



Maryland Health Benefit Exchange

REQUEST FOR PROPOSALS

Actuarial Support Services for the State Innovation Waiver

SOLICITATION NO.: # [BPM028923](#)

Issue Date: March 31, 2022

NOTICE

A Prospective Offeror that has received this document from the Maryland Health Benefit Exchange's website, <https://www.marylandhbe.com/solicitations> or <https://emma.maryland.gov>, or that has received this document from a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this RFP should immediately contact the Procurement Officer and provide the Prospective Offeror's name and mailing address so that addenda to the RFP or other communications can be sent to the Prospective Offeror.

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

STATE OF MARYLAND NOTICE TO OFFERORS/CONTRACTORS

In order to help us improve the quality of State Proposals solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your Proposals. If you have chosen not to submit a Proposal on this Contract, please email this completed form to hix.procurement@maryland.gov

Title: Actuarial Support Services for the State Innovation Waiver

Project No: BPM028923

1. If you have responded with a "no proposal", please indicate the reason(s) below:

- ☐ Other commitments preclude our participation at this time.
- ☐ The subject of the solicitation is not something we ordinarily provide.
- ☐ We are inexperienced in the work/commodities required.
- ☐ Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- ☐ The scope of work is beyond our present capacity.
- ☐ Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
- ☐ We cannot be competitive. (Explain in REMARKS section.)
- ☐ Time allotted for completion of the Proposal is insufficient.
- ☐ Start-up time is insufficient.
- ☐ Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- ☐ Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- ☐ MBE or VSBE requirements. (Explain in REMARKS section.)
- ☐ Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- ☐ Payment schedule too slow.
- ☐ Other: _____

2. If you have submitted a Proposal, but wish to offer suggestions or express concerns, please use the Remarks section below.

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) ____ - _____

Address: _____

E-mail Address: _____

**STATE OF MARYLAND
Maryland Health Benefit Exchange
RFP KEY INFORMATION SUMMARY SHEET**

| | |
|-------------------------------|---|
| Request for Proposals: | Actuarial Support Services for the State Innovation Waiver |
| Solicitation Number: | # BPM028923 |
| RFP Issue Date: | March 31, 2022 |
| RFP Issuing Office: | Maryland Health Benefit Exchange |
| Procurement Officer: | Anthony Armiger 750 East Pratt Street, 6th Floor Baltimore, MD 21202 Hix.procurement@maryland.gov |
| Contract Monitor: | Johanna Fabian-Marks Director, Policy and Plan Management 750 East Pratt Street, 6th Floor Baltimore, MD 21202 |

Proposals are to be uploaded to [Sharefile Link](https://marylandhealthconnection.sharefile.com/r-r1a89921b65434189a26a4aa86c02fa8a) –
<https://marylandhealthconnection.sharefile.com/r-r1a89921b65434189a26a4aa86c02fa8a>

| | |
|--|---|
| Pre-Proposal Conference: | April 11, 2022 at 1:00 - PM Local Time Via Google Meet |
| Proposal Due (Closing) Date and Time: | May 2, 2022 at 11:00 AM Local Time |
| MBE Subcontracting Goal: | 0% |
| Contract Type: | Fixed Unit Price, Indefinite Quantity |
| Contract Duration: | 1 One Year Base term with 2 One Year Options |
| Federal Funding: | Yes |

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SECTION 1 – MINIMUM QUALIFICATIONS

1 Offeror Minimum Qualifications

The Offeror must provide proof with its Proposal that the following Minimum Qualifications have been met:

- 1.1 The Offeror's place of business, where the main account team services this Contract, shall be located within the United States. As proof of meeting this requirement, the Offeror shall provide with its Proposal the address of the proposed place of business where the main account team serving this Contract shall be located.
- 1.2 Have at least five (5) years of experience in the review and analysis of health benefit plan rate filings for a State regulatory agency. This experience need not be consecutive but must have occurred within seven years of the date the proposal is submitted.
- 1.3 Employees working on the analysis must possess a Bachelor's Degree (BA/BS) in accounting, insurance, mathematics, finance, risk management, business administration, or a curriculum related to the successful performance of the required services.
- 1.4 The Offeror has not worked for any of the insurance carriers within the last five (5) years.
- 1.5 The Offeror has an established professional reputation in performing the type of services required under this RFP.

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SECTION 2 – SCOPE OF WORK

2.1 Summary Statement

- 2.1.1 The Maryland Health Benefit Exchange (MHBE) is issuing this Request for Proposals (RFP) to provide actuarial consulting services for health benefit plan state reinsurance program support and other activities as described in Section 2.3.
- 2.1.2 It is the MHBE's intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror and the State. The anticipated duration of services to be provided under this Contract is a base term of one year, starting on or about July 1, 2022 running through June 30, 2023, with two additional one-year options exercised at the sole discretion of the MHBE.
- 2.1.3 The MHBE intends to award a Primary Contract as a result of this RFP. See RFP Section 4.13 for more Contract award information. The successful offeror(s) will be expected to provide contractual assistance when called upon by the MHBE. Work under this Contract shall be performed on an as needed basis, and no minimum or maximum amount of work is guaranteed.
- 2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.5 Maryland State, County, municipal, and other Maryland governments or government agencies and not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by this Contract at the same prices chargeable to the State.

All such purchases by non-State of Maryland governments, government agencies or not-for-profit entities:

- 1. Shall constitute Contracts between the Contractor and that government, agency or not-for-profit entity;
- 2. Shall not constitute purchases by the State or State agencies under this Contract;
- 3. Shall not be binding or enforceable against the State; and
- 4. May be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor bears the risk of determining whether or not a government, agency or not-for-profit entity with which the Contractor is dealing is a State of Maryland agency.

All Contract prices, terms, and conditions must be provided to any Maryland local government or not-for-profit entity requesting services under this Contract.

2.2 Background and Purpose

2.2.1 Background

The Maryland Health Benefit Exchange (MHBE) was established in April 2011 in accordance with the Patient Protection and Affordable Care Act of 2010 (ACA). The MHBE is the independent state agency charged with administering the private insurance marketplace in Maryland. The Insurance Article of the Annotated Code of Maryland (“Insurance Article”) grants the MHBE broad authority to operate the State run Marketplace and other matters for compliance with the applicable provisions of the Insurance Article and the Code of Maryland Regulations (COMAR). See Ins. Art. §§ 31-106(c)(1)(iv); 31-108(b)(1); 31-108(b)(10).

Maryland Health Connection has helped to cut the state’s uninsured rate to its all-time low — about 6%, according to the U.S. Census Bureau, from 14% or higher prior to the establishment of the ACA. About 1.4 million Marylanders, or 1 of every 5 Marylanders, are now insured through Maryland Health Connection, including most of the state’s Medicaid enrollees. MHBE has continually worked to refine the consumer experience by improving the MarylandHealthConnection.gov website for ease of use and offering a mobile app, which allows end-to-end enrollment in both private coverage and Medicaid. Nearly 1,000 consumer assistance workers and insurance brokers across the state offer free, in-person enrollment assistance.

In recent years, MHBE has led several innovative programs to improve health insurance affordability and increase enrollment in the individual market. Most significantly, in 2019 Maryland launched a state reinsurance program that has reduced individual market rates by more than 30% compared to 2018, the year prior to the program’s launch. In addition, in 2022 Maryland began offering a state premium subsidy to young adults ages 18-34, the largest remaining block of uninsured individuals, with the goal of improving affordability, increasing young adult enrollment, and further stabilizing the individual market. MHBE is also engaged in efforts to simplify enrollment, including through the Easy Enrollment program, launched in 2020, which allows uninsured individuals to check a box on their state tax return to receive assistance enrolling in coverage, and which is being expanded in 2022 to offer a similar option to individuals filing for unemployment compensation. Through these efforts and others, MHBE continues to pursue its mission to offer affordable health insurance to all Marylanders.

2.2.2 Historical Information

Between 2019 and 2022, the previous Contractor conducted an annual analysis of carrier enrollment data, enrollment data provided by MHBE, and data provided by the Maryland Insurance Administration to recommend annual parameters for the reinsurance program (an attachment point, coinsurance rate, cap, and dampening factor) and update 10-year reinsurance program cost, market impact, and federal funding projections. This has included enrollment and premium projections for the individual market with and without reinsurance.¹ In order to assist MHBE in completing legislatively-required reports, the Contractor has also modeled the cost and market impact of several potential affordability programs, including individual market subsidy designs for young adults, individuals at 400-600% of the federal poverty level, and individuals ineligible for federal premium assistance due to immigration status or the family glitch.² The previous Contractor has also supported implementation of

¹ 2022 reinsurance report and projections available at: <http://www.marylandhbe.com/wp-content/uploads/2021/08/Lewis-Ellis-MHBE-2022-SRP-Report.pdf> ; <http://www.marylandhbe.com/wp-content/uploads/2021/07/Lewis-Ellis-10-Year-Projection.pdf>.

² See appendix 2 of report at [http://dlslibrary.state.md.us/publications/MHBE/SB124Ch104HB196Ch105\(2\)\(2020\)2020.pdf](http://dlslibrary.state.md.us/publications/MHBE/SB124Ch104HB196Ch105(2)(2020)2020.pdf) and appendix of report at http://dlslibrary.state.md.us/publications/JCR/2021/2021_44b_2021.pdf

the pilot Maryland young adult subsidy program by providing a daily estimate of 2022 program cost during open enrollment using enrollment data provided by MHBE.

2.3 Scope of Work

The Contractor (Primary and Back-up) must be fully capable of performing all of the requirements specified herein and possess the required qualifications.

