

**Commercial Off-the-Shelf Software (COTS) Contract**

DEPARTMENT OF INFORMATION TECHNOLOGY (DoIT)

Commercial Off-the-Shelf Software

060B2490021-2015

THIS CONTRACT (the "Contract") is made this 2<sup>nd</sup> day of May, 2016 by and between EN Pointe Technologies Sales, LLC and, on behalf of the STATE OF MARYLAND, the MARYLAND DEPARTMENT OF INFORMATION TECHNOLOGY (DoIT).

IN CONSIDERATION of the following, the parties agree as follows:

**1. Definitions**

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

- 1.1. "COMAR" means the Code of Maryland Regulations.
- 1.2. "Contract" means this contract for Commercial Off-the-Shelf (COTS) Software and related Installation, Training, and Maintenance Services. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Purchase Order (PO).
- 1.3. "Contract Manager" means the individual identified in Section 1.6 of the Request for Proposals (RFP), or a successor designated by the Department.
- 1.4. "Contractor" means En Pointe Technologies Sales LLC, whose principal business address is:  
1940 E. Mariposa Ave, El Segundo, CA 90245.
- 1.5. "Department" means the Department of Information Technology (DoIT).
- 1.6. "eMM" means eMaryland Marketplace.
- 1.7. "Financial Proposal" means the Contractor's financial proposal dated 12/18/15.
- 1.8. "Installation" means transferring manufacturer's electronic media to computer systems so that the COTS software will provide the features and functions generally described in the user documentation.
- 1.9. "Minority Business Enterprise" (MBE) means an entity meeting the definition at COMAR 21.01.02.01B(54), which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.10. "Procurement Officer" means the person identified in Section 1.5 of the RFP or a successor designated by the Department.
- 1.11. "Proposal" means, as appropriate, either or both the Contractor's Technical or Financial Proposal.
- 1.12. "Purchase Order" or "PO" means the authorization for Contractor to proceed with delivery of products and/or any services requested via a PORFP.
- 1.13. "PORFP" means Purchase Order Request for Quotation.
- 1.14. "Requesting Agency" means the unit of the State government issuing the PORFP.
- 1.15. "RFP" means the Request for Proposals for Commercial Off-the-Shelf Software, Solicitation # 060B2490021-2015 and any amendments thereto issued in writing by the State.
- 1.16. "Sensitive Data" means any personally identifiable information (PII), protected health information (PHI) or other private/confidential data.

- 1.17. "Software" means the object code version of computer programs licensed pursuant to this Contract. Embedded code, firmware, internal code, microcode, and any other term referring to software that is necessary for proper operation is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. "Software" also includes any upgrades, updates, bug fixes or modified versions or backup copies of the Software licensed to the State by Contractor or an authorized distributor.
- 1.18. "State" means the State of Maryland.
- 1.19. "Technical Proposal" means the Contractor's technical proposal dated 12/18/15.
- 1.20. Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

## **2. Scope of Contract**

- 2.1. The Contractor shall provide COTS software, installation and/or training, and/or maintenance, as described in a PORFP or PO, in the following functional area(s):
- Functional Area I: COTS Software (**excluding** Microsoft)
  - Functional Area II: Installation and Training Services
  - Functional Area III: Manufacturer's Software Maintenance
- 2.2. These products and services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and the accompanying Exhibits, the terms of this Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall apply:
- Exhibit A – The RFP
- Exhibit B – The Contract Affidavit dated 4-25-2016.
- Exhibit C – The Technical Proposal.
- Exhibit D –The Financial Proposal
- 2.3 A PORFP may specify terms in addition to the terms specified herein, including warranties, deliverables, and acceptance test requirements. PORFPs, POs and Reference BPOs may not limit the State's rights as provided by law, in this Contract, or in the RFP and may not change the terms of, or conflict with, this Contract or any of its Exhibits.

