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Header 1

General Information

Contact

Default Values

Discount

Document Information

Procurement Folder: 559309

SO Doc Code: CRFQ

Procurement Type: Central Contract - Fixed Amt

SO Dept: 1600

Vendor ID: VS0000013846

SO Doc ID: SOS2000000001

Legal Name: FOSTER MOORE US LLC

Published Date: 7/16/19

Alias/DBA:

Close Date: 7/29/19

Total Bid: \$3,394,872.00

Close Time: 13:30

Response Date: 07/29/2019

Status: Closed

Response Time: 13:10

Solicitation Description: Addendum No. 3 (COTS)
Enterprise Registration

Total of Header Attachments: 1

Total of All Attachments: 1



Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

**State of West Virginia
 Solicitation Response**

Proc Folder : 559309
Solicitation Description : Addendum No. 3 (COTS) Enterprise Registration
Proc Type : Central Contract - Fixed Amt

Date issued	Solicitation Closes	Solicitation Response	Version
	2019-07-29 13:30:00	SR 1600 ESR07281900000000409	1

VENDOR
VS0000013846 FOSTER MOORE US LLC

Solicitation Number: CRFQ 1600 SOS2000000001

Total Bid : \$3,394,872.00 **Response Date:** 2019-07-29 **Response Time:** 13:10:53

Comments:

FOR INFORMATION CONTACT THE BUYER
 Melissa Pettrey
 (304) 558-0094
 melissa.k.pettrey@wv.gov

Signature on File	FEIN #	DATE
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All offers subject to all terms and conditions contained in this solicitation

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
2	Setup/Configuration/Installation				\$1,960,903.00

Comm Code	Manufacturer	Specification	Model #
81112300			

Extended Description :	Setup/Configuration/Installation
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
3	Historical Data Migration				\$407,725.00

Comm Code	Manufacturer	Specification	Model #
81112300			

Extended Description :	Historical Data Migration
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
5	System Training				\$24,900.00

Comm Code	Manufacturer	Specification	Model #
81112300			

Extended Description :	System Training
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
6	First year Technical Support/Maintenance				\$156,610.00

Comm Code	Manufacturer	Specification	Model #
81112300			

Extended Description :	First year Technical Support/Maintenance
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
7	Second year Technical Support/Maintenance Optional				\$281,578.00

Comm Code	Manufacturer	Specification	Model #
81112300			

Extended Description : Second year Technical Support/Maintenance-Optional Renewal.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
8	Third year Technical Support/Maintenance- Optional				\$281,578.00

Comm Code	Manufacturer	Specification	Model #
81112300			

Extended Description : Third year Technical Support/Maintenance - Optional Renewal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
9	Fourth year Technical Support/Maintenance - Optional				\$281,578.00

Comm Code	Manufacturer	Specification	Model #
81112300			

Extended Description : Fourth year Technical Support/Maintenance - Optional Renewal



**Foster[®]
Moore**

The registry people

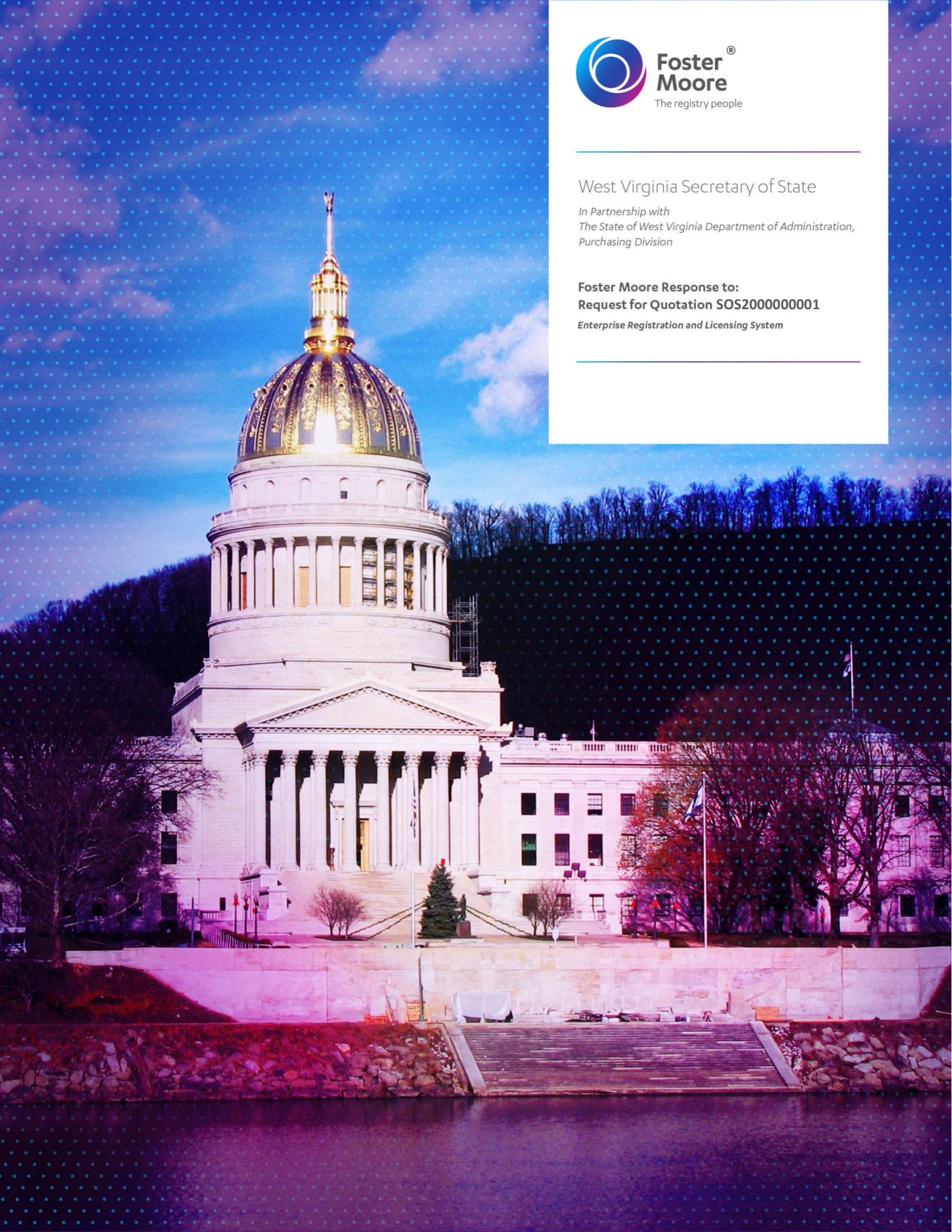
West Virginia Secretary of State

In Partnership with

*The State of West Virginia Department of Administration,
Purchasing Division*

Foster Moore Response to: Request for Quotation SOS200000001

Enterprise Registration and Licensing System





July 29 2019

Ms. Melissa Pettrey
State Of West Virginia, Purchasing Division
2019 Washing Street East
Charleston, WV 25305
Email: melissa.k.pettrey@wv.gov

Dear Melissa

Re: Enterprise Licensing and Registration System, CRFQ SOS200000001

Foster Moore is excited to present our response to the West Virginia Secretary of State's Request for Quote (RFQ) for an Enterprise Registry and Licensing System. We provide the most innovative electronic registry and licensing solutions for government organizations across the globe and look forward being of service to the citizens and administrators of West Virginia.

