Contractor warrants that the information technology offered under the Proposal (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. 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.

**40. 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 to 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.

41. MINORITY BUSINESS ENTERPRISE (MBE) GOAL COMPLIANCE

**41.1 MBE Participation**

The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the MBE goal. MBE performance must be in accordance with Attachment F (MDOT Certified MBE Utilization and Fair Solicitation Affidavit) as authorized by COMAR 21.11.03. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in Attachment F.

**41.2 MBE Participation Goal**

A MBE subcontract participation goal of **ten (10%)** **percent** has been established for this RFP. By signing this Contract, the Contractor agrees that this dollar amount of the Contract will be performed by certified minority business enterprises.

**41.3 Liquidated Damages**

The Contractor is required to make good faith efforts to comply with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or Contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation as follows:

1. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13 (B) (3): **$27.00** per day until the monthly report is submitted as required.
2. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13 (B) (4): **$87.00** per MBE subcontractor.
3. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a Contract with a MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
4. Failure to meet the Contractor’s total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
5. Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of this Contract: **$100.00** per day until the undisputed amount due to the subcontractor is paid.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the Contract and exercise all other rights and remedies provided in the Contract or by law.

**42. PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY**

* 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.
	2. The State shall own all right, title and interest in and to all Custom Software Deliverables and all intellectual property rights subsisting therein. “Custom Software Deliverables” means all computer programs and software and all related documentation provided to the State pursuant to this Contract. Custom Software Deliverables includes, but is not limited to, application modules developed to integrate with a commercial-off-the-shelf software, maintenance updates and bug fixes, configuration files, all related documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools; all software design information (e.g., module names and functionality); and user instructions. Custom Software Deliverables excludes any Third Party Intellectual Property.
	3. Immediately upon a Contractor’s voluntary or involuntary filing of bankruptcy or any other insolvency proceeding, Contractor’s dissolution, Contractor’s merger with or acquisition by another company or Contractor, discontinuance of support of any software or system, the Contractor shall deliver to the State (except to the extent previously provided to the State) all completed and in-process (regardless of form) Custom Software Deliverables and all Third Party Intellectual Property.
	4. Contractor shall provide to the State on such media and in such form as designated by the State (a) the source code version of the software components of any Custom Software Deliverables; (b) the object code version of the software components of any Third Party Intellectual Property; (c) all non-software components of any Custom Software Deliverables and Third Party Intellectual Property; and (d) the Deliverables in any other format or condition as may be set forth in the Contract.
	5. Unless otherwise identified as Licensed Data (as defined below), the State shall own all right, title and interest in and to all data, databases and all derived data products (and all intellectual property rights subsisting therein) created, collected, manipulated, or directly purchased as part of this Contract (“State Data”). The purchasing State Agency is considered the custodian of the State Data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.
	6. Licensed and/or copyrighted data from third parties that are identified in the Contract (“Licensed Data”) shall be governed by the terms and conditions identified in the Contract.
	7. All work performed or provided by the Contractor in connection with the Contract, including any and all deliverables (including any Custom Software Deliverables, State Data, reports drawings, studies, specifications, estimates, tests, photographs, graphics, mechanical, artwork, computations, data, inventions, discoveries, developments, improvements, ideas, concepts, creative works, innovations and designs, whether or not in writing or reduced to practice, and whether or not they are patentable, including but not limited to, processes, methods, formulas, and techniques and know-how, works of authorship, trade secrets, trademarks, copyrights, and any other intellectual property) (“Work Product”) will be considered “work for hire,” as if the Contractor had been “hired to invent,” or as having similar status in the United States or elsewhere, and therefore, all rights therein will be the property of the State. In the event any Work Product is not considered “work for hire,” Contractor, on behalf of itself and its employees, agents, Subcontractors and affiliates, hereby assigns to the State all rights, title, and interest in such Work Product. The Contractor shall not affix (or permit any third party to affix) any restrictive markings upon any Work Product (except as expressly directed or otherwise authorized in writing by the State) and, if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such markings. During the term of this Contract and at any time following expiration or termination for any reason of this Contract, upon the request and at the reasonable expense of the State or its nominee and for no additional remuneration, Contractor and its employees, agents, Subcontractors and affiliates will take such action as the State reasonably may request to more fully evidence, protect, maintain, secure, defend, transfer, vest or confirm the State’s ownership, right, title and interest in the Work Product. If Contractor or any of its employees, agents, Subcontractors or affiliates fails to cooperate with or assist, execute, acknowledge, verify or deliver any such document requested by the State, Contractor hereby irrevocably appoints the State and its authorized officers and agents as the agent and attorney-in-fact to act in place of Contractor or such employee, agent, Subcontractor or affiliate, as applicable, to execute, acknowledge, verify and/or deliver any such document on such party’s behalf.