## **3. Period of Performance**

- 3.1. The Contract shall be for a period of 12 years beginning April 6, 2016 and ending on September 30, 2027.
- 3.2. Audit, confidentiality, document retention, patents, copyright, intellectual property, warranty, and indemnification obligations under this Contract and any other obligations specifically identified shall survive expiration or termination of the Contract.
- 3.3. Upon termination of this Contract, the Contractor, at its own expense, shall deliver any equipment, software, or other property provided by the State to the place designated by the Procurement Officer.

## **4. Consideration and Payment**

- 4.1. In consideration of the satisfactory performance of the Contract and any PORFP and/or PO, the State will promptly process a proper invoice for payment in accordance with the terms of this Contract.
- 4.2. The total payment for products and services provided under a fixed price PO or the fixed price element of a combined fixed price – time and materials PO, shall be the firm fixed price submitted by the Contractor in its quotation or proposal submitted in response to a PORFP, regardless of the actual cost to the Contractor.
- 4.3. POs that include a time and materials element shall include a not-to-exceed (NTE) ceiling for payments. For time and materials PO, or POs which include both fixed price and time and materials elements, total payments to the Contractor for the time and materials portion may not exceed the identified PO NTE amount. The Contractor shall notify the Contract Manager, in writing, at least 60 days before time and material obligations are expected to reach the PO NTE Amount. The Contractor shall have no obligation to perform the time and materials requirements under this Contract after payments reach the PO NTE Amount. The cessation of the Contractor's obligation to perform under this paragraph 4.3 is expressly conditioned on the following: that prior to the PO NTE Amount being reached, the Contractor shall: (i) give the notice required under this paragraph 4.3; (ii) promptly consult with the Requesting Agency and cooperate in good faith with the Requesting Agency 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 PO NTE Amount will be reached; and (iii) secure databases, 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 any such unfinished work. Any work performed by the Contractor in excess of PO NTE amount without the prior written approval of the Contract Manager is at the Contractor's risk of non-payment.
- 4.4. Invoices shall be submitted as specified in a PORFP. Invoices that contain both fixed price and time and material items must clearly identify the items as either fixed price or time and material billing. Each invoice must include the Contractor's Federal Tax Identification Number: 47-3335712. The Contractor's eMM identification number is 305140. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Requesting Agency'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. The final payment under a PORFP will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.
- 4.5. 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, then Contractor will be notified and provided a time specified by the State to cure the breach. If the breach is not cured within the time specified within the notification, the Procurement Officer may 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.
- 4.6. PORFPs may specify periodic payments based on deliverables or stages of completion. A PORFP may further specify that a portion of the payments due will be withheld until completion of the PO. The amount withheld from each payment shall be paid to the Contractor within thirty (30) days of the State's acceptance of all deliverables required under the PO and receipt from the Contractor of a release in a form prescribed by the State for any claims arising out of or related to the PORFP.
- 4.7. Payment of an invoice by the State is not evidence that services were rendered as required under

this Contract or any applicable PORFP.

**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. Except as provided in Section 5.4 of this Contract, the Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, software, graphics, mechanical, artwork, computations and data prepared by or for the Contractor for purposes of this Contract ("Work Product") shall become and remain the sole and exclusive property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.3. Except as provided in Section 5.4 of this Contract, the Contractor agrees that at all times during the term of this Contract and thereafter, Work Product shall be "works made for hire" as that term is interpreted under U.S. copyright law and shall be owned by the State. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights and all information used to formulate such Work Product. In the event any Work Product is or may not be considered a work made for hire under applicable law, Contractor assigns and transfers to the State the entire right, title, and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof. Contractor shall execute all documents and perform such other proper acts as the State may deem necessary to secure for it the rights pursuant to this section.
- 5.4. Notwithstanding anything to the contrary in this Contract, to the extent (i) the Work Product incorporates any commercial-off-the shelf software (COTS) and/or any Pre-Existing Intellectual Property or (ii) any COTS and/or 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 COTS 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 to the State, on behalf of itself and any third-party licensors, a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right 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.
- 5.5. Subject to the terms of Section 6, Contractor shall defend, indemnify, and hold harmless the State, including, but not limited to, the Department or Requesting 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.