Our global team of over 200 public sector registry and licensing thought leaders includes more than 60 members in the US and Canada. We are long term corporate partners and sponsors of the National Association of Secretaries of State and IACA; both being organizations in which multiple WVSOS administrations and their staff have been participants. Our sustained success and growth would not be possible without the collaborative relationships afforded by these associations.

To achieve these ambitious modernization goals, WVSOS needs a long-term strategic partner who brings an innovative, mature solution with a track record of success with large-scale public registry and licensing authorities. Foster Moore's experience in this realm is unrivalled. We are the right partner with the right product that the WVSOS can depend on to provide an efficient, cost-effective and streamlined application for both the public and administration. We welcome any questions and look forward to discussing this undertaking in more detail soon.

In 2018 we responded to CRFQ SOS1800000007. Our detailed response provided an overview of all system functionality and examples of how Catalyst - The Registry Manager™ fulfilled the requirements. Our assessment of CRFQ SOS2000000001 is that the majority of requirements are in line with those from 2018. Since that time and in anticipation of a reissuance, our team has undertaken detailed research on legislation related to the forms, service processes and data requirements for each of the registers in scope. Additionally, we have made assumptions against other key areas based on our experience in the industry and gleaned from our independent research. Factors such as potential systems integrations, interfaces with other State entities, continuous industry improvement and an understanding of best practices for IT infrastructure for government organizations have attributed to costing variances compared to the 2018 submission. We recognize the importance of ensuring both parties are fully aware of and aligned with expectations of what is required and ultimately delivered to ensure WVSOS has a fully functioning solution that delivers a world-class system to the State.



In the spirit of brevity and understanding that this is an RFQ process, as opposed to an RFP, should the State wish to independently gain in-depth familiarity with our Catalyst solution, which completely addresses the requirements of this RFQ, we would kindly refer them to our 2018 RFQ Submission. Beyond this extensively detailed documentation, we welcome an opportunity to present this information and our partnership in-person.

By submitting this Solicitation in its entirety, we understand the requirements, terms and conditions, and other information contained within CRFQ SOS2000000001.

Yours sincerely

Joel Foster

President & CEO

Table of Contents

- 1. Introduction..... 1
- 2. Addendum Acknowledgement Form 2
- 3. Qualifications..... 3
 - 3.1 Has successfully deployed a business services registration system..... 3
 - 3.2 Vendor has maintained fully implemented public facing system for 5 years 3
 - 3.3 Annual receipts collected greater or equal to US \$5,000,000 4
 - 3.4 Can configure their COTS system to meet the requirements 4
 - 3.5 Has implemented business services registration systems 6
 - 3.5.1 Private Investigators and/or Security Guards 6
 - 3.5.2 Trademarks..... 6
 - 3.5.3 Corporations..... 7
 - 3.5.4 Uniform Commercial Code 7
 - 3.5.5 Notary Public 8
 - 3.5.6 Apostilles 8
 - 3.5.7 Charities and Charities Solicitors 8
- 4. Pricing..... 9
- 5. Assumptions 11
- 6. Exceptions and Clarifications..... 13
- 7. Terms and Conditions..... 14
- 8. Purchasing Affidavit..... 27
- 9. Foster Moore Software License Agreement 28

1. Introduction

Foster Moore US, a Limited Liability Company incorporated in North Carolina and a wholly owned subsidiary of Foster Moore International Limited, is excited to present our response to the West Virginia Secretary of State's Request for Quote (RFQ) for an Enterprise Registry and Licensing System.

Foster Moore is a dedicated registry software company. We have our roots in New Zealand but are an international company. Our 220 staff are located in our offices in Auckland - New Zealand, Toronto – Canada and Raleigh, North Carolina – USA. We have delivered our Catalyst – The Registry Manager (Catalyst) software in the following jurisdictions:

1. Ministry of Business, Innovation and Employment, New Zealand (New Zealand Companies Office)
2. Financial Markets Authority, New Zealand
3. Secretary of State, Montana, USA
4. Ministry of Government Services, Ontario, Canada
5. Ministry of Commerce, Tourism and Labour, Kingdom of Tonga
6. Ministry of Commerce, Solomon Islands
7. Investment Promotions Authority of Papua New Guinea
8. Ministry of Commerce, Industry and Labour, Western Samoa
9. Vanuatu Financial Services Commission in Vanuatu
10. Ministry of Trade and Industry, Co-operatives and Marketing (MTICM), Lesotho
11. Ministry of Trade and Industry, Botswana
12. Financial Supervisory Commission, Cook Islands
13. Labuan Financial Services Authority – Malaysia
14. Ministry of Finance - Brunei Darussalam
15. ADGM, Abu Dhabi, UAE
16. Ministry of Commerce, Cambodia
17. Office of the Lieutenant Governor, US Virgin Islands
18. Department of State, Puerto Rico, US Territory

We have projects currently underway with:

19. Canadian Securities Administration, Canada
20. Ministry of the Attorney General - WRITS Filing System, Ontario, Canada
21. Office of the Lieutenant Governor, US Virgin Islands
22. Australian Treasury Office, Australia
23. Registrar of Companies, Bermuda
24. Companies Commission of Malaysia (SSM), Malaysia

Our Catalyst product is a commercial-off-the-shelf-solution and is purpose built for government registries just like WVSOS. The solution is scalable and powers small, medium and large jurisdictions. Catalyst manages the life cycle of a registry from the entity incorporation, occupational licensing, maintenance, annual returns or professional renewals, to case management. Catalyst has very robust compliance tools along with a great set of tools used by the registry to manage workflow.

We provide the world's most innovative electronic registry and licensing solutions for government organizations across the globe and look forward being of service to the citizens and administrators of West Virginia soon.

2. Addendum Acknowledgement Form

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ SOS200000001

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:
(Check the box next to each addendum received)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input checked="" type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input checked="" type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Company FOSTER MOORE

Authorized Signature  NICK DALTON

Date 10 JULY 2019

NOTE: This addendum acknowledgement should be submitted with the bid to expedite document processing.