	8. Notwithstanding anything to the contrary in **Section 42.7**, to the extent (a)(i) the Work Product incorporates any commercial-off-the-shelf software and/or any Pre-Existing Intellectual Property or (ii) any commercial-off-the-shelf software and/or Pre-Existing Intellectual Property is required to access, install, build, compile or otherwise use the Work Product and (b) such commercial-off-the-shelf software and/or Pre-Existing Intellectual Property has been identified in the Contract (such as commercial-off-the-shelf software and Pre-Existing Intellectual Property individually and collectively referred to herein as “Third Party Intellectual Property,” which shall be the sole property of Contractor or its third party licensors, as applicable), Contractor hereby grants, on behalf of itself and any third party licensors, to the State a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, perpetual, worldwide right and license, with the right to sublicense, to use, execute, reproduce, display, perform, distribute copies of, modify and prepare derivative works based upon, such Third Party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended, including, but not limited to, the State’s right to provide such Third Party Intellectual Property, in connection with the Work Product, to other third parties. This right and license also includes the right to make, have made, use, sell, offer to sell, import and otherwise dispose of such Third Party Intellectual Property under any patents that Contractor or any of its third party licensors owns, controls or otherwise possess a right to grant any rights thereunder or thereto. “Pre-Existing Intellectual Property” means any program, utility or tool owned by Contractor that is in existence prior to the date of this Contract. To the extent any Third Party Intellectual Property has not been identified in the Contract, Contractor hereby grants to the State all rights to such Third Party Intellectual Property consistent with the ownership rights in the Work Product granted to the State in accordance with **Section 42.7.**
	9. Subject to the terms of **Section 20**, Contractor shall defend, indemnify, and hold harmless the State, including, but not limited to, the Agency and its agents, officers, and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any claim the Work Product or any Third Party Intellectual Property infringes, misappropriates or otherwise violates any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent, which consent may be withheld in the State’s sole and absolute discretion. Contractor shall be entitled to control the defense or settlement of such claim (with counsel reasonably satisfactory to the State), provided that the State will, upon requesting indemnification hereunder: (a) provide reasonable cooperation to Contractor in connection with the defense or settlement of any such claim, at Contractor’s expense; and (b) be entitled to participate in the defense of any such claim. Contractor’s obligations under this section will not apply to the extent any Third Party Intellectual Property infringes, misappropriates or otherwise violates any third party intellectual rights as a result of modifications made by the State in violation of the license granted to the State pursuant to section 5.8; provided that such infringement, misappropriation or violation would not have occurred absent such modification.
	10. Without limiting Contractor’s obligations under **Section 42.8**, if all or any part of the Work Product or any Third Party Intellectual Property is held, or Contractor or the State reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the item in accordance with its rights under this Contract; (b) replace the item with an item that does not infringe, misappropriate or otherwise violate any third party intellectual property rights and, in the State’s sole and absolute determination, complies with the item’s specifications, and all rights of use and/or ownership set forth in this Contract; or (c) modify the item so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and, in the State’s sole and absolute determination, complies with the item’s specifications and all rights of use and/or ownership set forth in this Contract.
	11. Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials and/or the Work Product, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State.
	12. Contractor, on behalf of itself and its Subcontractors, hereby agrees not to incorporate, link, distribute or use any third party software or code in conjunction with any Work Product in such a way that: (a) creates, purports to create or has the potential to create, obligations with respect to any State software (including any deliverable hereunder), including without limitation the distribution or disclosure of any source code; or (b) grants, purports to grant, or has the potential to grant to any third party any rights to or immunities under any State intellectual property or proprietary rights. Without limiting the generality of the foregoing, neither Contractor nor any of its Subcontractors shall incorporate, link, distribute or use, in conjunction with the Work Product, any code or software licensed under the GNU General Public License (“GPL”), Lesser General Public License (“LGPL”), Affero GPL (“AGPL”), European Community Public License (“ECPL”), Mozilla, or any other open source license, in any manner that could cause or could be interpreted or asserted to cause any State software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or any other open source software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or such other open source license.
	13. Without limiting the generality of the foregoing, neither Contractor nor any of its Subcontractors shall use any software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its Subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an “Open Source License”). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its Subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its Subcontractors that is undertaken under this Contract as to any software or technology shall be construed as being inconsistent with the intent to not cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.
	14. In connection with services provided under the Contract, the Contractor may create, acquire or otherwise have rights in, and may, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Contractor Technology"). To the extent that any Contractor Technology is contained in any of the Contract deliverables including any derivative works, the Contractor grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Contractor Technology in connection with the Contract deliverables for the State's purposes.
	15. Royalty-Free Rights to Use Software or Documentation Developed

The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which the Contractor purchases ownership, under this Contract or subcontract.