2.3.1 General Requirements

State Reinsurance Program Modeling

- 2.3.1.1(A) The Contractor shall build upon previous work for the State Reinsurance Program by requesting from individual market carriers appropriate EDGE files and continuance tables with data from the prior plan year and emerging experience from the current plan year. Continuance tables will include claim and membership information for various claim buckets; and premium and membership information, split by on and off Exchange, as well as other potential breakouts. This data shall be collected annually, with updated data collected as appropriate during the course of the Contractor's analysis. The Contractor shall provide technical assistance to the carriers as necessary to assist them in completing the data submission
- 2.3.1.1(B) The Contractor shall conduct a risk adjustment analysis, regarding the individual market, by analyzing the collected data, including the following:
 - I. Using the EDGE data for the individual ACA market, develop member-level data for the following year, adjusting for the following:
 - a. Data will be trended, and other adjustments will be made as appropriate.
 - b. The data will be run through the latest federal risk adjustment model to replicate the risk transfers for this population under the expected regulations and guidance.
 - c. Risk transfers will be applied at a member-level such that each member will have an "adjusted claim amount" and a claim premium loss ratio.
 - d. An additional calculation will be made to determine the amount of reinsurance that a carrier would receive for each member. This will result in a secondary view of adjusted claims and claim to premium ratio.
 - II. Using the member-level data adjusted to the following year, the Contractor shall summarize the data, both with and without the impact of reinsurance. The Contractor should look at the following segments of the market to understand the impact of the reinsurance program: Metal Level; PPO and HMO; Insurer; Member cost; other relevant market segments. The Contractor shall provide an Excel file that summarizes the results of the analysis.

III. The Contractor should make recommendations as to whether an adjustment (a “dampening factor”), with a specified factor, to reinsurance payments is warranted.

- 2.3.1.1(C) Using the collected data, the Contractor shall develop updated 10-year projections for the reinsurance program. These projections shall include projected program cost, federal funding, state funding, enrollment, and premium impact of the reinsurance program. Projections shall include a “without reinsurance” scenario and a “with reinsurance” scenario. Projections shall be updated at least annually. The Contractor may be asked to update projections more frequently to reflect actual or potential market impacts such as changes in the federal premium subsidy structure or to model the impact of changes in program parameters.
- 2.3.1.1(D) Using the collected data and incorporating the analyses described in subsections (B) and (C), the Contractor shall recommend reinsurance parameters for the following year. Parameters are expected to take the shape of a reinsurance attachment point, coinsurance rate, and cap (in addition to the dampening factor referenced in subsection C).
- 2.3.1.1(E) The analyses described in subsections B, C, and D shall be summarized in a report submitted to MHBE annually. The report shall include information on the data used, the methodologies, a summary of findings, a comparison to the most recent past projections with an explanation of any updates and differences, and recommendations. The report will be used to inform the MHBE Board of Trustees’ finalization of program parameters for the following year.

1332 Waiver Applications

- 2.3.1.1(F) MHBE’s current Affordable Care Act Section 1332 State Innovation waiver (a “1332 waiver”) for the state reinsurance program ends on December 31, 2023. MHBE anticipates that a waiver amendment or extension will be requested to keep the reinsurance waiver in place for an additional 5-year period. Potential amendments to the waiver include, but are not limited to, incorporating a young adult premium subsidy program into the waiver. The Contractor shall provide actuarial and economic analysis necessary to complete the waiver amendment or extension application. The analysis should include:
- I. Actuarial analysis and actuarial certifications to support Maryland’s estimates that the proposed waiver will comply with the comprehensive coverage requirement, the affordability requirement, and the scope of coverage requirement.
 - II. Economic analysis to support Maryland’s estimates that the proposed waiver will comply with the comprehensive coverage requirement, the affordability requirement, and the scope of coverage requirement, and the Federal deficit requirement, including:
 - a. A detailed 10-year budget plan that is deficit neutral to the Federal government, as prescribed by section 1332(a)(1)(B)(ii) of the Affordable Care Act, and includes all costs under the waiver,

including administrative costs and other costs to the Federal government, if applicable; and

- b. A detailed analysis regarding the estimated impact of the waiver on health insurance coverage in Maryland.

- III. Calculate the anticipated amount of the federal pass-through funding. The analysis should be project pass-through funding from 2024-2028.

- 2.3.1.1(G) MHBE may apply for additional 1332 waivers in the future or may modify an existing 1332 waiver application. The contractor shall provide actuarial support for 1332 waiver applications as requested.

Affordability Program Modeling

- 2.3.1.1(H) The Contractor shall build upon previous work for the state young adult subsidy program by analyzing data provided by MHBE and/or requested from the carriers as appropriate in order to:
 - I. Maintain an ongoing projection of the program cost for the current and/or following year, as requested by MHBE.
 - II. Project the impact of the subsidy on the individual market.
 - III. Make preliminary and final recommendations regarding program parameters for the following year.
 - IV. Perform other analyses to support implementation of the young adult subsidy program as requested by MHBE.
- 2.3.1.1(J) The Contractor shall summarize the analyses described in subsections (H)(I -III) in a report submitted to MHBE annually. The report shall include information on the data used, the methodologies, a summary of findings, a comparison to the most recent past projections with an explanation of any updates and differences, and recommendations. The report will be used to inform the MHBE Board of Trustees' finalization of program parameters for the following year.
- 2.3.1.1(K) The Contractor shall provide actuarial analysis of other potential affordability programs as requested by MHBE.

Other Actuarial Support

- 2.3.1.1(L) The Contractor shall provide actuarial analysis to support other legislative reports, studies, or workgroups as requested by MHBE. MHBE and the Contractor will work together to determine the scope of each request, taking into account the availability of data, level of effort, and availability of funds.

2.3.1.3 Deliverables

The Contractor shall provide the MHBE with the following deliverables:

- 2.3.1.3(A) Weekly meetings with the State Contract Monitor to report on the status of any projects and discuss any issues related to such projects on a continuing basis, until all assigned, outstanding items have been completed. The first weekly meeting will be scheduled no later than one (1) week after the Contract is fully executed. Subsequent weekly meetings will be scheduled at mutually convenient times, and may, in the sole discretion of the State Contract Monitor, be conducted by telephone or other electronic means.
- 2.3.1.3(B) By January 31st of each contract year, the Contractor will provide preliminary recommendations regarding reinsurance parameters for the following year. These will be used to inform the MHBE Board of Trustees' establishment of estimated reinsurance parameters for the following year.
- 2.3.1.3(C) By January 31st of each contract year, if the young adult subsidy program is expected to be in place for the following year, the Contractor will provide preliminary recommendations regarding young adult subsidy program parameters for the following year. These will be used to inform the MHBE Board of Trustees' establishment of estimated subsidy parameters for the following year.
- 2.3.1.3(D) By May 30th of each contract year, the Contractor will provide the young adult subsidy report described in Section 2.3.1.1(J).
- 2.3.1.3(E) By June 30th of each contract year, the Contractor will provide the state reinsurance program report described in Section 2.3.1.1(E).
- 2.3.1.3 (F) By December 1st, 2022, the Contractor will provide the analysis described in Section 2.3.1.1(F) to support a state reinsurance program 1332 waiver extension or amendment application.
- 2.3.1.3 (G) The Contractor shall provide an updated projected cost for the young adult subsidy program daily during open enrollment and weekly outside of open enrollment.
- 2.3.1.3 (H) The Contractor shall provide actuarial analysis to support other legislative reports, studies, or workgroups as requested by MHBE according to mutually agreed upon dates.

2.3.2 *Corporate Experience*

The Contractor must meet the following corporate experience requirements:

- 2.3.2.1. The Contractor shall have an established professional reputation in performing the type of services required under this RFP; and
- 2.3.2.2 The Contractor shall have at least 5 years' experience reviewing health benefit plan rate filings for a State regulatory agency. This experience need not be consecutive but must have occurred within seven years of the date the proposal is submitted. A preference will be given to an Offeror with experience reviewing health benefit plan rate filings impacting Maryland consumers.

2.3.3 *Staffing Requirements*

The Contractor must meet the following staffing requirements:

- 2.3.3.1 The Lead Reviewer, who will have primary responsibility for overseeing the work on the Contract and sign the final actuarial report and opinion, must:
 - a. Possess, and maintain for the duration of the Contract term, Fellow of the Society of Actuaries (FSA) or Associate of the Society of Actuaries (ASA) designation, and be a member in good standing of the American Academy of Actuaries.
 - b. Have at least five (5) years of experience in the review and analysis of health benefit plan rate filings. This experience need not be consecutive but must have occurred within seven years of the date the proposal is submitted; and
 - c. Possess a Bachelor's Degree (BA/BS) in accounting, insurance, mathematics, finance, risk management, business administration, or a curriculum related to the successful performance of the required services.
- 2.3.3.2 Other than the person identified as the Lead Reviewer, Team Members who will perform tasks directly related to the substantive review and analysis of a filing must meet the following requirements:
 - a. Have at least two (2) years of experience in the review and analysis of health benefit plan rate filings; and
 - b. Possess a Bachelor's Degree (BA/BS) in accounting, insurance, mathematics, finance, risk management, business administration, or a curriculum related to the successful performance of the required services.
- 2.3.3.3 By submitting the proposal, the Offeror commits that the Team Members identified in its Proposal will actually perform the assigned work. The MHBE reserves the right to reject and require the replacement of any of the Offeror's Team Members, whether proposed or actually assigned to the project. Any Team Member substitution must be made in accordance with Section 3.7 "Substitution of Personnel".

2.3.4 *Additional Requirements*

- 2.3.4.1 Project Management. The Contractor shall designate a "Contract Manager" who shall be responsible for the administration of the Contract, resolving technical questions related to the Contract and monitoring all services to be performed under the Contract. The Contract Manager shall have at least 2-5 years of experience as a Contract Manager. The Contract Manager will be required to interface with the State Contract Monitor on a regular basis during the term of the Contract, and may be required to participate in program management review meetings. No changes in the Contract Manager will be allowed after proposals are submitted or prior to the Contract award. After Contract award, the Contractor is required to notify the MHBE in writing of any change in Contract Manager in accordance with Section 3.7 "Substitution of Personnel".