- 5.6. Except if Contractor has pre-existing knowledge of such infringement, 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 5.4; provided that such infringement, misappropriation or violation would not have occurred absent such modification.
- 5.7. Without limiting Contractor's obligations under Section 5.5, 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 or service in accordance with its rights under this Contract; (b) replace the item or service with an item that does not infringe, misappropriate or otherwise violate any third party intellectual property rights and, in the State's sole and absolute determination, complies with the item's specifications as defined in this Contract, and all rights of use and/or ownership set forth in this Contract; or (c) modify the item or service so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and, in the State's sole and absolute determination, complies with the item's specifications and all rights of use and/or ownership set forth in this Contract.
- 5.8. Except for any Pre-Existing Intellectual Property and Third-Party Intellectual Property, Contractor shall not acquire any right, title, or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a PORFP executed by the Contractor and an authorized representative of the State.
- 5.9. Contractor, on behalf of itself and its subcontractors, hereby agrees not to incorporate, link, distribute or use any Third-party Intellectual Property 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 such other open source software.
- 5.10. 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 intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

- 5.11. The Contractor shall report to the Department or Requesting Agency, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Work Product delivered under this Contract.
- 5.12. This Section 5 shall survive expiration or termination of this Contract.

## **6. Indemnification**

- 6.1. In addition to Contractor's indemnification obligations described in Section 5, Contractor shall indemnify, defend, and hold the State, its directors, officers, employees and agents harmless from liability for the following conduct arising from or relating to the performance of the Contractor or its subcontractors under this Contract: (a) tangible property damage, bodily injury and death, to the extent caused by or contributed to by Contractor or its subcontractors and (b) fraud or willful misconduct of Contractor or its subcontractors. Such indemnification shall include all related defense costs and expenses attributable to the claims of third parties, including, but not limited to, reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties.
- 6.2. Upon the State's request of indemnification under Section 5 or 6, Contractor shall be entitled to control the defense or settlement of the relevant claim with counsel reasonably satisfactory to the State. The State will: (a) provide reasonable cooperation to Contractor in connection with the defense or settlement of the claim, at Contractor's expense; and (b) be entitled to participate in the defense of the claim, at its own expense.
- 6.3. 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.
- 6.4. 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.
- 6.5. To the extent permitted by applicable law, the Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any third party claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.
- 6.6. This Section 6 shall survive expiration or termination of this Contract.

## **7. Limitations of Liability**

Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees, including but not limited to personal injury; physical loss; or violations of the Patents, Copyrights, Intellectual Property sections of this Contract, as follows:

- 7.1. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 5 ("Patents, Copyrights, Intellectual Property") of this Contract;
- 7.2. Without limitation, for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 7.3. 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 one (1) time the total amount of the PORFP out of which the claim arises; provided however, the State may, in its sole discretion, decrease the ceiling established hereunder in any PORFP issued pursuant to this RFP. Third-party claims arising under Section 6 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third-party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.
- 7.4. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor.

## **8. Prompt Pay Requirements**

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

with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

**9. Risk of Loss; Transfer of Title**

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

**10. Source Code Escrow**

Source Code Escrow is not required for this Contract.

**11. 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. In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in Section 16.17.

**12. Markings**

The Contractor shall not affix (or permit any third party to affix), without the Department or Requesting Agency's consent, any restrictive markings upon any Work Product and if such markings are affixed, the Department or Requesting Agency shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

**13. Exclusive Use and Ownership**

Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or Requesting Agency or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department or Requesting Agency's confidential information is to be disclosed shall be advised by Contractor of and bound by the confidentiality and intellectual property terms of this Contract.

**14. Notification of Legal Requests**

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

**15. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including

services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

#### **16. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law. This Section shall survive expiration or termination of the Contract.

#### **17. Parent Company Guarantee (If Applicable)**

[Corporate name of Parent Company] hereby guarantees absolutely the full, prompt and complete performance by "[Contractor]" of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. "[Corporate name of Parent Company]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. "[Corporate name of Parent Company]" further agrees that if the State brings any claim, action, suit or proceeding against "[Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

#### **18. General Terms and Conditions**

Unless otherwise noted, the General Terms and Conditions are mandatory Contract Terms and cannot and will not be revised.