Revised 06/05/2019

3. Qualifications

3.1 Has successfully deployed a business services registration system

3.1 Has successfully deployed a business services registration system for at least two (2) of the 50 US states or its territories at the level of the Secretary of State or its equivalent and the system that is hosted by the vendor or a third party (“cloud”).

Foster Moore confirms that we have successfully deployed a business services registration system in multiple US states and/or US territories at the Secretary of State or Lt. Governor levels and the systems where hosted by a third party in the cloud. These include:

US State or Territory	Office	Business Service Registration Systems
Puerto Rico	Puerto Rico Secretary of State – Department of State Office	Corporations, Trademarks and UCC solutions
US Virgin Islands	US Virgin Islands Office of the Lt. Governor	Corporations and UCC Solutions
Montana	Montana Secretary of State	Business Entities and UCC solutions
Missouri	Missouri Secretary of State Office	Corporations and UCC Solutions

3.2 Vendor has maintained fully implemented public facing system for 5 years

3.2 The vendor has maintained the fully implemented (ie: post Go-Live) back office and public facing system referenced in 3.1 for a minimum of 5 years.

Of the implementations deployed, Foster Moore has maintained the fully implemented back office and public facing system for a minimum of 5 years.

The Puerto Rico Secretary of State, Department of State Office, Corporations and Trademarks registers were deployed in 2009 and 2010 respectively. Foster Moore maintained and operated them under a hosted transactional model for over eight years. Both systems are still operational and support for the registers was transitioned back to the Department of State Office in April 2018. The UCC system still operates under a hosted transaction model by Foster Moore.

3.3 Annual receipts collected greater or equal to US \$5,000,000

3.3 The total annual receipts collected by the system(s) referenced in 3.1 were greater than or equal to US \$5,000,000 in aggregate during at least four of the five or more years in which the vendor maintained the fully implemented system.

Puerto Rico Secretary of State – Department of State Office – generated over \$10M in receipts across the Corporations, Trademarks and UCC solutions, in aggregate during the first five years in which Foster Moore maintained the fully implemented systems.

3.4 Can configure their COTS system to meet the requirements

3.4 Can configure their COTS system to meet the laws, rules, regulations, administrative codes, and processing requirements of the state of West Virginia. Configurable COTS system

Catalyst The Registry Manager™ is a software platform that is configured to meet the individual needs of different registers in different jurisdictions. It has been developed to meet the laws, rules, regulations, administrative codes and processing requirements of the jurisdictions into which we have successfully configured and delivered our projects. Catalyst is based on a set of core components that interact with each other to deliver the business functionality required to operate online registries such as business registries, secured transaction and occupational registries.

Using Catalyst, Foster Moore is able to quickly configure, deploy, test and deliver flexible registries, which meet the jurisdiction's specific needs. Catalyst is based on a set of core components that interact with each other to deliver the business functionality required to operate online registries.

Catalyst also builds a business services layer that can be securely invoked by custom-developed applications, or external systems, to deliver custom functionality. Catalyst also includes components that provide management of communications, document and records management and payment processing.

Catalyst provides an online, browser-based solution for access by both members of the public performing online transactions, and by back-office staff responsible for the management and operation of the register. Catalyst provides members of the public with integrated search, reservation, registration (incorporation) and compliance functions as well as access to online payment facilities. Back-office staff use Catalyst to carry out the daily functions required to maintain the register; working from an online interactive task list they complete the tasks allocated to them based on their defined responsibilities and security level.

Catalyst workflows are constructed to control the business processes that take place within the registry. This may include the registration or incorporation of new entities, entity administration and completion of regular compliance functions online, such as annual filing notices.

Online registers built using Catalyst provide significant business benefits to registry operators, including:

- 1) **Flexible** solution meets requirements of complex or simple registries
- 2) Significantly **lowers project risk** by deploying proven product
- 3) **Quicker initial implementation** through product configuration
- 4) **Improved support for changing legislative environment** through rapid product configuration changes
- 5) Access to **product updates** provide enhanced features and functionality, including leading technologies
- 6) **Improved efficiency** through task-driven approach for registry staff
- 7) **Team-based task management** accurately assigns tasks to users, and teams of users
- 8) Features and flexibility based on **over 20 years of registry experience**
- 9) Increased range of self-service functions through **intuitive online application**
- 10) Flexibility through a **range of payment methods**
- 11) Accessible from a **range of devices** including web browsers and mobile phones
- 12) **Reduced errors and omissions** through team-based assignment, management and monitoring of tasks

Online registers built using Catalyst provide significant technical benefits, including:

- 1) **Reduced operational costs** through increased self-service uptake and improved internal efficiencies
- 2) **Integration** with other state initiatives such as identification and login services
- 3) **Leverages existing IT operational and support skills** through support for a wide range of infrastructure
- 4) Long-term support for growing registers through **platform scalability**
- 5) **Retains existing IT investment** through integration with existing infrastructure
- 6) **Extended functionality and data integrity** through data sharing between registers
- 7) **Flexible licensing model**, with a range of options, covers full range of implementations, from small to large
- 8) **Open source platform** reduces implementation and support costs
- 9) **Open design** allows for the implementation and evolution of true “best of breed” solutions

Catalyst comes with all the components and capabilities to build and support all the registers and functions that need configuring to match the requirements of the West Virginia Secretary of State. For more detailed information regarding compliance with WVSOS requirements and specifications, we would refer you to our 2018 RFSQ submission document.

3.5 Has implemented business services registration systems

Has implemented a business services registration system, for the clients referenced in 3.1 or elsewhere, to include the following business services (some which are not currently listed within the scope of this RFQ):

3.5.1 Private Investigators and/or Security Guards

3.5.2 Trademarks

3.5.3 Corporations

3.5.4 UCC - Uniform Commercial Code

3.5.5 Notary Public

3.5.6 Apostilles

3.5.7 Charities and Charities Solicitors

3.5.1 Private Investigators and/or Security Guards

Foster Moore deployed Catalyst to deliver the Security Guards and Private Investigators register for Service Ontario. This register manages the licensing of all authorized security guards and private investigators across the province, covering almost 80,000 individuals, 600 employers and 600 agencies.

In the first two months of operation, with a soft launch and minimal promotion, online registration and self-service activity increased from 21% to 66%. This provided a significant contribution to the cost reductions and efficiency increases by the project and offered significant benefits to the Government of Ontario.

3.5.2 Trademarks

1) The Puerto Rico Department of State ("PRDOS") worked with the Foster Moore team to implement the PR Trademarks online register that went live in 2011. The implementation (licensing and design/delivery) and ongoing operations and maintenance support of the online Trademarks solution was contracted under a hosted transactional model. This was a very successful undertaking for both parties as the budgetary approval risk was removed and the entire implementation cost was recovered through a revenue sharing model.