- 2.3.4.2 The Technical Proposal shall be free of spelling and typographical errors, conform to standard grammatical conventions, and be formatted in a manner that is easily read, including but not limited to sequential page numbering.
- 2.3.4.3 Initial services under the Contract shall not commence until the Procurement Officer has issued a written Notice to Proceed (NTP). Thereafter, additional NTPs may be issued by either the Procurement Officer or the State Contract Monitor, and shall specify the name of the carrier(s) whose filings are to be reviewed as well as the start date for any service included within this solicitation.

SECTION 3 – CONTRACTOR REQUIREMENTS

3.1 Insurance Requirements

All insurance required by this section shall be effective when the Contract commences and shall remain in effect during the term of the Contract and renewal option periods, if exercised. Certificates of insurance and evidence of the payment of premiums shall be furnished to the Procurement Officer within ten (10) business days after notice of recommended Contract award.

All insurance companies shall be licensed or authorized to do business within the State and shall be subject to approval by Exchange.

The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$2,000,000 aggregate.

3.2 Security Requirements

3.2.1 Employee Identification.

- 3.2.1.1 Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- 3.2.1.2 At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

3.3 Problem Escalation Procedure

- 3.3.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor, as well as to other State

personnel as directed should the Contract Monitor not be available.

- 3.3.2 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- a. The process for establishing the existence of a problem;
 - b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
 - c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
 - d. Expedited escalation procedures and any circumstances that would trigger expedited them;
 - e. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
 - f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
 - g. A process for updating and notifying the Contract Monitor of any changes to the PEP.

Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

3.4 Invoicing

- a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor within 30 days of delivery of services and shall include, at the minimum, the following information:
- Contractor name
 - Remittance address
 - Federal taxpayer identification number
 - Invoice period
 - Invoice date
 - Invoice number
 - State assigned Contract number
 - State assigned Purchase or Blanket Purchase Order number(s)
 - Services provided with supporting documentation providing details
 - Amount due

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

- b) The MHBE reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the MHBE with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.

3.5 SOC 2 Type 2 Audit Report

A SOC 2 Type 2 Report is not a Contractor requirement for this Contract.

3.6 MBE Reports

If this solicitation includes an MBE Goal (see Section 4.30), the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

1. **Attachment D-4A**, the MBE Participation Prime Contractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer;
2. **Attachment D-4B** (*if applicable*), the MBE Prime Contractor Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer; and
3. **Attachment D-5**, the MBE Participation Subcontractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

3.7 Substitution of Personnel

- 3.7.1 **Continuous Performance of Key Personnel.** Unless substitution is approved per paragraphs 3.7.2-3.7.4 of this section, Key Personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under this Contract, as described in the RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Monitor.

If the Contract is task order based, the provisions of this section apply to Key Personnel identified in each task order proposal and agreement.

- 3.7.2 **Definitions.** For the purposes of this section, the following definitions apply:

Extraordinary Personal Circumstance – Any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

Incapacitating – Any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Contractor's Technical Proposal.

Sudden – When the Contractor has less than thirty (30) days' prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

3.7.3 Key Personnel General Substitution Provisions. The following provisions apply to all of the circumstances of staff substitution described in paragraph 3.7.4 of this section.

1. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute Key Personnel have qualifications at least equal to those of the Key Personnel for whom the replacement is requested.
2. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
 - A detailed explanation of the reason(s) for the substitution request;
 - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
 - The official resume of the current personnel for comparison purposes; and
 - Any evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested Key Personnel replacement.

3.7.4 Replacement Circumstances

3.7.4.1 Voluntary Key Personnel Replacement.

To voluntarily replace any Key Personnel, the Contractor shall submit substitution request as described in paragraph 3.7.3 of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph 3.10.4 (2) of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

3.7.4.2 Key Personnel Replacement Due to Vacancy.

The Contractor shall replace Key Personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section 3.10.4.1 of this section.).

Under any of the circumstances set forth in this paragraph 3.7.4.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph 3.7.3 of this section within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

3.7.4.3 Key Personnel Replacement Due to an Indeterminate Absence.

If any Key Personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Monitor as required under paragraph 3.7.3 of this section.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

3.7.4.4 Directed Personnel Replacement.

3.7.4.4.1. The Contract Monitor may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 3.7.4.4.2. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph 3.7.3 of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

3.7.4.4.2 If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Key Personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

SECTION 4 – Procurement instructions

4.1 Contract Type

The Contract shall be a firm fixed price Contract as described in with COMAR 21.06.03.2.A (2).

4.2 Contract Duration

- 4.2.1 The Contract resulting from this RFP shall be for a base period of one (1) year beginning on or about July 1, 2022 through June 30, 2023 with two additional one-year options exercised at the sole discretion of the MHBE.
- 4.2.2 As of the NTP Date, the Contractor shall perform all activities required by the Contract, including the requirements of this solicitation, and the offerings in its Technical Proposal, for the compensation described in its Financial Proposal.
- 4.2.3 The Contractor's obligations to pay invoices to Subcontractors that provide products/services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment H - Contract) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied

4.3 Procurement Officer

The sole point of contact in the MHBE for purposes of this solicitation prior to the award of any Contract is the Procurement Officer at the address listed below:

Anthony Armiger
Procurement Officer
Maryland Health Benefit Exchange
750 East Pratt Street, 6th Floor
Baltimore, MD 21202
E-mail: hix.procurement@maryland.gov

The MHBE may change the Procurement Officer at any time by written notice.

4.4 Contract Monitor

The Contract Monitor is:

Johanna Fabian-Marks
Director, Policy and Plan Management
750 East Pratt Street, 6th Floor
Baltimore, MD 21202

The MHBE may change the Contract Monitor at any time by written notice.

4.5 Pre-Proposal Conference

A Virtual Pre-Proposal Conference (the Conference) will be held on April 11, 2022 indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

The Conference will be summarized. As promptly as is feasible after the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace Advantage (eMMA) and the MHBE procurement site located here: <https://www.marylandhbe.com/solicitations/>. See RFP Section 4.6.

Please e-mail the Pre-Proposal Conference Response Form to the attention of the Procurement Officer no later than 4:00 PM Local Time on April 8 (final date for submission of Attachment A). The Pre-Proposal Conference Response Form is included as **Attachment A** to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer no later than April 7, 2022. The MHBE will make a reasonable effort to provide such special accommodation.

4.6 eMaryland Marketplace Advantage

eMMA is an electronic commerce system administered by the Maryland Department of General Services. Each Offeror is requested to indicate its eMaryland Marketplace Advantage (eMMA) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP.

In addition to using the MHBE website <https://www.marylandhbe.com/solicitations/> and possibly other means for transmitting the RFP and associated materials, solicitation and summary of the Pre-Proposal Conference, Offeror questions, and Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMMA.

4.7 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the Procurement Officer's e-mail address indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email in a timely manner prior to the Proposal due date. Questions are requested to be submitted at least **five (5) days** prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are

not clearly specific only to the requestor, will be posted to eMMA and the MHBE procurement site in sufficient time for the answer to be taken into consideration in the Proposal.

4.8 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Proposals process under Section II.B of the Procurement Policies and Procedures of the MHBE (PP&P).

4.9 Proposals Due (Closing) Date and Time

Proposals, in the number and form set forth in RFP Section 5.2 “Proposals” must be received by the Procurement Officer at the Sharefile address no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

Requests for extension of this time or date will not be granted. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the RFP Key Information Summary Sheet will not be considered.

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the RFP Key Information Summary Sheet for receipt of Proposals.

Proposals must be uploaded and submitted to the Sharefile Link -

<https://marylandhealthconnection.sharefile.com/r-r1a89921b65434189a26a4aa86c02fa8a>

Proposals will not be opened publicly.

Vendors not responding to this solicitation are requested to submit the “Notice to Vendors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements, etc.). This form is located in the RFP immediately following the Title Page (page ii).

4.10 Multiple or Alternate Proposals

Neither multiple nor alternate Proposals will be accepted.

4.11 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror’s Proposal to meet the requirements of this RFP.

4.12 Public Information Act Notice

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see RFP Section 5.4.2.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed

after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

4.13 Award Basis

The Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP for providing the services as specified in this RFP. In order for MHBE to achieve its overall minority participation goal, MHBE may recommend and award a contract to a certified minority business enterprise or to a person whose offer otherwise reflects the greatest amount of certified MBE or minority participation in the event of two or more offers in which the Offerors' Technical and Price proposals are determined by the Procurement Officer to be equally most advantageous to the State. The MBE documentation required by COMAR 21.11.03.10B(2)-(6) shall be used in making this determination. See RFP Section 6 for further award information.

4.14 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Offerors must confirm in writing any substantive oral clarification of or change in their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

4.15 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers (see Section 6.5.2.5) if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

4.16 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for Proposals, the MHBE shall post addenda to eMMA and the MHBE Procurement website. It remains the responsibility of all prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted timely Proposals and that remain under award consideration as of the issuance date of the addenda.

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal. Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

4.17 Cancellations

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part,

received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

4.18 Incurred Expenses

The State will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, providing a demonstration, or performing any other activities related to submitting a Proposal in response to this solicitation.

4.19 Protest/Disputes

Any protest related to this solicitation shall be subject to the provisions of Section VII of the MHBE Procurement Policies & Procedures. Any dispute related to the Contract shall be subject to the Disputes provisions of the Contract resulting from this RFP (refer to RFP Attachment H).

4.20 Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.30 "Minority Business Enterprise Goals").

If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror shall submit with its Proposal an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualification of the parent are transferred to and shared with the Offeror, the parent is directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

4.21 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment H**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 5.4.2.4).**

4.22 Proposal Affidavit

A Proposal submitted by an Offeror must be accompanied by a completed Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP.