**43. LIMITATION OF LIABILITY**

**43.1** 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 42 ("Patents, Copyrights and Intellectual Property") of this Contract.

B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property based on actual damages sustained or awarded. The Contractor shall, without limitation indemnify, defend and hold harmless the State and its officers, employees and agents against any third party claims, demands, loss, damage or expenses (including counsel fees and court costs) relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the negligence or willful misconduct of the Contractor in the course of performing its obligations under the Contract.

C. For all other claims, damages, loss, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form, Contractor’s liability per claim shall not exceed five times the total amount of the Contract out of which the claim arises. Third party claims arising under Section 20 (“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 20 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 20.

**43.2** **Failure to Meet Service Level Requirements**

The Contractor shall agree that in the event of a failure to meet timelines in an approved project plan, Deliverable due dates and/or service levels defined in this RFP, damage shall be sustained by DHR. Actual damages to the State may be extremely difficult and impractical to determine. It is therefore agreed that the State, at its sole option and after the Contractor has been given reasonable opportunity, of which the timeframe will be determined at the sole discretion of the State, to cure the failure and fails to do so, may require the Contractor to pay liquidated damages for such failures according to the following subsections. Total damages will be limited as out-lined in Section 43.1 Limitation of Liability and any liquidated damages assessed will count against the limitations of liability threshold. In addition, a single event of failure on the part of the Contractor or its subcontractors will only result in the imposition of damages in one liquidated damage category. Liquidated Damages shall apply as follows:

1. In the event of a force majeure event, or failure due to third parties outside of the Contractors reasonable control, no liquidated Damages will apply.
2. In the event of a failure to meet performance requirements, other than an excusable failure, liquidated damages in any one month will not exceed the total amount of the invoice for that month.
3. Amounts due the State as liquidated damages will be deducted by the State from any money payable to the Contractor pursuant to this Contract.

The State will notify the Contractor in writing of any claim for liquidated damages before the date the State deducts such sums from money payable to the Contractor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.

The Contractor shall not be liable for liquidated damages when, in the opinion of DHR, incidents or delays result from excusable failure. DHR shall adopt a reasonable standard of review which takes into consideration the totality of the circumstances. The Contractor will bear the burden of providing evidence, that the delay is attributable to, and the responsibility of, another entity outside and independent of the custody, control, supervision and/or direction of the Contractor, its officers, agents or employees. Failure to provide such proof will result in the Contractor being responsible and liable for all liquidated damages hereunder.

**43.3 Failure Notification Requirement**

Written notification of failure to meet a performance requirement shall be given by DHR Project Manager to the Contractor. The Contractor shall have three (3) working days from the date of receipt of the written notification of failure to perform the specifications to cure the failure set forth in the written notification. If the failure is not resolved or if the Contractor fails to provide a plan to cure the failure that is acceptable to DHR Project Manager within this period, liquidated damages may be imposed retroactively to the date of failure to perform, excluding days used by DHR to review the product if it proves acceptable. However, if the product is not acceptable these review days may be included in the computation of liquidated damages. Such review shall be done within a reasonable time period and in no event exceed more than ten (10) working days.

**43.4 *Transition-In* and *Transition-Out* Timelines**

1. ***Transition In* Performance Standard.** The Contractor is responsible for ensuring that the services under this Contract are not jeopardized by delays in the transition schedule, as agreed and stated in the Contract, and defined in the final Transition In Plan approved by DHR Project Manager.

**Liquidated Damages.** If the Contractor fails to complete the required Transition In tasks and subtasks as per the agreed upon transition schedule, it being acknowledged and agreed by the parties that the damages the State might reasonably be anticipated to accrue as a result of any such failure are difficult to ascertain with precision, liquidated damages of $1,000.00 per calendar day for the first twenty (20) days, and thereafter $2,500.00 per calendar day shall be assessed for every calendar day, or fraction of a day that the schedule is delayed, from the date of written notification by DHR Project Manager to the Contractor that the schedule is late.

