



## REQUEST FOR PROPOSALS (RFP)

External Evaluation of the MHBE Compliance Program

SOLICITATION NO. BPM029704

**Issue Date: July 8, 2022**

### NOTICE

A Prospective Offeror that has received this document from the Maryland Health Benefit Exchange 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 VENDORS**

In order to help us improve the quality of State 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 this solicitation. Please return your comments with your response. If you have chosen not to respond to this Contract, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Sheet below for contact information).

**Title: External Evaluation of the MHBE Compliance Program**

**Solicitation No: BPM029704**

1. If you have chosen not to respond to this solicitation, 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 Bid/Proposal is insufficient.
- ☐ Start-up time is insufficient.
- ☐ Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- ☐ Bid/Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- ☐ MBE 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 response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

---

---

Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

DOJ Audit of MHBE Compliance Program – RFP #BPM029704



**STATE OF MARYLAND  
MARYLAND HEALTH BENEFIT EXCHANGE  
RFP KEY INFORMATION SUMMARY SHEET**

**Request for Proposals:** **EXTERNAL EVALUATION OF THE MHBE COMPLIANCE PROGRAM**

**Solicitation Number:** **BPM029704**

**RFP Issue Date:** **July 8, 2022**

**Procurement Officer:** **Tracey D. Gamble  
Maryland Health Benefit Exchange  
750 East Pratt Street, 6th floor  
Baltimore, MD, 21202  
Phone: 410-547-8152  
e-mail: [hix.procurement@maryland.gov](mailto:hix.procurement@maryland.gov)**

**Contract Monitor:** **Caterina Pangilian, Program Manager  
Maryland Health Benefit Exchange  
750 East Pratt Street, 6<sup>th</sup> floor  
Baltimore, MD, 21202**

**Proposals are to be sent to:** **Maryland Health Benefit Exchange,**  
electronically via one unencrypted link at:  
<https://marylandhealthconnection.sharefile.com/r-rd99be93fb0364a519b769c369e4cc98e>

**Pre-Proposal Conference:** **July 25, 2022, 1:00 PM, Local Time**

**Closing Date and Time:** **August 8, 2022, 11:00 AM, Local Time**

**MBE Subcontracting Goal:** **0%**

## Contents

SECTION 1 -BACKGROUND AND VISION	8
1.1 Summary Statement	8
1.2 Abbreviations and Definitions	9
1.3 Contract Type	10
1.4 Contract Duration	10
1.5 Procurement Officer	11
1.6 Contract Monitor	11
1.7 Pre-Proposal Conference	11
1.8 eMarylandMarketplace Advantage	12
1.9 Questions	12
1.10 Procurement Method	12
1.11 Proposals Due (Closing) Date and Time	13
1.12 Multiple or Alternate Proposals	13
1.13 Economy of Preparation	13
1.14 Public Information Act Notice	13
1.15 Award Basis	13
1.16 Oral Presentation	14
1.17 Duration of Proposal	14
1.18 Revisions to the RFP	14
1.19 Cancellations	14
1.20 Incurred Expenses	15
1.21 Protest/Disputes	15
1.22 Offeror Responsibilities	15
1.23 Substitution of Personnel	15
1.24 Mandatory Contractual Terms	18
1.25 Bid/Proposal Affidavit	19
1.26 Contract Affidavit	19
1.27 Compliance with Laws/Arrearages	19
1.28 Verification of Registration and Tax Payment	19
1.29 False Statements	19
1.30 Payments by Electronic Funds Transfer	20
1.31 Prompt Payment Policy	20

1.32	Electronic Procurements Authorized	20
1.33	Minority Business Enterprise Goal	22
1.34	Federal Funding Acknowledgement	22
1.35	Conflict of Interest Affidavit and Disclosure	22
1.36	Non-Disclosure Agreement	22
1.37	Non-Exchange Entity Agreement	23
1.38	HIPAA — Business Associate Agreement	23
1.39	Nonvisual Access	23
1.40	Mercury and Products That Contain Mercury	33
1.41	Performance Bond	23
1.42	Surety Bond Assistance Program	23
SECTION 2 – MINIMUM QUALIFICATIONS		24
2.1	Offeror Minimum Qualifications	24
SECTION 3 – SCOPE OF WORK		25
3.1	Background and Purpose	25
3.2	Scope of Work	25
3.2.1	Contractor Requirements	25
3.2.2	Deliverables	25
3.3	Transition Plan	26
3.4	Service Level Agreements (SLA)	26
3.4.1	SLA Liquidated Damages	26
3.4.2	SLA Effective Date	26
3.4.3	SLA Reporting	26
3.4.4	Credit for failure to meet SLA	26
3.4.5	Root Cause Analysis	26
3.4.6	Service Level Metrics and Measurements	26
The Contractor shall comply with the following metrics and measurements:		
3.5	Liquidated Damages	27
3.6	Problem Escalation Procedure	27
3.7	Staffing Requirements/Plan	28
3.8	Security Requirements	28
3.9	Insurance Requirements	29
3.10	Invoicing	29