4.23 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit, a copy which is included as **Attachment I** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. The Contractor must also submit a Contract Affidavit with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section “B” of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

4.24 Compliance with Laws/Arrearages

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

4.25 Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>

It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of Proposals. An Offeror’s failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

4.26 False Statements

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

- (a) In connection with a procurement contract a person may not willfully:
 - (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of a material fact; or
 - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this

section.

- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

4.27 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

<https://www.marylandtaxes.gov/forms/state-accounting/static-files/GADX10Form.pdf>

4.28 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract "Prompt Payment" clause (see **Attachment D**). Additional information is available on GOMA's website at:

<http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf>

4.29 Electronic Procurements Authorized

- 4.29.1 Unless otherwise prohibited by law, the MHBE may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.29.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract.
- 4.29.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emma.maryland.gov/>), and electronic data interchange.
- 4.29.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.27 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section 4.29.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:

- 4.29.4.1 The Procurement Officer may conduct the procurement using eMMA, e-mail, or facsimile to issue:

- (a) The solicitation (e.g., the RFP);
- (b) Any amendments;
- (c) Pre-Proposal conference documents;
- (d) Questions and responses;
- (e) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
- (f) Notices of award selection or non-selection; and
- (g) The Procurement Officer's decision on any Proposal protest or Contract claim.

4.29.4.2 An Offeror or potential Offeror may use e-mail or facsimile to:

- (a) Ask questions regarding the solicitation;
- (b) submit the Proposal (including technical and financial);
- (c) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer; and
- (d) Submit a "No Proposal Response" to the solicitation.
- (e) Submit documents determined by the MHBE to require original signatures (contract execution or modifications).

4.29.4.3 The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

4.29.5 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

- (a) Filing of Proposal Protests;
- (b) Filing of Contract Claims;
- (c) Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

4.29.6 Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, Contract, or direction from the Procurement Officer or Contract Monitor.

4.29.7 The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

4.29.8 Notwithstanding the foregoing provisions of this Section 4.29, MHBE requires all Transmittal Letters, Proposals and any Contract resulting from this RFP to contain original signatures executed in ink by a person authorized to bind the Contractor. However, the Contractor may scan and submit electronically any document containing such original signature(s). The Contract may be signed by the Parties in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Contract.

4.30 Minority Business Enterprise Goals

There are no MBE subcontractor participation subgoals for this procurement.

4.31 Federal Funding Acknowledgement

- 4.31.1 There are programmatic conditions that apply to this Contract due to federal funding. (See **Attachment E**).
- 4.31.2 The total amount of federal funds allocated for the MHBE is \$426.5 million in Maryland State fiscal year 2022, . This represents 92.4% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 4.31.3 This Contract contains federal funds. The source of these federal funds is: [State Innovation Waiver under Section 1332 of the Affordable Care Act](#) The Unique Federal Award Identification Number (FAIN) is [SIWIW190006](#). The conditions that apply to all federal funds awarded by the MHBE are contained in Federal Funds **Attachment E**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment E** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror's intent to comply with all conditions, which are part of this Contract.

4.32 Conflict of Interest Affidavit and Disclosure

Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (RFP **Attachment F**) and submit it with their Proposal. All Offerors are advised that if a Contract is awarded as a result of this solicitation, the Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to RFP **Attachment F** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08, which is hereby incorporated into this RFP by reference.

Under State Government Article 15-508 of the State ethics laws, a person and their employer who assist or are involved in the drafting of specifications for a procurement are prohibited from submitting a proposal for that procurement, from assisting or representing another person, directly or indirectly, who is submitting a proposal for that procurement, and from participating in the implementation of those specifications, whether as a prime or subcontractor.

In addition, all Offerors are advised that if the Offeror is awarded a Contract as a result of this solicitation, the successful Offeror's personnel and any participating subcontractor personnel may be required to complete a conflict of interest affidavit and disclosure.

4.33 Non-Disclosure Agreement

All Offerors are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment G**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to

expedite processing, it is suggested that this document be completed and submitted with the Proposal.

4.34 HIPAA — Business Associate Agreement

Based on the determination by MHBE that certain functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and in substantially similar form to that set forth in **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the MHBE Board of Trustees, may withdraw the recommendation for award and make the award to the responsible Bidder/Officer with the next lowest Bid or next highest overall-ranked Proposal.

4.35 Nonvisual Access

By submitting a Proposal, the Offeror warrants that the information technology (IT) offered under the Proposal: (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than five percent (5%). For purposes of this solicitation and resulting Contract, the phrase “equivalent access” means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Maryland IT Nonvisual Access standards can be found at:
www.doit.maryland.gov/policies/pages/nva.aspx.

4.36 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

4.37 Non-Exchange Entity Agreement

This solicitation does not require a Non-Exchange Entity Agreement.

SECTION 5 – PROPOSAL FORMAT

5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

- Volume I – TECHNICAL PROPOSAL
- Volume II – FINANCIAL PROPOSAL

5.2 Proposal Submission

The Proposal shall be submitted to the Procurement Officer electronically via upload to the [Sharefile Link -](#)

<https://marylandhealthconnection.sharefile.com/r-r1a89921b65434189a26a4aa86c02fa8a>

- A. The subject line in the upload shall state “MHBE Actuarial Services RFP # **BPM028923** including the Offeror’s name.
- B. The e-mail shall provide the following attachments:
 1. One attachment labeled “MHBE Actuarial Services RFP # **BPM028923** Technical Proposal” containing the Technical Proposal contents and all required signed Attachments (see Section 4.4.3 below), in PDF format.
 2. A second attachment labeled “MHBE Actuarial Services RFP #BPM028923 Financial” containing the Financial Proposal contents, signed and in Excel and PDF format.
 3. A third attachment labeled “MHBE Actuarial Services RFP # BPM028923 ”, including Volumes I and II in searchable Adobe .pdf format for Public Information Act (PIA) requests (this copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 4.12 “Public Information Act Notice”). If an Offeror chooses to submit its Proposal without identifying any information that is confidential/proprietary, it should still provide the third attachment required here and label it “PIA”, even though no information therein will be redacted.

5.3 Delivery

Offerors must submit Proposals via [Sharefile Link -](#)

<https://marylandhealthconnection.sharefile.com/r-r1a89921b65434189a26a4aa86c02fa8a>

5.4 Volume 1 – Technical Proposal

Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing information is to be included only in the Financial Proposal (Volume II).

5.4.1 Format of Technical Proposal. The RFP sections are numbered for ease of reference. Section 5.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 5.4.2.1 “Title and Table of Contents,” Section 5.4.2.2 “Claim of Confidentiality,” Section 5.4.2.3 “Transmittal Letter,” Section 5.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 2.2.1 Response . . . ; “Section 2.2.2 Response . . . ,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 6.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

5.4.2 The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

5.4.2.1 Title Page and Table of Contents (Submit under TAB A). The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

5.4.2.2 Claim of Confidentiality (If applicable, submit under TAB A-1). Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 4.12 “Public Information Act Notice”). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

5.4.2.3 Transmittal Letter (Submit under TAB B). A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

1. Name and address of the Offeror;
2. Name, title, e-mail address, and telephone number of primary contact for the Offeror;
3. Solicitation Title and Solicitation Number that the Proposal is in response to;
4. Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
5. Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual’s Social Security Number (SSN);
6. Offeror’s eMMA number;
7. Offeror’s MBE certification number (if applicable);
8. Acceptance of all State RFP and Contract terms and conditions (see Section 4.17); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 5.4.2.4); and
9. Acknowledgement of all addenda to this RFP.

5.4.2.4 Executive Summary (Submit under TAB C). The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.” In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary.

The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment H), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

If the Offeror has taken no exceptions to the requirements of this RFP, the Contract (Attachment H), or any other attachments, the Executive Summary shall so state.

5.4.2.5 **Minimum Qualifications Documentation (If applicable, Submit under TAB D).** The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP Section 1, “Minimum Qualifications” and

5.4.2.6 **Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E).**

5.4.5.6.1 The Offeror shall address each Scope of Work requirement (RFP Section 2) in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

5.4.5.6.2 The Offeror shall give a definitive **section-by-section** description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required services as outlined in RFP Section 2, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. The plan should specifically identify those individuals, by area of expertise, responsible for key implementation activities and clearly identify their roles for implementation. The Work Plan should include a list of specific implementation tasks and transition protocols and a timetable for initiation and completion of such tasks, including all contract deliverables. This plan should address any specific milestones identified in Section 2 and all other tasks and protocols necessary for successful implementation. The Work Plan should be specific about requirements for information transfer as well as any services or assistance required from the MHBE during implementation.

5.4.5.6.3 The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State’s requirements as outlined in this RFP.

5.4.5.6.4 The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department’s Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in RFP Section 3.3.

5.4.5.6.6 The Offeror shall provide a detailed explanation of service capabilities to address each of the following:

- Describe the Offeror's understanding and knowledge of both the federal and state requirements of the Affordable Care Act as it pertains to a state-based health insurance exchange, specifically those related to state reinsurance programs, individual market and small group market rating rules, and 1332 waiver applications;
- Describe the Offeror's understanding and knowledge of the goals and objectives of the Maryland Health Benefit Exchange; and
- Provide examples of the Offeror's capabilities, skills, and experience with prior projects in successfully and effectively providing actuarial analysis in support of state reinsurance programs, 1332 waiver applications, and state policies and programs impacting the individual and/or small group health insurance market in a state and explain how that experience relates to the requirements outlined in the Scope of Work.

5.4.2.7 **Experience and Qualifications of Proposed Staff (Submit under TAB F).** The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract.

The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. The Offeror shall include individual resumes for the Key Personnel and the proposed MHBE Account Team, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.

