

## **STATE SETTLEMENT AGREEMENT**

### **I. PARTIES**

This Settlement Agreement (the “Agreement”) is entered into between the State of Maryland (“the State”) and Cúram Software Ltd. and Cúram Software, Inc. (collectively “Cúram”), and International Business Machines Corporation (“IBM”) (all hereafter collectively referred to as “the Parties”), through their authorized representatives. Cúram and IBM are collectively referred to as “Cúram-IBM.”

### **II. RECITALS**

- A. IBM is an international information technology services company based in Armonk, New York, which, among other things, produces and sells information technology hardware, software, and support services. Cúram, based in Dublin, Ireland, developed social enterprise management software. IBM completed its acquisition of Cúram on December 19, 2011. IBM finalized the transfer of business of Cúram to IBM on July 1, 2012.
- B. On October 21, 2011, the State of Maryland, acting through the Maryland Health Benefit Exchange (“MHBE”), issued a request to solicit proposals to procure the Maryland Health Insurance Exchange (“HIX”) eligibility and enrollment system to support the State of Maryland in implementing key elements of the Patient Protection and Affordable Care Act (“ACA”) under Solicitation EXCHANGE - DHMSO294031 (the “RFP”).
- C. On December 19, 2011, Noridian Administrative Services, LLC (“Noridian”) submitted a proposal to the State of Maryland to support the HIX in response to the RFP, which was drafted in part by Cúram and included Cúram as a subcontractor providing software and services, along with subcontractor Connecture. The proposal included statements

regarding the commercial off-the-shelf (“COTS”) status of Cúram software and its existing and intended functionality to meet specific Business Requirements listed in the RFP. The proposal also included a letter from Cúram to the MHBE stating that Cúram would provide services and software support to Noridian under the proposal. On January 5, 2012, as part of the formal RFP process and with IBM’s knowledge, Cúram participated in a presentation to the State of Maryland of the proposed solution for the HIX that illustrated Cúram software conducting eligibility determinations for health assistance coverage, calculating applicable ACA tax credits, addressing changes in life events (e.g. changes in income), and illustrating the integration of Cúram’s software with fellow subcontractor Connecture’s health plan shopping software. A January 20, 2012 clarification letter from Noridian, drafted in part by Cúram, made further statements about the COTS status and existing functionality of Cúram software and its integration with Connecture’s software.

- D. On February 22, 2012, following the procurement selection process, the State of Maryland, acting through MHBE, awarded the contract to Noridian. That contract was between MHBE and Noridian and expressly incorporated by reference Noridian’s entire final proposal, including the December 19, 2011 proposal and the January 20, 2012 clarification letter. Cúram-IBM served as a subcontractor pursuant to the RFP proposal. The HIX project was funded, in part, by the Department of Health and Human Services, through grants provided to the State of Maryland.
- E. After repeated problems following the launch of the HIX website in October 2013, the State terminated the Noridian contract and replaced the HIX website and IT platform, including the Cúram software.

- F. Cúram-IBM has entered into or will be entering into a separate settlement agreement with the United States of America (hereinafter referred to as the “Federal Settlement Agreement”) under which the United States of America will receive settlement funds from Cúram-IBM for the Covered Conduct described in Paragraph G below.
- G. The State of Maryland contends that it and the United States of America have certain civil claims against Cúram-IBM arising from misrepresentations made during the RFP process, and Cúram-IBM’s performance as a subcontractor to Noridian, during the period from January 1, 2011 through May 31, 2014. More specifically, the United States and the State of Maryland allege that the material misrepresentations to the State of Maryland concerned: (1) the development and COTS status of the Cúram for Health Care Reform software, which the proposal described as a COTS solution to support consumer enrollment in health plans under the ACA; (2) the existing functionality of Cúram’s software to meet specific Business Requirements set forth in the RFP, including requirements related to calculating ACA tax credits and addressing life events; and (3) the existing capabilities of Cúram software and integration of that software with Connecture’s health-plan-shopping software, including as represented to the State of Maryland on January 5 and January 20, 2012. That conduct, as well as any other statements made or actions taken by Cúram-IBM relating to the procurement of the Maryland HIX or services rendered by Cúram-IBM as a subcontractor to Noridian, is referred to below as the Covered Conduct.
- H. The State of Maryland alleges that, as a result of the Covered Conduct, Cúram-IBM submitted or caused to be submitted false claims for payment to the State of Maryland and the United States.

- I. Cúram-IBM expressly denies the United States' and the State of Maryland's allegations and contentions against them in Paragraphs C – H.
- J. This Settlement Agreement is neither an admission of liability by Cúram-IBM nor a concession by the State of Maryland that the State's claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

### **III. TERMS AND CONDITIONS**

1. No later than ten business days after the Effective Date of this Agreement, Cúram-IBM shall pay to the State of Maryland the sum of \$2,812,000, of which \$1,406,000 is restitution, plus interest at a rate of 2.625% from February 20, 2019 to the date of payment by electronic funds transfer pursuant to written instructions to be provided by the State of Maryland.
2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon Cúram-IBM's full payment of the Settlement Amount, the State of Maryland releases Cúram-IBM, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any known or unknown civil or administrative monetary claim or cause of action of any kind that the State of Maryland has or may have for the Covered Conduct, as a relator or otherwise, including under the False Claims Act, 31 U.S.C. §§ 3729 – 3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 – 3812; the Maryland False Health

Claims Act, Md. Code Ann., Health-Gen. § 2-602(a); or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the releases given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the State are specifically reserved and are not released:

- (a) Any criminal, civil, or administrative liability arising under state revenue codes;
- (b) Any criminal liability;
- (c) Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal or State health care programs or the suspension and debarment rights of any state agency;
- (d) Any liability to the State for any conduct other than the Covered Conduct;
- (e) Any liability based upon obligations created by this Agreement;
- (f) Any liability of individuals;
- (g) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

4. Cúram-IBM waives and shall not assert any defenses Cúram-IBM may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. Cúram-IBM fully and finally releases the State of Maryland, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Cúram-IBM has asserted, could have asserted, or may assert in the future against the State of Maryland, its agencies, officers, agents, employees, and servants, related to the Covered Conduct, the State of Maryland's investigation and prosecution thereof, and the HIX.

6. This Agreement is intended to be for the benefit of the Parties only.

7. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

8. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

9. This Agreement is governed by the law of Maryland without regard to conflict of laws principles. The exclusive jurisdiction are the state courts sitting in the State of Maryland and venue for any dispute relating to this Agreement is the Circuit Court for Baltimore City. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

10. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

11. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

12. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

13. This Agreement is binding on Cúram-IBM's successors, transferees, heirs, and assigns.

14. All parties consent to the State of Maryland's disclosure of this Agreement, and information about this Agreement, to the public.

15. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

STATE OF MARYLAND

By:  Date: 6/14/19

Brian E. Frosh  
Attorney General of Maryland


Approved for legal sufficiency



Sarah W. Rice  
Assistant Attorney General



CÚRAM AND IBM

By:  \_\_\_\_\_ Date: 6/13/19

R. Tulloss Delk  
Senior Counsel

By:  \_\_\_\_\_ Date: 6/13/19

Anne McClain Sidrys  
Kirkland & Ellis LLP