##### **18.1. Pre-Existing Regulations**

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

**18.2. Maryland Law Prevails**

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

**18.3. Multi-year Contracts Contingent Upon Appropriations**

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

**18.4. Cost and Price Certification**

The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations. The price under this Contract (including any PO) and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

**18.5. Contract Modifications**

The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or a PO. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. Pursuant to COMAR 21.10.04, the Contractor must assert in writing its right to an adjustment under this section and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Section 18.8, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

**18.6. Termination for Default**

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 of Maryland 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.

**18.7. 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. 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 21.07.01.12A(2).

**18.8. Disputes**

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

**18.9. Living Wage**

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

**18.10. Non-Hiring of Employees**

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

**18.11. Nondiscrimination in Employment**

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

**18.12. Commercial Non-Discrimination**

18.12.1. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

**18.13. Subcontracting and Assignment**

The Contractor may not subcontract any portion of the products or services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor

may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such approvals shall be at the State's sole and absolute discretion. Any such subcontract or assignment shall include the terms of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to any subcontractors.

**18.14. Minority Business Enterprise Participation**

There is no MBE subcontractor participation goal for this Contract.

**18.15. Insurance Requirements**

The Contractor shall maintain workers' compensation coverage, property and casualty and any other insurance as required in the RFP. The minimum limits of such policies must meet any minimum requirements established by law and the limits of insurance required by the RFP, and shall cover losses resulting from or arising out of Contractor action or inaction in the performance of services under the Contract by the Contractor, its agents, servants, employees or subcontractors. Effective no later than the date of execution of the Contract, and continuing for the duration of the Contract term, and any applicable renewal periods, the Contractor shall maintain such insurance coverage and shall report such insurance annually or upon Contract renewal, whichever is earlier, to the Procurement Officer. The Contractor is required to notify the Procurement Officer in writing, if policies are cancelled or not renewed 5 days of learning of such cancellation and/or nonrenewal. Certificates of insurance evidencing this coverage shall be provided within five (5) days of notice of recommended award. All insurance policies shall be issued by a company properly authorized to do business in the State of Maryland. The State shall be named as an additional named insured on the property and casualty policy and as required in the RFP.

**18.16. Veteran Owned Small Business Enterprise Participation**

There is no VSBE subcontractor participation goal for this procurement.

**18.17. Security Requirements and Incident Response**

The Contractor agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State and Department of Information Technology information security policy, currently found at <http://doit.maryland.gov/Publications/DoITSecurityPolicy.pdf>. Contractor shall limit access to and possession of Sensitive Data to only employees whose responsibilities reasonably require such access or possession and shall train such employees on the Confidentiality obligations set forth herein.

**18.18. Suspension of Work**

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

**18.19. Nonvisual Accessibility Warranty**

18.19.1. The Contractor warrants that the information technology to be provided under the Contract.

- (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.
- 18.19.2. 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.

**18.20. Compliance with Laws/Arrearages**

The Contractor hereby represents and warrants that:

- 18.20.1 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;
- 18.20.2 It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 18.20.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- 18.20.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

**18.21. Contingent Fee Prohibition**

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

**18.22. Delays and Extensions of Time**

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

subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**18.23. Financial Disclosure**

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

**18.24. Political Contribution Disclosure**

The Contractor shall comply with the provisions of Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for procurement with the State, a county or a municipal corporation or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the aggregate \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (1) before execution of a contract by the State, a county, municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (2) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six-month period ending January 31; and (ii) August 5, to cover the six-month period ending July 31. Additional information is available on the State Board of Elections website:  
[http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

**18.25. Retention of Records and Audit**

18.25.1. The Contractor and Subcontractors 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, prevailing federal or State law or regulation, or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. The Contractor shall, upon request by the Department, 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. All records related in any way to the Contract are to be retained for the entire time provided under this section.