The Offeror shall provide a staffing plan that describes how the Offeror intends to staff this Contract to meet the MHBE's needs. Provide an organizational chart showing the management structure of the firm with a description of the qualifications, credentials and the location of upper management, regional management and support staff, as well as those actually assigned and dedicated to manage this account. The following information is to be included:

- Names, titles and roles of key personnel
- Area of expertise
- Geographic location
- Brief description of qualification and credentials

5.4.2.8 **Offeror Qualifications and Capabilities (Submit under TAB G).** The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

1. The number of years the Offeror has provided the similar services;
2. The number of clients/customers and geographic locations that the Offeror currently serves;
3. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
4. The Offeror's process for resolving billing errors; and
5. An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

5.4.2.9 References (Submit under TAB H). At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Minimum Qualifications (see RFP Section 1) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and shall include the following information:

1. Name of client organization;
2. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
3. Value, type, duration, and description of services provided.

The Department reserves the right to request additional references or utilize references not provided by an Offeror.

5.4.2.10 List of Current or Prior State Contracts (Submit under TAB I). Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

1. The State contracting entity;
2. A brief description of the services/goods provided;
3. The dollar value of the contract;
4. The term of the contract;
5. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
6. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

5.4.2.11 Financial Capability (Submit under TAB J). An Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror may supplement its response to this Section by including one or more of the following with its response:

1. Dun & Bradstreet Rating;
2. Standard and Poor's Rating;
3. Lines of credit;
4. Evidence of a successful financial track record; and
5. Evidence of adequate working capital.

5.4.2.12 Certificate of Insurance (Submit under TAB K). The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in

Section 3.1. See Section 3.1 for the required insurance certificate submission for the recommended Offeror.

5.4.2.13 **Subcontractors (Submit under TAB L).** The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project.

5.4.2.14 **Legal Action Summary (Submit under TAB M).** This summary shall include:

1. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
2. A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
3. A description of any judgments against the Offeror within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and
4. In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, the name of the judge and location of the court.

5.4.3 **Additional Required Technical Submissions (Submit under TAB O).**

The following documents shall be completed, signed, and included in the Technical Proposal that follows the material submitted in response to Section 5.4.1.

- a. Completed Bid/Proposal Affidavit (**RFP Attachment C**).
- b. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**). **See Section 4.30**;
- c. If applicable, a signed statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. ***refer to RFP Section 4.20**.
- d. Federal Funding Acknowledgement (**Attachment E**); **refer to RFP Section 4.31**.
- e. Completed Conflict of Interest Affidavit and Disclosure (**Attachment F**) ***refer to RFP Section 4.32**.

5.5 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 5.2 "Proposals," the Offeror shall submit an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

The remainder of this page is intentionally left blank

SECTION 6 – EVALUATION AND SELECTION PROCESS

6.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with this RFP by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The MHBE reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

6.2 Evaluation Criteria

The Contract will be awarded to all qualified Offerors in accordance with the Competitive Sealed Proposals procurement process under Section II. B of MHBE's Procurement Policies and Procedures.

6.3 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub-criteria within each criterion have equal weight.

6.3.1 Experience and Qualifications of Proposed Staff (See RFP § 5.4.2.7).

MHBE will evaluate the length and relevance of experience and qualifications of the Offeror's (and any subcontractors') personnel, as described in the Offeror's Proposal. Relevance will be determined by the alignment of experience with the associated Scope of Work/deliverables of team members.

6.3.2 Offeror Qualifications and Capabilities, including proposed Subcontractors (See RFP § 5.4.2.8 – 5.4.2.14).

MHBE will evaluate the relevance and success of the Offeror's (and any subcontractors') past experience with similar projects and services, as described in the Offeror's Proposal. Relevance will be determined by the alignment of past projects with the Scope of Work. Success will be determined by the favorability of references' comments regarding past projects as well as by review of any outcomes/deliverables that that Offeror can provide for previous projects, such as submitted 1332 waiver applications or analysis in support of state reinsurance programs or state programs or policies impacting the individual or small group health insurance market.

6.3.3 Offeror's Technical Response to RFP Requirements and Work Plan. (See RFP § 5.4.2.6).

MHBE will evaluate the Offeror's comprehensive understanding of the RFP's work requirements and mastery of the relevant subject matter, as demonstrated in the Offeror's Proposal responding to the work requirements set forth in the RFP. Understanding of the work requirements will be determined by evaluating the Offeror's ability to articulate a Work Plan that comprehensively addresses the required services as outlined in RFP Section 2, Scope of Work. Mastery of the relevant subject matter will be determined by evaluating the Offeror's ability to demonstrate a clear understanding of federal and state requirements of the Affordable Care Act as it pertains to a state-based health insurance exchange, specifically those related to state reinsurance programs, individual market and small group market rating rules, and 1332 waiver applications.

6.4 Financial Criteria

Financial Proposals will be evaluated separately. Offerors shall propose prices for **all** work. All Qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form.

6.5 Selection Procedures

6.5.1 General. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found in Section II.B of the MHBE Procurement Policies and Procedures. The Competitive Sealed Proposals method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.

In either case (i.e., with or without discussions), the State may determine an Offeror to be not responsible and/or an Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, that Offeror's Financial Proposal will subsequently be returned if the Financial Proposal is unopened at the time of the determination.

6.5.2 Selection Process Sequence

6.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and properly completed, if there is an MBE goal. Finally, a determination is made that all Minimum Qualifications, if any (See RFP Section 1), have been satisfied.

6.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and Offeror's ability to perform the services, as well as facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.

6.5.2.3 Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.

6.5.2.4 The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

6.5.2.5 When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

6.5.3 Award Determination. Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. **In making this most advantageous Proposal determination, technical factors will receive greater weight than financial factors.**

6.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit one (1) copy of each of the following documents:

1. Contract (**Attachment H**),
2. Contract Affidavit (**Attachment I**),
3. MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; ***see Section 4.30**,
4. MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; ***see Section 4.30**),
5. Non-Disclosure Agreement (**Attachment G**), if applicable; ***see Section 4.33**,

RFP ATTACHMENTS

ATTACHMENT A – Pre-Proposal Conference Response Form

It is requested that this form be completed and submitted as described in RFP Section 4.5 by those potential Offerors that plan on attending the Pre-Proposal Conference.

ATTACHMENT B – Financial Proposal Instructions and Form

The Financial Proposal Form must be completed and submitted in the Financial Proposal package.

ATTACHMENT C – Proposal Affidavit

This Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENTS D – Minority Business Enterprise Forms

If required (see RFP Section 4.30), these Attachments include the MBE subcontracting goal statement and instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within ten (10) Business Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3A/B.

ATTACHMENT E – Federal Funds Attachment

If required (see RFP Section 4.31), these Attachments must be completed and submitted with the Technical Proposal as instructed in the Attachments. The terms and conditions in this attachment are incorporated into any resulting Contract with the Offeror.

ATTACHMENT F – Conflict of Interest Affidavit and Disclosure

If required (see RFP Section 4.32), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT G– Non-Disclosure Agreement

If required (see RFP Section 4.33), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT H – Contract

This is the sample contract used by the MHBE. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer one (1) executed copy of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Contractor.

ATTACHMENT I – Contract Affidavit

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT J – HIPAA Business Agreement

Appendix I - Definitions

Appendix II – Sample Alternative Scenario Results

ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM

Solicitation Number BPM028923

MHBE Actuarial Support Services for the State Innovation Waiver

A Virtual Pre-Proposal Conference will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

Please return this form at least three (3) Business Days prior to the Pre-Proposal Conference date, advising whether or not you plan to attend. The completed form should be returned via e-mail to the Procurement Officer. The Procurement Officer's contact information is provided in the RFP Key Information Summary Sheet.

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.5 "Pre-Proposal Conference"):

Signature

Title

Name of Firm (please print)

ATTACHMENT B – FINANCIAL PROPOSAL INSTRUCTIONS & FORM

B-1: FINANCIAL PROPOSAL INSTRUCTIONS

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

The Financial Proposal Form is used to calculate the Offeror's EVALUATED PROPOSAL PRICE. Follow these instructions carefully when completing your Financial Proposal Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03, and may cause the Proposal to be rejected.
- H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the MHBE does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

B-2: FINANCIAL PROPOSAL FORM

Provided as a separate Excel Document.

Submit one hard, signed copy and submit electronic files in both Excel and PDF format.

ATTACHMENT C – PROPOSAL AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Offeror hereby certifies and agrees that the following information is correct: In preparing its Proposal on this project, the Offeror has considered all Proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Proposal submitted by the Offeror on this project, and terminate any contract awarded based on the Proposal. As part of its Proposal, the Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Offeror agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES

The undersigned Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority Proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Proposal submitted by the Offeror on this project, and terminate any contract awarded based on the Proposal.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been

convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;

- (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
- (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
- (d) §7206, Fraud and False Statements, or
- (e) §7207, Fraudulent Returns, Statements, or Other Documents;

(10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
- (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
- (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
- (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Proposal that is being submitted; or

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Proposal price of the Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, State Department of Assessments and Taxation, and Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

- (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
- (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: _____

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the Proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of

the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

Date: _____

By: _____ (print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

ATTACHMENT E - FEDERAL FUNDS ATTACHMENT

[Reference, among other provisions, 45 C.F.R. § 75.335]

In addition to other provisions required by the RFP and Contract related to the federal funds that may be included in any Contract to be awarded as a result of this RFP, the following provisions are applicable:

A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

C. Debarment and Suspension (Executive Orders 12549 and 12689) (see 2 CFR 180.220 and 45 CFR 75.212) A party listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension” is not eligible for award under this RFP. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Any Contractor awarded a Contract as a result of this RFP is responsible for ensuring that any party with which it subcontracts is not debarred or suspended and is in full compliance with the executive orders and federal regulations cited in this paragraph.

D. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required attached certification. Each tier (including the Contractor and any subcontractor(s)) certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal awardee (which, in this case, is the State of Maryland).

1. *Form and rule:* All prospective and present contractors and subcontractors (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the attached form “Certification Against Lobbying.” It assures, generally, that contractors and subcontractors receiving federal funds will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF-111.