1. ***Transition Out* Performance Standard.** The Contractor is responsible for ensuring that the services provided to DHR are not jeopardized by delays in the Transition Out schedule, as agreed and defined in the final Transition In Plan of the incoming Contractor that has been approved by DHR. The Contractor will participate in all meetings, produce all documentation within three (3) business days of request, and complete all assigned tasks in accordance with the Transition In Plan approved by DHR Project Manager.

**Liquidated Damages.** If the Contractor fails to complete the required Transition Out tasks and subtasks in accordance with the defined due dates, it being acknowledged and agreed by the parties that the damages the State might reasonably be anticipated to accrue as a result of any such failure are difficult to ascertain with precision, liquidated damages of $2,500.00 per calendar day shall be paid by the Contractor to DHR for every calendar day, or fraction of a day that the schedule is delayed, from the date of written notification by DHR Project Manager to the Contractor that the schedule is late.

**43.5 Service Level Agreements (SLA)**

EBT Service Outage- A service outage is defined as a failure to satisfy any of the defined SLAs as outlined in RFP **Attachment Q**, Service Level Agreements. The requirement is that the service be available seven (7) days per week, 24 hours per day. For each SLA that is missed, the Contractor shall pay the State liquidated damages as stated in **Attachment Q.**

The liquidated damages will be assessed against any of the selected Contractor’s invoices submitted.

The Contractor shall provide the necessary equipment and/or methodology for measuring performance and shall perform those measurements. Such equipment and/or methodology are subject to approval by DHR Project Manager. Measurements shall be taken on a schedule to be provided by DHR Project Manager. Additional measurement periods shall be required, at the option of DHR, on demand and unannounced.

**43.6 Failure to Meet Project Deliverable Schedule Criteria**

For any failure by the Contractor to meet a critical project Deliverable due date, the Contractor shall pay liquidated damages in the amount of $2,500.00 per day per Deliverable, each and every day thereafter up to the maximum until such Deliverable is completed and accepted by DHR Project Manager. If the Contractor fails to complete the Deliverable within thirty (30) days, DHR may move to terminate the Contract for default. Critical project Deliverables are listed in RFP **Attachment X**, **Deliverables Chart**, and will also include deliverables developed through-out the life of this contract. Liquidated damages may apply to any contract deliverables including but not limited to those defined in Attachment X.

**43.7 Key Personnel**

In the event that the Contractor diverts or replaces any Key Personnel without the prior written approval of DHR, the Contractor is subject to liquidated damages in the amount of $2,500 per business day for diversion of the Contractor’s Project Manager (CPM) and $1,000 per business day for all other Key Personnel, until the personnel’s replacement is approved by DHR Project Manager and begins work. The damages will begin the first business day of the diversion or replacement of Key Personnel by the Contractor and applies only to replacement of personnel by the Contractor that is within the Contractor’s control. No liquidated damages will be payable by the Contractor if removal or reassignment of such personnel is required as a result of the following, provided that the Contractor provides written notification to DHR’s Project Manager within five (5) business days of such removal/reassignment and exercises commercially reasonable efforts to find a suitable replacement for the Personnel:

1. Voluntarily resignation from Contractor’s employment
2. Dismissal by the Contractor for performance or for misconduct (e.g. fraud, drug abuse, theft)
3. Inability to work due to a disability
4. Replacement, insufficient staff or reassignment of such personnel by DHR

**The Next Page is the Signature Page**

Type Agency Control Number here

**IN WITNESS WHEREOF,** the parties have executed this Contract and have caused their respective seals to be affixed hereto.

|  |  |  |
| --- | --- | --- |
| ATTEST: |  | FOR: CONTRACTOR |
|  |  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Witness |  | By: |
|  |  |  |
|  |  | Type Title Here |
|  |  | Title |
|  |  |  |
|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Date Signed |
|  |  |  |
|  |  |  |
|  |  | **FOR: DEPARTMENT OF HUMAN RESOURCES** |
|  |  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Witness |  | By: |
|  |  |  |
|  |  | Type Title Here |
|  |  | Title |
|  |  |  |
|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Date Signed |
|  |  |  |
|  |  |  |
|  |  |  |
| **APPROVED AS TO FORM AND LEGAL SUFFICIENCY:** |
|  |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **ASSISTANT ATTORNEY GENERAL** | **(Date)** |
|  |
|  |
| **APPROVED BY BPW:** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
|  | **(BPW Item #)** | **(Date)** |