2) USVI Trademarks and Notary Account Management, USVI is in the process of securing funds for additional project phases, targeting to secure funds in 2019 and work on these systems will commence in early 2020.

3.5.3 Corporations

Foster Moore have implemented Business Registers in over 15 countries and jurisdictions, including; New Zealand, Botswana, US Virgin Islands, Montana, Canada, Malaysia, Samoa, Solomon Islands, Vanuatu, Brunei, Cambodia, Abu Dhabi, Lesotho, Tonga, Labuan Malaysia and Lesotho.

New Zealand - Ministry of Business, Innovation and Employment (MBIE.)

The most notable Corporations register implement by Foster Moore is the New Zealand Companies office operated by the Ministry of Business, Innovation and Employment (MBIE.) Foster Moore and MBIE have worked in partnership for over twenty years from New Zealand's first online business register through to today with multiple registers which have been implemented and upgraded. New Zealand continues to be ranked #1 in the world for the ease of doing business, it has held this position for three years.

The Business Register includes;

- Companies Register
- Business Register Platform
- Financial Services Providers Register
- Disclose Register
- Personal Property Securities Register

In addition, Foster Moore provides the following registers for MBIE;

- Insolvency Register
- Radio Spectrum Management
- Standards New Zealand
- Government Electronic Tendering System
- Motor Vehicle Traders Register
- Societies
- Shared Services (Payments, Security and Correspondence)
- Energy Safety

3.5.4 Uniform Commercial Code

1) The Puerto Rico Department of State ("PRDOS") worked with the Foster Moore team to implement a Uniform Commercial Code (UCC) solution, to accomplish three main objectives:

- 1) Provide expanded UCC online services and improved public information access,
- 2) Bring PRDOS UCC processing and functionality into compliance with IACA Standards,
- 3) Improve the performance, quality, and integrity of the UCC data repository by replacing an aging legacy application.

This high successful and timely implementation had Foster Moore replace the legacy application with Catalyst™ UCC in 2016.

2) The Office of the Lieutenant Governor of the Virgin Islands was in need of an online system that accommodates Business Entities, Trademarks and Uniform Commercial Code filings. Foster Moore successfully completed the Business Entities online register in early 2018 and completed the UCC online register in March 2019 (this was a very rapid deployment delivered in under 7 months).

3.5.5 Notary Public

We have scoped and specified a Notary Public register for an existing customer Secretary of State, they are seeking funding approval and expect the project to start in 2020.

As they have an existing operational register, the new register can draw on this work as a starting point. Foster Moore has compiled a library of configurations that support a range of registers and jurisdictions with the benefit for the of being able to draw on the closest existing configuration as a starting point for its new registers.

3.5.6 Apostilles

We have scoped and specified a Apostilles register for an existing customer Secretary of State, they are seeking funding approval and expect the project to start in 2020.

As they have an existing operational register, the new register can draw on this work as a starting point. Foster Moore has compiled a library of configurations that support a range of registers and jurisdictions with the benefit for the of being able to draw on the closest existing configuration as a starting point for its new registers.

3.5.7 Charities and Charities Solicitors

We have implemented a Charitable Associations register for the Vanuatu Financial Services Commission. The register was launched in September 2015.

4. Pricing

CONTRACT ITEMS

Item #	Item	Vendor Description	Unit of Measure	Quantity	Cost	Ref
1	Setup/Configuration/Installation	Commercial Off-the-Shelf (COTS) Enterprise Registration and Licensing System (ERLS) including License, Software, Set-up, Configuration and Installation	Each	1	\$1,960,903	
2	Historical Data Migration	Historical data migration	Each	1	\$407,725	
3	System Training	System training for registry staff - train the trainer.	Each	1	\$24,900	
4	First Year Maintenance and Support/Warranty/Hosting	Catalyst Licence Software Maintenance and AWS Hosting	Each	1	\$156,610	

CONTRACT SERVICES

Item #	Item	Vendor Description	Unit of Measure	Quantity	Cost	Ref
5	Second Year Maintenance and Support/Warranty/Hosting	Catalyst Licence Software Maintenance, AWS Hosting, IT Operations Support (of AWS) and Application Support and Maintenance.	Each	1	\$281,578	
6	Third Year Maintenance and Support/Warranty/Hosting	Catalyst Licence Software Maintenance, AWS Hosting, IT Operations Support (of AWS) and Application Support and Maintenance.	Each	1	\$281,578	
7	Fourth Year Maintenance and Support/Warranty/Hosting	Catalyst Licence Software Maintenance, AWS Hosting, IT Operations Support (of AWS) and Application Support and Maintenance.	Each	1	\$281,578	
Total Bid Amount (1+2+3+4+5+6+7) =					\$3,394,872	

5. Assumptions

Number	Functional Area	Assumption
1	Scope	The estimates are based on our interpretation of the requirements/specifications provided in the RFQ. No additional information was provided through Addendums. As such we conducted some additional research and based our costing on this. If there are variances in any interpretation of the scope, we anticipate a review, alignment, and confirmation on them with the Client.
2	Functionality	Our proposal has assumed that a consistent approach will be applied to the types of services and the associated workflow for each of the Occupational type registers.
3	Registry Language	American English only.
4	Currency	Single currency only – US Dollars. All payments will be entered into system in USD. Foreign currency payments must be converted to USD.
5	Time zone	There is a single time zone covering all users of the system.
6	Project - Client Resources/SMEs	Foster Moore will have access to SMEs as required, delays to this access or to decision-making may impact project schedules and/or costs.
7	Data Migration	The client will handle data cleansing and analysis of their own data, to assist in the data migration process. All mandatory data required by the systems business rules (presumably the same as the Jurisdictions legislation) are available in the legacy data. Versioning of migrated data is not required. Legacy data will come from a single data source. Foster Moore will be provided with read-only access to the legacy database or a full extract as required. Data migration excludes payment data and in-flight transactions. It is assumed that there are common business rules and data formats shared across the various licensing databases. Large differences between the datasets may impact project schedules and/or costs. There will be only one go-live. There won't be a phased approach to go-live. Data SMEs are available to help map the data and turn around any questions in a timely manner.
8	Content Management System	The delivery of a Content Management System (CMS) is out of scope.
9	Payment Processor	A third-party payment service will be used, and sensitive financial info (such as credit card number) will not be captured by, or stored within, Catalyst.
10	Searching	Searching will be performed using the Catalyst search engine. Searching within documents is out of scope.
11	Workflow	It is assumed that the standard Catalyst filing workflow will be used, with custom configuration for the client. The core Catalyst workflow will be configured to ensure that all of West Virginia's business rules are met.