2. *Form and instructions:* “Form LLL, Disclosure of Lobbying Activities” must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.

E. Section 504 of the Rehabilitation Act of 1973. Any Contractor awarded a Contract as a result of this

RFP certifies that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 791 *et seq.*), and all regulations promulgated thereunder. Section 504 prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation— programs, activities, and facilities and employment. It states, among other things, that: *Grantees that provide health ... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with impaired sensory or speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.*

F. Age Discrimination Act of 1975. Any Contractor awarded a Contract as a result of this RFP certifies that it shall not discriminate on the basis of Age, according to the requirements of the Age Discrimination Act of 1975.

G. Title VI of the Civil Rights Act of 1964. Any Contractor awarded a Contract are a result of this RFP certifies that it shall comply with Title VI of the Civil Rights Act of 1964 and shall not discriminate in participation by race, color, or national origin.

H. Section 1557 of the ACA. Any Contractor awarded a Contract as a result of this RFP certifies that it shall comply with Section 1557 of the Affordable Care Act (42 U.S.C. § 18116) and any regulations promulgated thereunder. Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. Section 1557 further provides that, except as provided in Title I or the Patient Protection and Affordable Care Act (as amended, the ACA), an individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any health program or activity, any part of which is receiving federal financial assistance or any program or activity that is administered by any entity (such as MHBE) established under Title I of the ACA.

ATTACHMENT E-1 – CERTIFICATION AGAINST LOBBYING

U.S. Department of Health and Human Services CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

| | |
|---|-----------------------------------|
| Award No. | Organizational Entry |
| Name and Title of Official Signing for Organizational Entry | Telephone No. Of Signing Official |
| Signature of Above Official | Date Signed |

ATTACHMENT E-2 DISCLOSURE OF LOBBYING ACTIVITIES
Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

| | | |
|--|---|---|
| 1. Type of Federal Action: a. Contract b. Grant c. Cooperative Agreement d. Loan e. Loan guarantee f. Loan insurance | 2. Status of Federal Action: a. Bid/offer/application b. Initial award c. Post-award | 3. Report Type: a. Initial filing b. Material change For Material Change Only: Year _____ quarter _____ Date of last report _____ |
| 4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, <i>if known</i> : | | 5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, <i>if known</i> : |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description: CFDA Number, <i>if applicable</i> : _____ | |
| 8. Federal Action Number, if known: | 9. Award Amount, if known: \$ | |
| 10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i> | b. Individuals Performing Services <i>(including address if different from No. 10a) (last name, first name, MI):</i> | |
| 11. Amount of Payment <i>(check all that apply)</i> \$_____ <input type="checkbox"/> actual <input type="checkbox"/> planned | 13. Type of Payment <i>(check all that apply)</i> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____ | |
| 12. Form of Payment <i>(check all that apply)</i> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind, specify: nature _____ value: _____ | | |
| 14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) SF-LLLA, if necessary) | | |

| | | | |
|--|--|--|-----------------------------|
| 15. Continuation Sheet(s) SF-LLLA attached: | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <p>16. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p> | | <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p> | |
| Federal Use Only | | Authorized for Local Reproduction Standard Form LLL (Rev. 7-97) | |
| | | | |

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

ATTACHMENT F– CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08, Incorporated Herein

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder/Offeror, Contractor, consultant, or Subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Bidder/Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The Bidder/Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder/Offeror shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder/Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

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

Date:_____ By:_____ (Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

ATTACHMENT G – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the Maryland Health Benefit Exchange (“MHBE”), and _____ (the “Contractor”).

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Actuarial Support Services for the State Innovation Waiver RFP #BPM028693 (the “RFP”); and

WHEREAS, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and Subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the State deems confidential information (the “Confidential Information”).

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, Confidential Information means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, State Govt. §10-1301), PII protected under 45 C.F.R. § 155.260 and Protected Health Information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the MHBE’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT G-1. Contractor shall update ATTACHMENT G-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or who will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties

and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information, including those set forth in the Non-Exchange Entity Agreement between the Parties pursuant to the above RFP (the “Non-Exchange Entity Agreement”). For the avoidance of doubt, should any provisions of this Non-Disclosure Agreement conflict with those in the Non-Exchange Entity Agreement, the provisions of the Non-Exchange Entity Agreement shall control.

5. Contractor shall promptly advise the MHBE if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s). Should the Confidential Information constitute PII, as that term is defined in the Non-Exchange Entity Agreement, Contractor shall follow the procedures set forth therein for notifying the MHBE. Should the Confidential Information be other than PII, the Contractor shall notify the MHBE in writing.
6. Contractor shall, at its own expense, return to the MHBE all copies of the Confidential Information in its care, custody, control or possession upon request of the MHBE or on termination of the Contract. Should the Confidential Information constitute PII, the Contractor shall comply with the provisions of the Non-Exchange Entity Agreement regarding preservation, return or deletion of the Confidential Information. Unless otherwise instructed by the MHBE’s Chief Compliance Officer, Contractor shall complete and submit ATTACHMENT G-2 when returning the Confidential Information to the MHBE. Contractor agrees it shall cooperate with the MHBE’s Chief Compliance Officer with respect to whether to delete or retain, for the period specified in the Contract or required by applicable law, any Confidential Information stored electronically or otherwise held by the Contractor.
7. A breach of this Agreement by the Contractor or by the Contractor’s Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor’s Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State’s rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor’s Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys’ fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor’s Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor’s Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or

- delegated, by operation of law or otherwise, without the prior written consent of the MHBE;
- c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
- d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
- e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
- f. The Recitals are not merely prefatory but are an integral part hereof; and
- g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

| | |
|---------------------|---------------------|
| Contractor: _____ | (MHBE) |
| By: _____ (SEAL) | By: _____ |
| Printed Name: _____ | Printed Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |

**LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO
THE CONFIDENTIAL INFORMATION**

[illegible]

ATTACHMENT G-2 - NON-DISCLOSURE AGREEMENT

CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the Maryland Health Benefit Exchange and _____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the MHBE in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT H – CONTRACT

MHBE Actuarial Support Services for the State Innovation Waiver

RFP # BPM028923

THIS CONTRACT (the “Contract”) is made this _____ (“Xth”) day of _____ (month), _____ (year) by and between _____ (Contractor’s name) and the MARYLAND HEALTH BENEFIT EXCHANGE.

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

1. Definitions

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

- 1.1 “ACA” means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), together with regulations promulgated pursuant thereto.
- 1.2 “Agency” or “MHBE” means the Maryland Health Benefit Exchange, a public corporation and a unit of State government.
- 1.3 “COMAR” means Code of Maryland Regulations.
- 1.4 “Contract” means this agreement between _____ (Contractor’s name) and the Maryland Health Benefit Exchange.
- 1.5 “Contract Monitor” means the following MHBE employee identified as the Contract Monitor or a successor designated by MHBE: Johanna Fabian-Marks, Director, Policy and Plan Management, 750 East Pratt Street, 6th Floor, Baltimore, MD 21202.
- 1.6 “Contractor” means _____ (Contractor’s name) whose principal business address is _____ (Contractor’s primary address) and whose principal office in Maryland is _____ (Contractor’s local address).
- 1.7 “Effective Date” shall mean July 1, 2022, following full execution of the Contract by the Parties.
- 1.8 “eMMA” means eMaryland Marketplace Advantage.
- 1.9 “Financial Proposal” means the Contractor’s Financial Proposal dated _____ (Financial Proposal date; if a Financial Proposal Best and Final Offer was provided, use the date of the Best and Final Offer here).

- 1.10 “Notice to Proceed Date” or “NTP Date” means the date specified in an NTP for work on Contract, project, Task Order or Work Order to begin.
- 1.11 “Minority Business Enterprise” (MBE) means an entity meeting the definition at COMAR 21.01.02.01B(54), which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.12 “Notice to Proceed” or “NTP” means a written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- 1.13 “Personally Identifiable Information” or “PII” means personally identifiable information as defined by U.S. Office of Management and Budget Memorandum M-07-12 (Jan. 3, 2017) (“The term PII refers to information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual”). PII is a broad category of information that includes subsets of other information, such as Personal Health Information (PHI) and “personal information”, as the latter term is used in the following sections of the Maryland Code Annotated: Section 14-3501(d) of the Commercial Law Article and Section 10-1301(c) of the State Government Article.
- 1.14 “Procurement Officer” means the following MHBE employee identified as the Procurement Officer or a successor designated by the MHBE: Anthony Armiger, 750 East Pratt Street, 6th Floor, Baltimore, MD 21202 , hix.procurement@maryland.gov
- 1.15 “Proposal(s)” means, as appropriate, either or both of the Contractor’s Technical or Financial Proposal.
- 1.16 “Protected Health Information” or “PHI” has the meaning provided in 45 C.F.R. § 160.103; generally, information transmitted or maintained in any form or medium that is (1) created or received by a health care provider, health plan, employer, or health care clearinghouse and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual. .
- 1.17 “RFP” means the Request for Proposals for Actuarial Support Services for the State Innovation Waiver Solicitation # BPM028693, and any addenda thereto issued in writing by the State.
- 1.18 “State” means the State of Maryland, including the Maryland Health Benefit Exchange
- 1.19 “Technical Proposal” means the Contractor’s Technical Proposal dated _____ (Technical Proposal date; if a Technical Proposal Best and Final Offer was provided, use the date of the Best and Final Offer here).
- 1.20 Capitalized terms not defined herein shall have the meanings the RFP provides.

2. Scope of Contract

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-G, which are listed

below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – State Contract Affidavit, executed by the Contractor and dated _____.

Exhibit C – The Non-Disclosure Agreement

Exhibit D – The Federal Funds Attachment (Attachment E to the RFP, including E-1 and E-2).

Exhibit E – The Contractor’s Technical Proposal

Exhibit F – The Contractor’s Financial Proposal

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 Without limiting the rights of the Procurement Officer in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all required approvals are obtained.
- 2.4 Contracts awarded in violation of the MHBE Procurement Policies and Procedures shall be voidable at the election of MHBE.