18.25.2 The State reserves the right, at its sole discretion and at any time, to perform an audit

of the Contractor's and/or Subcontractors' performance under this Contract. In this Contract, an audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's and/or Subcontractor's compliance with the Contract, including but not limited to the adequacy and compliance with established procedures and internal controls over the services being performed for the State.

- 18.25.3 Upon three (3) business days' notice, Contractor and/or Subcontractors shall provide the State reasonable access during normal business hours to their records to verify conformance to the terms of this Contract. The State shall be permitted to conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting/audit firm, solely at the State's election. The State shall have the right to copy, at its own expense, any record related to the services performed pursuant to this Contract.
- 18.25.4 Contractor and/or Subcontractors shall cooperate with the State or the designated auditor and shall provide the necessary assistance for the State or the designated auditor to conduct the audit.
- 18.25.5 The right to audit shall include subcontracts in which goods or services are subcontracted by Contractor and/or Subcontractors and that provide essential support to the services provided to the State under this Contract. Contractor and/or Subcontractors shall ensure the State has the right to audit with any lower tier Subcontractor.
- 18.25.6 This Section 18.25 shall survive expiration or termination of this Contract.

**18.26 Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law**

HIPAA clauses do not apply to this Contract.

**19. Administrative Information**

**19.1. Procurement Officer and Contract Manager**

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

**19.2. Notices**

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

If to the State:

State of Maryland  
Department of Information Technology  
45 Calvert Street  
Annapolis, MD 21401-1907

With a copy to:

Gayle Mealy  
Department of Information Technology (DoIT)  
45 Calvert Street, Rm 434A  
Annapolis, MD 21401-1907  
Gayle.Mealy@maryland.gov

If to the Contractor:

En Pointe Technologies Sales LLC

1940 E. Mariposa Ave,

El Segundo, CA 90245

Attn: Imran Yunus

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

CONTRACTOR

En Pointe Technologies Sales LLC



By: Shahzad Munawwar  
Sr. Vice President

4-25-2016

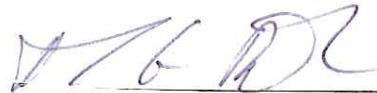
Date

STATE OF MARYLAND

DEPARTMENT OF INFORMATION  
TECHNOLOGY (DoIT)

By: Secretary David A. Garcia

Or designee:



Albert G. Bullock, Chief of Staff

4-2-16

Date

Approved for form and legal sufficiency  
this 28<sup>th</sup> day of April, 2016.



Assistant Attorney General

APPROVED BY BPW:

4/27/16

(Date)

3-1T

(BPW Item #)

**Contract Affidavit**

**A. AUTHORITY**

I HEREBY AFFIRM THAT:

I, Shahzad Munawwar (name of affiant), am the Sr. Vice President (title) and duly authorized representative of En Pointe Technologies Sales LLC (name of business entity) and I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation —  domestic or  foreign;
- (2) Limited Liability Company —  domestic or  foreign;
- (3) Partnership —  domestic or  foreign;
- (4) Statutory Trust —  domestic or  foreign;
- (5)  Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

*Name and Department ID*

*Number:* THE CORPORATION TRUST INCORPORATED/ F00018689 *Address:* 351 WEST CAMDEN STREET BALTIMORE, MD 21201

*and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:*

*Name and Department ID Number:* En Pointe Technologies Sales LLC/Z16632838

*Address:* 1940 E. Mariposa Ave, El Segundo, CA 90245

**C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other

agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14 101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

The dangers of drug and alcohol abuse in the workplace;

The business's policy of maintaining a drug and alcohol free workplace;

Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

Abide by the terms of the statement; and

Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

Take appropriate personnel action against an employee, up to and including termination; or

Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

#### F. CERTAIN AFFIRMATIONS VALID

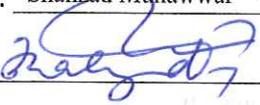
#### I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated April 25th, 2016, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: 4-25-2016

By: Shahzad Munawwar (printed name of Authorized Representative and Affiant)

  
\_\_\_\_\_ (signature of Authorized Representative and Affiant)