Number	Functional Area	Assumption
12	Correct the Register	The Catalyst services available to correct the register (this includes data and filings) are available to internal users only. External users can notify the registry of corrections that are required, via an online service. However, the actual correction will need to be done by an internal user with the appropriate permissions.
13	Feedback & Sign off	Feedback should be received within an “acceptable timeframe”. For signoff of documentation/specifications produced by Foster Moore, this has to be done within two weeks following receipt of the final version.
14	Training	Training includes the Licensing system training only. Server administration training, database administration training, and external (Public) end user training is not currently carried out by Foster Moore and has not been factored into estimates.
15	Application Support and Maintenance	Price includes 40 hours per month. P1 & P2 break fix only.
16	Project Management	The project will be managed using Foster Moore’s Catalyst Adoption Methodology (CAM).
17	Infrastructure – Shared Platform	The different registers will all share the same technical infrastructure.
18	Infrastructure - Environments	Any external interfaces will be provided by West Virginia and not the vendor. The third-party payment gateway can be contacted directly from the Catalyst application layer without the need for further equipment.
19	Infrastructure - Support	The infrastructure costs provided are based on Foster Moore's out of the box reference architecture.
20	External Interfaces	Two external system interfaces have been allowed for. We have assumed one Financial System interface and one Credit Card payment gateway interface.
21	Project Documentation	Project documentation will be provided to the level outlined in the CAM methodology. This includes and is not limited to; test strategies, test plans, user requirements and technical design documents.

6. Exceptions and Clarifications

Section 11 of the *Instructions to Vendors Submitting Bids* states that *Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications to its bid . . .*

Reference	Exception/ clarification/ modification
GTC section 26. Subsequent Forms	Foster Moore seeks to clarify that its standard End User License Agreement for Catalyst (included as part of this submission, 9. Foster Moore Software License Agreement) will form part of the Contract and will prevail in respect of the License Agreement’s subject-matter.
GTC section 36. Indemnity	Foster Moore seeks to discuss reasonable limitations of its liability for its performance of the Contract and related risk.
General – rights and remedies (e.g. GTC section 19. Cancellation; GTC section 28 Warranty; and the Specifications section 10)	The Contract appears to be directed more at provision of tangible goods and anticipates that the State may exercise rights (e.g. cancellation and warranty) for any failure and in broad circumstances. Foster Moore seeks to discuss adding materiality thresholds and other limitations (including a warranty claim process) to align the Contract with standard information technology undertakings. These undertakings generally recognise that IT projects are complex, that issues are likely to arise and materiality thresholds should apply, and that the vendor should be given the chance to remedy issues using standard and objective processes.
GTC section 8. Insurance	Foster Moore seeks to discuss the Cyber Liability Insurance level of cover and associated costs.

7. Terms and Conditions

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

Revised 06/05/2019

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

Term Contract

Initial Contract Term: This Contract becomes effective on UPON AWARD and extends for a period of ONE (1) year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to THREE (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Alternate Renewal Term – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

Fixed Period Contract: This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

Fixed Period Contract with Renewals: This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

One Time Purchase: The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

Other: See attached.

Revised 06/05/2019

4. NOTICE TO PROCEED: Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

Open End Contract: Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

Service: The scope of the service to be provided will be more clearly defined in the specifications included herewith.

Combined Service and Goods: The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

One Time Purchase: This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

BID BOND (Construction Only): Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

PERFORMANCE BOND: The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

Revised 06/05/2019

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

- Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.
- Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.
- Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence.
- Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.
- Cyber Liability Insurance** in an amount of: \$25,000,000.00 per occurrence.
- Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.
- Pollution Insurance** in an amount of: _____ per occurrence.
- Aircraft Liability** in an amount of: _____ per occurrence.
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Revised 06/05/2019

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

9. WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. [Reserved]

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

_____ for _____

Liquidated Damages Contained in the Specifications

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

Revised 06/05/2019

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

Revised 06/05/2019

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

Revised 06/05/2019

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

Revised 06/05/2019

34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

Revised 06/05/2019

37. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

39. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

40. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.requisitions@wv.gov.

41. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Revised 06/05/2019

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

42. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

43. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a

Revised 06/05/2019

“substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

44. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

Revised 06/05/2019

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

Bill Clarke, VP Business Development and Partnerships

(Name, Title)
Bill Clarke, VP Business Development and Partnerships

(Printed Name and Title)
229 Yonge Street, Suite 501/502, Toronto, ON M5B 1N9

(Address)
+1 (416) 524 4542

(Phone Number) / (Fax Number)
bill.clarke@fostermooore.com

(email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

Foster Moore

(Company)



(Authorized Signature) (Representative Name, Title)

NICK DALTON, EXECUTIVE VP NORTH AMERICA

(Printed Name and Title of Authorized Representative)

10 JULY 2019

(Date)

+1 647 391 0003

(Phone Number) (Fax Number)

Revised 06/05/2019

8. Purchasing Affidavit

STATE OF WEST VIRGINIA
Purchasing Division
PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Nehalaj Robin Dalton

Authorized Signature: [Signature] Date: July 11, 2019

State of Province of Ontario

County of City of Toronto, to-wit:

Taken, subscribed, and sworn to before me this 11 day of July, 2019

My Commission expires N/A (Does not expire), 20

AFFIX SEAL HERE

NOTARY PUBLIC

MAMANN, SANDALUK & KINGWELL LLP
Barristers & Solicitors
103 Church Street, Suite 200
Toronto, Ontario M5C 2G3
Tel (416) 862-0000 Fax (416) 862-0625
www.migrationlaw.com

[Signature]
Joseph Paul Granton
a Notary Public or and for the
Province of Ontario

9. Foster Moore Software License Agreement

Foster Moore International Limited a limited liability company registered in New Zealand ("**Foster Moore**")

Software License Agreement

IMPORTANT NOTICE: By installing or using the Licensed Software in any way (or permitting any other person to do so on the Licensee's behalf), the Licensee agrees to the terms of this License Agreement. If the Licensee does not agree to the terms of this License Agreement, the Licensee should promptly contact Foster Moore, must not install or use (or permit any other person to do so on its behalf) the Licensed Software or Documentation, must immediately return all copies of the Licensed Software and Documentation to Foster Moore, and must provide written certification confirming the return of all copies on Foster Moore request. The Licensee is deemed to have accepted this License Agreement if the Licensed Software is installed or used in any way.

Foster Moore owns and supplies software applications for use in operating and managing various public registries. The Licensee wishes to use some or all of Foster Moore's software applications and related documentation. Foster Moore has agreed to grant to the Licensee a license to use those applications and documentation, on the terms and conditions of this License Agreement.