3. **Period of Performance.**

- 3.1 The Contract shall be effective as of July 1, 2022 following its full execution by the Parties. From this date, the Contract shall be for a base period of one (1) year, beginning on or about July 1, 2022 and ending on or about June 30, 2023, unless terminated earlier as provided in this Contract.
- 3.2 In its sole discretion, the MHBE shall have the unilateral right to extend the Contract for two, successive one year renewal options (each a “Renewal Term”) at the labor rates established in the Contract. “Term” means the Initial Term and any Renewal Term(s).
- 3.3 All maximum prices for rates as well as the terms offered in RFP Attachments B, B-1 and B-2 are binding on the Contractor for the term of the Contract.
- 3.4 The Contract shall have a not to exceed amount of **\$ 200,000 per year.**
- 3.5 The Contractor’s performance under the Contract shall commence as of the date provided in a written NTP.
- 3.6 The Contractor’s obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this

Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the MHBE shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract, including the base term and any options exercised by the MHBE, shall not exceed the budgeted amount as approved by the Board of Trustees.
- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the MHBE's receipt of a proper invoice for services provided by the Contractor, acceptance by the MHBE of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is _____ (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor via hbe.finance@maryland.gov. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the MHBE is not evidence that services were rendered as required under this Contract.
- 4.5 Contractor's eMaryland Marketplace Advantage vendor ID number is _____ (Contractor's eMMA number).

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in Section 7.2), and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the MHBE or developed by Contractor relating to the Contract, except as provided for in Section 8 (“Confidential or Proprietary Information and Documentation”).

7. Patents, Copyrights, and Intellectual Property

- 7.1 All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the MHBE or licensed by the MHBE from third parties, including all information provided by the MHBE to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the MHBE will have no rights to the same except as expressly granted in this Contract. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-

exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract..

- 7.3 Subject to the terms of Section 10, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent..
- 7.4 Without limiting Contractor's obligations under Section 7.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7 The Contractor shall report to the MHBE, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the MHBE's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the MHBE shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

8. Confidential or Proprietary Information and Documentation

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law, including the ACA and 45 C.F.R. § 155.260, the Non-Exchange Entity Agreement and Non-Disclosure Agreement each incorporated into this Contract pursuant to Section 2.1.
- 8.2 The Contractor acknowledges its duty to become familiar and comply, to the extent applicable, with all requirements of the Patient Protection and ACA. If in connection with the procurement or at any time during the term of the Contract, the MHBE determines that the Contractor's access to PII in connection with work performed in accordance with the scope of work set forth in the solicitation makes the Contractor a Non-Exchange Entity, as that term is defined in 45 C.F.R. § 155.260(b)(1), the Contractor shall execute a Non-Exchange Entity Agreement as required by 45 C.F.R. § 155.260(b) in the form required by MHBE.
- 8.3 The Contractor acknowledges its duty to become familiar and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:
 - (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
 - (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
 - (c) Otherwise providing good information management practices regarding all health information and medical records.
- 8.4 If in connection with the procurement or at any time during the term of the Contract, the MHBE determines that functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form required by the MHBE.
- 8.5 This Section 8 shall survive expiration or termination of this Contract.

9. Loss of Data

In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

10. Indemnification and Notification of Legal Requests

- 10.1 At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2 The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3 Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request.
- 10.4 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.5 Section 10 shall survive expiration or termination of this Contract.

11. Non-Hiring of Employees

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

12. Disputes

- 12.1 As used herein, a "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or relating to this Contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim. However, if the submission subsequently is not acted upon in a

reasonable time, or is disputed as to liability or amount, it may be converted to claim for the purpose of this clause.

- 12.2 Within thirty (30) days of when the Contractor knows or should have known of the basis for a claim relating to the Contract, it shall file a written notice of claim on its letterhead to the Procurement Officer. Contemporaneously with, or within thirty (30) days after filing the notice of claim, the Contractor shall submit the written claim to the Procurement Officer. The claim shall be in writing and shall contain: (a) An explanation of the claim, including reference to all contract provisions upon which it is based; (b) The amount of the claim; (c) The facts upon which the claim is based; (d) All pertinent data and correspondence that the Contractor relies upon to substantiate the claim; and (e) a certification by a senior official, officer, or general partner of the Contractor or the subcontractor, as applicable, that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the contract adjustment for which the person believes the MHBE is liable. The Procurement Officer shall issue a final, written decision on the claim as expeditiously as possible. Any final decision of the Procurement Officer may award a Contract claim only for those expenses incurred not more than thirty (30) days before the contractor initially filed its notice of claim.
- 12.3 If the final decision of the Procurement Officer grants the claim in part and denies the claim in part, the MHBE shall pay the Contractor the undisputed amount. Payment of the partial claim shall not be construed as an admission of liability by the MHBE and does not preclude the MHBE from recovering the amount paid if a subsequent determination modifies the final decision.
- 12.4 Within ten (10) days of receipt of the final decision of the Procurement Officer, the Contractor may file a notice of appeal to the MHBE Executive Director for claims for monetary amounts less than \$50,000, and to the Board of Trustees for either claims for monetary amounts of \$50,000 or greater or for claims involving non-monetary relief. Contemporaneously with, or within twenty (20) days after filing the notice of appeal, the Contractor shall submit its written appeal to the MHBE Executive Director or Board of Trustees as applicable. The Executive Director shall issue a final decision resolving the appeal of claims for monetary amounts less than \$50,000. The Board of Trustees shall issue a final decision resolving appeals of claims for \$50,000 or more and those for non-monetary relief. The Contractor's timely appeal to the Executive Director or the Board of Trustees shall be a strict condition precedent to the Contractor pursuing any legal rights which it alleges or which may exist in any other forum.
- 12.5 Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.
- 12.6 Nothing in this section shall be construed to limit the MHBE's right to withhold payments from the Contractor, assess liquidated damages against the Contractor, direct the Contractor to perform pursuant to the terms of the Contract or any written change order, or to exercise any other rights allowed by Contract or at law.

13. Maryland Law

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.

- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

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

16. Non-Availability of Funding

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

17. Termination for Default

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

governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

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

19. Delays and Extensions of Time

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

20. Suspension of Work

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

21. Pre-Existing Regulations

The regulations set forth in Title 21 of the Code of Maryland Regulations (“COMAR 21”) are applicable to this Contract where expressly referenced. In such cases, the referenced COMAR 21 regulation in effect on the date of execution of this Contract is applicable to this Contract.

22. Financial Disclosure

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

23. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that

every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

24. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of ten (10) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPPA) or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the Contract services being performed for the MHBE.
- 25.2 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The MHBE may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the MHBE's election. The MHBE may copy, at its own expense, any record related to the services performed and provided under this Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance unless otherwise noted herein
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the MHBE has the right to audit such subcontractor(s).

25.4 The Contractor and/or subcontractors shall cooperate with MHBE and MHBE's designated accountant or auditor and shall provide the necessary assistance for the MHBE or MHBE's designated accountant or auditor to conduct the audit.

25.5 This Section shall survive expiration or termination of the Contract.

26. Compliance with Laws

The Contractor hereby represents and warrants that:

26.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

26.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

26.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

26.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

27. Cost and Price Certification

27.1 By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Proposal.

27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

28. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer; provided, however, that a Contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

29. Liability

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

- 29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 (“Patents, Copyrights, and Intellectual Property”) of this Contract;
- 29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract where liability is not otherwise set forth as being “without limitation”, and regardless of the basis on which the claim is made, Contractor’s liability shall not exceed 3 times the value of the Contract. Third-party claims arising under Section 10 (“Indemnification”) of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor’s liability for third-party claims arising under Section 10 of this Contract, including for intellectual property infringement, bodily injury, damage to real property, and damage to tangible personal property, shall be unlimited if the State is not immune from liability for claims arising under Section 10.

30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State’s Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the MHBE, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all Subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State’s Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the MHBE, at its option and in its sole discretion, may take one or more of the following actions:
- a. Not process further payments to the contractor until payment to the subcontractor is verified;
 - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - e. Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation:
- a. Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
 - b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the MHBE, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
 - b. Be used as evidence on the merits of a dispute between the MHBE and the contractor in any other proceeding; or
 - c. Result in liability against or prejudice the rights of the MHBE.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the MHBE may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.

Verification shall include a review of the:

 - i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
 - b. If the MHBE determines that the Contractor is not in compliance with certified MBE

participation goals, then the MHBE will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

- c. If the MHBE determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the MHBE requires, then the MHBE may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- d. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

32. Use of Estimated Quantities

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the MHBE does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

33. Contract Monitor and Procurement Officer

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

34. Notices

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

If to the State: Tony Armiger
Procurement Officer
750 East Pratt Street, 6th Floor
Baltimore, MD 21202

If to the Contractor: _____

35. Federal Funds Requirements and Restrictions

This Contract contains federal Medicaid Funds (CFDA number 93.778). Execution of this Contract indicates Contractor's agreement with all federal funding terms and conditions that apply to contractors receiving

federal funds from the above referenced source, including but not limited to those required by 45 C.F.R. § 75.335, Appendix II to Part 75 of Title 45 of the Code of Federal Regulations and Attachment E of the RFP (including E-1 and E-2). Attachment E of the RFP is incorporated into this Contract pursuant to Section 2.1, above.

36. Parent Company Guarantee

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

37. Miscellaneous

- 37.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 37.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

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

CONTRACTOR

MARYLAND HEALTH BENEFIT
EXCHANGE

By:

By: Michele Eberle, Executive Director
Or designee:

Date

PARENT COMPANY (GUARANTOR) (if
applicable)

By:

By:

Date

Date

Approved for form and legal sufficiency
this ____ day of _____, 20____.