OPERATIVE PART

1 Interpretation

1.1 In this License Agreement:

"Approved Hosting Provider" means a hosting provider (other than the Licensee) approved in writing by Foster Moore to host the Licensed Software on the Licensee's behalf in accordance with the Special Conditions set out in the Order Form. To avoid doubt and without limitation, it will be a condition of approval that the physical location of the hosting site is advised to Foster Moore and approval is obtained in advance to move that location;

"Associated Material" includes (without limitation) product roadmaps and Foster Moore's proprietary Catalyst Application Methodology (CAM) software development methodology and templates, together with updates to any of those items;

"Commencement Date" means the date of installation of the Licensed Software on the Licensee's or Approved Hosting Provider's equipment;

"Confidential Information" means information which is confidential in nature or disclosed in confidence by Foster Moore to the Licensee including without limitation the Foster Moore Software, the Documentation, the Source Code, the Associated Material, or any information about Foster Moore's business or its development, marketing or other plans or strategies, but does not include any information which is:

- (a) on receipt by the Licensee, in the public domain or which subsequently enters the public domain without any breach of the License Agreement or other obligation owed to Foster Moore by any person;
- (b) on receipt by the Licensee, already known by the Licensee other than as a result of a breach of any obligation owed to Foster Moore by any person; or
- (c) at any time after the date of receipt by the Licensee, received in good faith from a third party without any breach of an obligation of confidentiality by that third party.

"Documentation" means the current standard documentation for the Licensed Software, together with any standard updates to that documentation provided with the Maintenance Services;

"Force Majeure Event" means any event that is beyond the reasonable control of Foster Moore, including without limitation war, riot, strike, communication lines or internet failure, and natural or man-made disaster;

"Foster Moore Software" means any Foster Moore application, including any modification, enhancement or derivative work and all patches, standard updates and revisions of an application provided as part of Maintenance Services or otherwise. To avoid doubt, the Licensed Software is Foster Moore Software;

“Intellectual Property” includes copyright, patents, designs, trade marks, trade names, goodwill rights, trade secrets, confidential information, know-how and any other intellectual proprietary right or form of intellectual property existing anywhere in the world and whether registered or not;

“License Agreement” means this software license agreement together with the Order Form;

“Licensed Software” means the Foster Moore Software specified in the Order Form and includes all patches, standard upgrades and revisions of that software supplied as part of the Maintenance Services, but excludes the Source Code;

“Licensee” means the person named as Licensee in the Order Form;

“Maintenance Services” means services to maintain the Licensed Software in good operating condition as determined by Foster Moore at its discretion, including the provision of patches, updates and revisions and new releases of the Licensed Software, but excludes the support and maintenance of any Licensee specific customizations made to, or Licensee specific derivative works of, the Licensed Software (such support and maintenance to be supplied under a separate support agreement);

“Order Form” means Foster Moore’s standard ‘Software Order Form’ which is completed and signed by Foster Moore and the Licensee;

“Service Provider” means Foster Moore, the Foster Moore related company, or the authorized service provider that enters into the Services Agreement with the Licensee;

“Services Agreement” means the master services or supply agreement including any relevant statement(s) of work, between a Service Provider and the Licensee under which the Licensed Software is implemented for the Licensee; and

“Source Code” means the source code for the Licensed Software.

2 License

- 2.1 Subject to the Licensee complying with the terms of this License Agreement, Foster Moore grants to the Licensee a non-exclusive, non-assignable license to use the Licensed Software and Documentation on the terms of this License Agreement for the purpose set out in and subject to any constraints on use specified in the Order Form or otherwise agreed upon in writing between the Licensee and Foster Moore. The license commences on the Commencement Date and will continue unless and until the License Agreement is terminated. Where there is an Approved Hosting Provider, that provider may host the Licensed Software on the Licensee’s behalf (subject to any Special Condition in the Order Form), provided that the Licensee procures the Approved Hosting Provider’s compliance with the terms of this License Agreement (including, without limit clauses 6 and 7). To avoid doubt, any breach of this License Agreement by the Approved Hosting Provider is deemed to be a breach of this License Agreement by the Licensee.
- 2.2 The Licensed Software must be installed only at the agreed site(s) specified in the Order Form. Implementation and related services are provided by the Service Provider under the Services Agreement.
- 2.3 Various third party software may be required for operation of the Licensed Software. Details are available on request from Foster Moore. The Licensee is responsible for procuring licenses to use the required third party software at its expense.
- 2.4 The Licensee must not, nor may it permit any other person to:
 - (a) sell, rent, lease, sub-license, lend, assign, transfer, make available, time share or act as a service bureau or application service provider that allows third party access to, in whole or in part, the Licensed Software or Documentation;
 - (b) resell or offer for resale, reproduce, modify, copy (except for backup purposes), reverse assemble, reverse compile or enhance the Licensed Software or Documentation or any of it, except to the extent expressly permitted by any law or treaty that is in force in the country where the Licensed Software is installed and which cannot be excluded, restricted or modified by the License Agreement;
 - (c) access the Licensed Software or Documentation other than as expressly set out in this License Agreement;
 - (d) alter, remove or tamper with any trade marks, any patent or copyright notices, or any confidentiality, proprietary or trade secret legend or notice, or any numbers, or other means of identification used on or in relation to the Licensed Software or Documentation; or
 - (e) do any act which would or might invalidate or be inconsistent with Foster Moore’s (or its licensor’s) Intellectual Property rights. Without limiting the earlier part of this clause 2.4, the Licensee must not supply or otherwise use the Licensed Software or Documentation in competition with Foster Moore.

3 Maintenance Services

- 3.1 Foster Moore will provide Maintenance Services for the Licensed Software to the Licensee, commencing on the commencement date for Maintenance Services specified in the Order Form. Provision of Maintenance Services is subject to (a) the Licensee's continued compliance with the terms of this License Agreement; (b) payment by the Licensee of the annual fees for Maintenance Services; (c) the Licensee using a current or supported version of the Licensed Software; and (d) the Licensee maintaining an adequate and properly configured environment for the operation of the Licensed Software (in accordance with any recommendation of Foster Moore from time to time). Support services for Licensee specific customisations made to, or Licensee specific derivative works of, the Licensed Software are only available under a separate agreement (and for which separate fees apply) and are subject to Licensee having paid the annual Maintenance Services fees under this License Agreement.
- 3.2 The fees for Maintenance Services for the initial 12 month term are as specified in the Order Form or if not specified in the Order Form will be the Foster Moore list price, unless otherwise agreed in writing with Foster Moore. For each 12 month period following the initial 12 month term, the maintenance fees will be as specified in the Order Form or if not specified in the Order Form will be the Foster Moore List price. The fees for each renewal period may be increased at the start of each period by a maximum of 5% of the maintenance fees applicable in the current period (provided that Foster Moore may not exercise this right in the first renewal period). Subject to the following sentence, as long as the Licensee pays the annual fees for Maintenance Services, Foster Moore will continue to provide Maintenance Services. Foster Moore may terminate the Maintenance Services on no less than 3 months' written notice, provided that it may not exercise this right prior to the 5th anniversary of the Commencement Date.
- 3.3 Provision of Maintenance Services does not include supply of any services, whether for installation or implementation of patches, updates or revisions or otherwise. Such services are available from the Service Provider under the Services Agreement or separate support agreement (as applicable).

4 Charges and payment

- 4.1 The Licensee must pay Foster Moore the license fees for the Licensed Software and the fees for Maintenance Services as specified in the Order Form or clause 3.2, plus any applicable goods and services tax, sales tax, value added tax, or similar form of tax. The Licensee must pay all fees by the 20th of the month following the date of the invoice unless otherwise specified in the Order Form.
- 4.2 All fees payable by the Licensee under the License Agreement must be made in full without set-off or counterclaim and, except to the extent required by law, free and clear of any deduction on account of tax or otherwise.
- 4.3 If the Licensee fails to pay any amount due under a License Agreement by the due date, Foster Moore may without prejudice to its other rights and remedies:
- (a) decline to supply any additional Foster Moore Software to the Licensee until payment of all outstanding amounts is paid; and/or
 - (b) require the Licensee to pay interest at 10% per annum on the amount due from the due date until the date of payment (in addition to the Licensee remaining liable for the full amount outstanding); and
 - (c) suspend the provision of the Maintenance Services or suspend the Licensee's access and use of the Licensed Software, including:
 - (i) by utilizing and changing passwords or remote access provided to Foster Moore by or on behalf of the Licensee (albeit for other purposes or provided under the Services Agreement or another separate agreement between the parties);
 - (ii) by instructing any third party hosting provider to cease hosting the Licensed Software and return all copies to Foster Moore and Foster Moore may disclose the License Agreement, and in particular this clause, together with such evidence of non-payment of relevant invoices as the hosting provider may require to any such hosting provider as Foster Moore's authority to instruct the hosting provider accordingly.

Without limiting any other remedies that Foster Moore may have, if Foster Moore invokes this clause 4.3(c), the Client's rights to use the Licensed Software (including without limitation any backup or other copy) cease immediately for the period of the suspension.

5 Escrow

- 5.1 Foster Moore will provide the Licensee with, and the Licensee accepts, rights of access to, and use of, the Source Code in accordance with the terms of this clause 5.
- 5.2 On request and subject to the Licensee paying all associated escrow account fees, Foster Moore will add the Licensee as a beneficiary to its standard escrow account (**Escrow Account**) that Foster Moore holds with Iron Mountain Intellectual Property Management, Inc. or any replacement escrow provider (**Iron Mountain**). Foster Moore's obligations under this clause 5 are subject to the Licensee's continued compliance with the terms of this Agreement and the Licensee signing all documents required for it to be added as a beneficiary under the Escrow Account.
- 5.3 Under the Escrow Account, the Licensee may elect to have any assessment, verification or other additional services carried out by Iron Mountain in relation to the Source Code, such services will be at the Licensee's cost.

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- 5.4 The Licensee's rights of access to the Source Code will be:
- (a) in accordance with the release conditions for the Escrow Account, provided that Foster Moore must be given written notice of an occurrence of a claimed release condition at the same time as the Licensee gives notice to Iron Mountain; and
 - (b) conditional on the Licensee having a continued need for support and maintenance of the Licensed Software.
- 5.5 On release of the Source Code in accordance with this clause, Foster Moore's obligation to provide Maintenance Services ceases and Foster Moore grants the Licensee a non-transferable and non-sub-licensable licence to use the Source Code for the sole purpose of supporting and maintaining the Licensed Software in a manner consistent with the Licensee's rights to support and maintenance that it would otherwise have been entitled to under this License Agreement (**Escrow License**). The Escrow License:
- (a) includes the right of the Licensee to adapt and modify the Source Code to the extent necessary to bug-fix and make like minor amendments; and
 - (b) excludes any further right to adapt, modify or make derivative works of the Source Code.
- 5.6 The restrictions and obligations on the Licensee set out in clauses 2.2, 2.4, 6, 7, and 12.1 of the License Agreement apply equally to the Source Code and the Escrow License, with all necessary modifications.
- 5.7 The Escrow License terminates on the earlier of the following events:
- (a) if the Licensee no longer has any need for support and maintenance of the Licensed Software (e.g. because it has implemented a replacement software or system for the Licensed Software or has discontinued its use of the Licensed Software);
 - (b) on termination of the License Agreement by Foster Moore in accordance with clause 10.1; or
 - (c) on notice from Foster Moore in the event of the Licensee committing a material breach of the terms of the Escrow License that is either incapable of remedy or that the Licensee has failed to remedy within 30 days of notice from Foster Moore of the default.
- 5.8 On termination of the Escrow License, clause 11.1 applies with all necessary modification.

6 Protection of Intellectual Property

- 6.1 Foster Moore or its licensor owns all Intellectual Property rights in the Foster Moore Software, the Documentation, the Source Code, and the Associated Material.
- 6.2 The Licensee must, at Foster Moore's expense, take all such steps as Foster Moore may reasonably require to assist Foster Moore to maintain the validity and enforceability of Foster Moore's (or its licensor's) Intellectual Property rights.
- 6.3 The Licensee must notify Foster Moore of any actual, threatened or suspected infringement of any Intellectual Property right in the Licensed Software or Documentation and of any claim by any third party that any use of the Licensed Software or Documentation infringes any rights of any other person, as soon as that infringement or claim comes to the Licensee's notice. The Licensee will (at Foster Moore's expense) do all such things as may reasonably be required by Foster Moore to assist Foster Moore in pursuing or defending any proceedings in relation to any such infringement or claim.

7 Confidentiality and publicity

- 7.1 The Licensee must effect and maintain adequate security measures to safeguard the Confidential Information.
- 7.2 The Licensee must not use or disclose any Confidential Information other than: (a) to its directors, employees, or Approved Hosting Provider to the extent necessary in the performance of the License Agreement; or (b) with the express prior written consent of Foster Moore; (c) to its professional advisers; or (d) to the extent required by law. Disclosure of Confidential Information to the persons in (a) and (c) is subject to those persons being subject to confidentiality obligations no less onerous than those set out in this License Agreement.
- 7.3 Foster Moore may, with the Licensee's prior written consent, use the Licensee as a reference site or in a case study or other promotional material.
- 7.4 Licensee acknowledges and agrees that the Foster Moore Software, the Documentation, the Source Code, and the Associated Material are "trade secrets" of Foster Moore and their use and disclosure in breach of this License Agreement may result in loss to Foster Moore that may not be adequately compensated by payment of damages and, without limiting Foster Moore's other rights and remedies, Foster Moore is entitled to equitable relief, including enforcing its rights by specific performance or injunction proceedings.