Assistant Attorney General

ATTACHMENT I – CONTRACT AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID

Number: _____ *Address:* _____

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

Name and Department ID

Number: _____ *Address:* _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

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

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

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

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

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

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

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

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

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

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit dated _____, 202____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT J – HIPAA Business Associate Agreement

This Business Associate Agreement (the “Agreement”) is made by and between the _____ (Issuing Agency Name) (the “Department” or “Agency” or “Authority” or “Commission”) and _____ (Offeror Company Name) (herein after known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 et seq.) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS.

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, subcontractor, Unsecured Protected Health Information, and Use.
- B. Specific definitions:
 1. **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean _____ (Offeror Company Name).
 2. **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean Maryland Health Benefit Exchange.
 3. **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.

II. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses, disclosures, and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2), for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e)(4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.
- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State’s payment of Business Associate for its performance pursuant to the Underlying Agreement.
- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.
- D1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case

later than fifteen calendar days after the use or disclosure;

2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:

- a. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
- b. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
- c. Is in substantially the same form as **ATTACHMENT J-1** attached hereto; and
- d. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
 - i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - ii. A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
 - iii. Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
 - iv. A brief description of what the Covered Entity and Business Associate are doing to investigate the Breach, mitigate losses, and protect against any further Breaches; and
 - v. Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
- e. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;
- f. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- g. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other

measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;

- h. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- i. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- j. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- k. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for [REDACTED] (Solicitation Title), Solicitation # [REDACTED], and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph B of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.
- C. Effect of Termination.
 - 1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
 - 2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the Maryland Confidentiality of Medical Records Act (MCMRA), Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

- D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

V. CONSIDERATION

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

VII. MODIFICATION; AMENDMENT

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the

section as in effect or as amended.

- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

[[Insert the name and contact information of the HIPAA contact person within the Agency or appropriate covered health care entity.]]

Name: _____

Address: _____

E-mail: _____

Phone: _____

- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

Attention: _____

Phone: _____

- E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.
- F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
- H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**J-1 FORM OF NOTIFICATION TO COVERED ENTITY OF BREACH
OF UNSECURED PHI**

This notification is made pursuant to Section III.D(3) of the Business Associate Agreement between Maryland Health Benefit Exchange and _____ (Business Associate).

Business Associate hereby notifies Maryland Health Benefit Exchange that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach:

Date of the breach: _____ Date of discovery of the breach: _____

Does the breach involve 500 or more individuals? Yes/No If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: _____ Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

E-mail Address: _____

Phone Number: _____

APPENDIX I - Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

1. **Affordable Care Act (ACA)** - The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended, including by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), and all regulations promulgated pursuant thereto.
2. **Agency** - The Maryland Health Benefit Exchange (MHBE).
3. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
4. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
5. **Contract**– The Contract awarded to the successful Offeror(s) pursuant to this RFP. The Contract will be in the form of **Attachment H**.
6. **Contract Commencement** - The date the Contract is signed by the Agency following any required approvals of the Contract, including approval by the MHBE Board of Trustees, if such approval is required. See Section 1.4.
7. **Contract Monitor** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities.
8. **Contractor**– The selected Offeror that is awarded a Contract by the State.
9. **eMMA** – eMaryland Marketplace Advantage (see RFP Section 1.8).
10. **Key Personnel** – All personnel identified in the solicitation as such, or personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract. See RFP Sections 3.10 and 5.4.2.7.
11. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
12. **Maryland Health Benefit Exchange (MHBE or Exchange or Agency)** - The unit of Maryland State government issuing this RFP.

- 13. Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 14. Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
- 15. Notice to Proceed (NTP)** – A written notice from the Procurement Officer that work on the Contract shall begin on a specific date. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- 16. Notice to Proceed Date** – The date specified in an NTP for work on the Contract to begin.
- 17. Offeror** – An entity that submits a Proposal in response to this RFP.
- 18. Open Enrollment** – Annual period when individuals may enroll or renew coverage in qualified health plans for the next plan year. The Open Enrollment period typically begins in the final quarter of the calendar year. For 2018, the Open Enrollment period shall begin on November 1 and end on December 15, with the option to extend the deadline at MHBE’s discretion.
- 19. Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment M), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- 20. Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
- 21. Request for Proposals (RFP)** – This Request for Proposals issued by the MHBE with the Solicitation Number and date of issuance indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors), including any addenda.
- 22. State** – The State of Maryland.
- 23. Subcontractor** – An agent, service provider, supplier, or vendor selected by the Contractor to provide subcontracted services or products under the direction of the Contractor or other Subcontractors and including any direct or indirect Subcontractors or a Subcontractor.
- 24. Time and Material** – Type of payment to the Contractor based on direct labor hours billed at specific hourly rates, plus the actual cost of any materials provided. The labor category hourly rates may not exceed the hourly rates proposed. The Contractor will be required to provide time records and/or other documentation documenting that all direct hours billed have actually been

expended by its' principal or employees or those of subcontractors, totally and productively in the performance under the Contract. In addition, the Contractor must also provide documentation of the actual cost of materials or other activities directly used in the performance of the Contract. The fixed hourly labor category rates, plus the actual cost of materials will be the only payment made for this type of Contract.

APPENDIX II – Sample Alternative Scenario Results

Table 7: Summary of Alternative Scenario Results for 2019

| Scenario | 1-Best Estimate | 2 | 3 | 4 | 5 | 6 |
|---|----------------------|----------------------|-------------------|---|----------------------|--|
| Enrollment | Based on Survey Data | Adjusted Survey Data | Take-up Function | Moderate Decrease; Same Decrease for all Subsidy Levels | Mandate Impact - CBO | Mandate Impact - CBO; Higher APTC Enrollment Increases |
| Premiums | Moderate Increase | Moderate Increase | Moderate Increase | Lower Increase | Higher Increase | Highest Increase |
| Baseline | | | | | | |
| Total Non-Group Enrollment | 171,526 | 164,989 | 185,857 | 171,546 | 138,619 | 139,348 |
| Exchange Enrollment | 121,503 | 118,458 | 128,585 | 116,143 | 107,436 | 109,915 |
| APTC Enrollment | 103,620 | 101,823 | 108,110 | 96,336 | 96,287 | 99,392 |
| Total Non-Group Premium PMPM | \$725.66 | \$735.62 | \$702.78 | \$695.14 | \$785.88 | \$846.27 |
| Exchange Premium PMPM | \$759.98 | \$770.42 | \$736.03 | \$728.03 | \$823.06 | \$886.31 |
| APTC PMPM | \$687.22 | \$698.40 | \$661.56 | \$592.40 | \$754.78 | \$840.93 |
| Total Non-Group Premiums | \$1,493,625,346 | \$1,456,435,659 | \$1,567,400,734 | \$1,430,988,776 | \$1,307,254,646 | \$1,415,114,944 |
| Total APTCs | \$854,516,632 | \$853,358,609 | \$858,253,567 | \$684,829,540 | \$872,108,491 | \$1,002,985,000 |
| After Reinsurance | | | | | | |
| Reinsurance Funding | \$462,000,000 | \$462,000,000 | \$462,000,000 | \$462,000,000 | \$462,000,000 | \$462,000,000 |
| Reduction in Premiums (Reinsurance Funding) | -30.9% | -31.7% | -29.5% | -32.3% | -35.3% | -32.6% |
| Reinsurance Assessment | 2.75% | 2.75% | 2.75% | 2.75% | 2.75% | 2.75% |
| Reduction in Premiums (Improved Morbidity) | -1.4% | -1.4% | -1.4% | -1.7% | -1.3% | -1.1% |
| Total Premium Impact | -30.0% | -30.8% | -28.5% | -31.5% | -34.4% | -31.5% |
| Total Non-Group Premium PMPM | \$508.03 | \$509.12 | \$502.44 | \$475.99 | \$515.65 | \$579.57 |

| Scenario | 1-Best Estimate | 2 | 3 | 4 | 5 | 6 |
|------------------------------------|----------------------|----------------------|-------------------|---|----------------------|--|
| Enrollment | Based on Survey Data | Adjusted Survey Data | Take-up Function | Moderate Decrease; Same Decrease for all Subsidy Levels | Mandate Impact - CBO | Mandate Impact - CBO; Higher APTC Enrollment Increases |
| Premiums | Moderate Increase | Moderate Increase | Moderate Increase | Lower Increase | Higher Increase | Highest Increase |
| Exchange Premium PMPM | \$532.07 | \$533.21 | \$526.21 | \$498.50 | \$540.04 | \$606.99 |
| APTC PMPM | \$443.09 | \$444.31 | \$436.82 | \$365.65 | \$451.63 | \$535.95 |
| Percent Change in Total Enrollment | 5.8% | 5.8% | 5.8% | 6.9% | 5.3% | 4.5% |
| Total Non-Group Enrollment | 181,522 | 174,587 | 196,625 | 183,369 | 145,967 | 145,551 |
| Exchange Enrollment | 124,136 | 120,986 | 131,421 | 119,256 | 109,371 | 111,548 |
| APTC Enrollment | 103,620 | 101,823 | 108,110 | 96,336 | 96,287 | 99,392 |
| Total Premiums | \$1,106,629,629 | \$1,066,640,334 | \$1,185,518,554 | \$1,047,373,717 | \$903,210,853 | \$1,012,287,098 |
| Total APTCs | \$550,954,999 | \$542,896,117 | \$566,695,541 | \$422,701,111 | \$521,836,618 | \$639,229,322 |
| Savings | | | | | | |
| Estimated APTC Savings | \$303,561,634 | \$310,462,493 | \$291,558,026 | \$262,128,430 | \$350,271,874 | \$363,755,678 |
| Estimated Net Federal Savings | \$303,561,634 | \$310,462,493 | \$291,558,026 | \$262,128,430 | \$350,271,874 | \$363,755,678 |
| Estimated Pass Through | 65.7% | 67.2% | 63.1% | 56.7% | 75.8% | 78.7% |