8 Warranties

- 8.1 Foster Moore warrants that Foster Moore or its licensors are entitled to grant the license granted under the License Agreement.
- 8.2 Except as provided under clause 8.1, all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

9 Limitation of liability

- 9.1 To the extent permitted by law, the maximum aggregate liability of Foster Moore under or in connection with the License Agreement or relating to the Licensed Software, the Documentation, the Source Code, or the Maintenance Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any 12 month period starting on the Commencement Date or anniversary of that date exceed the fees paid by the Licensee under the License Agreement in that 12 month period (which in the first 12 month period of this License Agreement is deemed to be the total fees paid by the Licensee from the Commencement Date to the date of the first event giving rise to liability).
- 9.2 To the extent permitted by law, Foster Moore will not be liable for:
- (a) losses or damages which do not flow directly from a breach of the License Agreement nor for any loss of business, savings, revenue, profits, data, and/or goodwill; and/or
 - (b) any failure to perform its obligations under the Agreement to the extent caused by: (i) Force Majeure; or (ii) any use or modification of the Licensed Software, the Documentation, the Source Code, or the Maintenance Services by the Licensee under the Escrow License or in a manner not permitted under this License Agreement.

10 Termination

- 10.1 Either party may terminate the License Agreement immediately by notice in writing:
- (a) upon the other party committing any material breach of the License Agreement that is incapable of remedy;
 - (b) upon the other party failing to remedy any breach of the License Agreement that is capable of remedy within 30 days of written notice of that breach having been given by the non-defaulting party to the other party (and, without limitation, a failure by the Licensee to pay any amount due under the License Agreement by the due date is a breach that is capable of remedy for the purposes of this clause 10.1(b)); or
 - (c) upon the commencement of liquidation or the insolvency of the other party (except for the purposes of solvent amalgamation or reconstruction) or upon the appointment of a receiver, statutory manager or trustee of the other party's property or upon an assignment for the benefit of the other party's creditors or upon execution being levied against the other party or upon the other party compounding with its creditors or being unable to pay its debts in the ordinary course of business.

11 Consequences of termination

- 11.1 On termination of the License Agreement by either party:
- (a) the licenses granted under the License Agreement will terminate immediately;
 - (b) the Licensee must cease to use Foster Moore's (and its licensor's) Intellectual Property (including all Licensed Software and Documentation) and remove the Licensed Software from its systems and instruct any Approved Hosting Provider to cease hosting the Licensed Software and remove it from all relevant systems;
 - (c) Foster Moore may require the Licensee to provide written certification to Foster Moore that it has complied with the requirements of clause 11.1(b); and
 - (d) the Licensee will promptly pay any amounts outstanding under the License Agreement.

12 General

- 12.1 Assignment: The Licensee must not assign, novate, transfer or sublicense any or all of its rights under the License Agreement without the prior written consent of Foster Moore. Foster Moore may assign its rights under the License Agreement at any time without the Licensee's consent.
- 12.2 Entire agreement: The License Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of the License Agreement.
- 12.3 Further assurances: The parties must each do all such further acts (and sign any documents), as may be necessary or desirable for effecting the transactions contemplated by the License Agreement.
- 12.4 Amendments: Except as specifically provided, no amendment to the License Agreement will be effective unless it is in writing and signed by both parties.
- 12.5 No waivers: No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it. No waiver will be effective unless it is in writing and signed by the party waiving the right or remedy.

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- 12.6 Remedies cumulative: Except as is expressly stated in the License Agreement, the rights, powers and remedies provided in the License Agreement are cumulative and will be in addition to every other right, power or remedy given under the License Agreement or existing at law.
 - 12.7 Severability: If any term of the License Agreement is subsequently found to be unenforceable, invalid or illegal for any reason whatsoever, the other terms will remain in full force and effect as if the License Agreement had been executed without such provisions.
 - 12.8 Order of precedence: If there is any conflict or inconsistency between a) the terms and conditions of this License Agreement and b) the Order Form, the Order Form will take precedence.

13 Notices

- 13.1 Any notice or other communication under the License Agreement will be deemed to be validly given if in writing and delivered by hand, pre-paid post or email to the Licensee or Foster Moore at the addresses for that party specified in the Order Form. Receipt will be deemed: a) if delivered by hand, upon delivery, b) if delivered by post, ten days after posting from one state or country to another or c) if delivered by email, on sending provided the sender does not receive any indication of the failure of, or delay in, delivery within 24 hours after dispatch.

14 Dispute resolution

- 14.1 Where any dispute arises between the parties concerning the License Agreement or the circumstances, representations, or conduct giving rise to the License Agreement, no party may commence any court or arbitration proceedings relating to the dispute unless that party has complied with the procedures set out in this clause 14.
- 14.2 The party initiating the dispute (“the first party”) must provide written notice of the dispute to the other party (“the other party”) and nominate in that notice the first party’s representative for the negotiations. The other party must within 7 days of receipt of the notice, give written notice to the first party naming its representative for the negotiations. Each representative nominated will have authority to settle or resolve the dispute.
- 14.3 If the parties are unable to resolve the dispute by discussion and negotiation within 14 days of receipt of the written notice from the first party, then the parties must immediately refer the dispute to mediation.
- 14.4 The mediation must be conducted under the terms of the International Chamber of Commerce Mediation Rules.
- 14.5 If the parties are unable to resolve the dispute by mediation, then the parties must immediately refer the dispute to arbitration, with this clause applying. The dispute must be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with those Rules. All arbitration meetings and hearings shall be heard in Charleston and in English. Parties may attend the meeting and hearing by videoconference. Unless agreed by the parties, the arbitrator that is selected or appointed must have at least 10 years’ experience as an arbitrator of similar disputes; and not have any interest that conflicts with, or may reasonably be seen to be in conflict with, the impartial performance of the duties of the arbitrator in respect of the dispute. Each party may be represented by a legal practitioner in proceedings before the arbitrator. The decision of the arbitrator will be confidential, and final and binding, between the parties. Any decision, judgment or award of the arbitrator may be entered in any court having jurisdiction to do so including the enforcement of any arbitration award in accordance with the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.
- 14.6 Nothing in this clause prevents a party from seeking urgent interlocutory and/or injunctive relief from any Court of competent jurisdiction.

15 Governing law

- 15.1 The License Agreement is governed by the laws of West Virginia, and, subject to the process in clause 14, the parties submit to the non-exclusive jurisdiction of the appropriate state court in West Virginia.