3.11	MBE Reports	30
3.12	Work Hours	30
3.13	Required IT System Security and Privacy Self Assessments Audits	30
SECTION 4 – PROPOSAL FORMAT		31
4.1	Proposal Submission	31
4.2	Proposals	31
4.3	Electronic Delivery	31
4.4	Volume I – Technical Proposal	32
4.5	Volume II – Financial Proposal	37
SECTION 5 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE		38
5.1	Evaluation Committee	38
5.2	Technical Proposal Evaluation Criteria	38
5.3	Financial Proposal Evaluation Criteria	38
5.4	Selection Procedures	38
5.5	Documents Required upon Notice of Recommendation for Contract Award	40
RFP ATTACHMENTS		41
ATTACHMENT A – CONTRACT		43
ATTACHMENT B – BID/PROPOSAL AFFIDAVIT		61
ATTACHMENT C – CONTRACT AFFIDAVIT		67
ATTACHMENT D – PRE-PROPOSAL CONFERENCE RESPONSE FORM		71
ATTACHMENT E – FINANCIAL PROPOSAL FORM		72
ATTACHMENT F – FEDERAL FUNDS ATTACHMENT		73
ATTACHMENT F-1 – CERTIFICATION AGAINST LOBBYING		75
1ATTACHMENT F-2 - DISCLOSURE OF LOBBYING ACTIVITIES		77
ATTACHMENT G - CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE		84
ATTACHMENT H– NON-DISCLOSURE AGREEMENT		85
ATTACHMENT H-1 – NON-DISCLOSURE AGREEMENT		89
ATTACHMENT H-2 - NON-DISCLOSURE AGREEMENT		90
ATTACHMENT I - NON-EXCHANGE ENTITY AGREEMENT		91
ATTACHMENT I-2 - NON-EXCHANGE ENTITY AGREEMENT		103
ATTACHMENT 1-3 - EXHIBIT 1 TO THE NON-EXCHANGE ENTITY AGREEMENT		115
ATTACHMENT J – PERFORMANCE BOND		118



ATTACHMENT K – BUSINESS ASSOCIATE AGREEMENT	122
ATTACHMENT K-1 – BUSINESS ASSOCIATE AGREEMENT FORM	131
ATTACHMENT L - MINORITY BUSINESS ENTERPRISE (MBE) FORMS	133

## **SECTION 1 - BACKGROUND AND VISION**

The Maryland Health Benefit Exchange (MHBE) is an independent unit of state government responsible for the administration of Maryland Health Connection, the state's health insurance marketplace, under the Patient Protection and Affordable Care Act of 2010 (ACA) and subsequent state legislation. The MHBE works with the Maryland Department of Health, Department of Human Services, Maryland Insurance Administration, and stakeholders statewide to make insurance affordability programs available to all eligible Marylanders.

The mission of the MHBE is to improve the health and well-being of Marylanders by connecting them with high-quality, affordable health coverage through innovative programs, technology, and consumer assistance. We value diversity, innovation, collaboration, and the highest standards of professional ethics. Consumers and small businesses entrust MHBE with confidential personally identifiable information, federal agencies entrust MHBE with highly confidential federal tax information and State and Federal agencies entrust MHBE to ensure effective and efficient use of federal and State funds while minimizing fraud, waste, and abuse.

MHBE has a Chief Compliance Officer who leads the agency's compliance program. The Chief Compliance Officer developed a Compliance and Ethics Plan and program utilizing the U.S. Department of Justice's Sentencing Guidelines seven elements of an effective compliance program. MHBE performed its first annual compliance program assessment in fiscal year 2021 (July 1, 2020, to June 30, 2021); and used the DOJ's Evaluation of Corporate Compliance Programs tool as a basis.

The purpose of this solicitation is to have an external party conduct a comprehensive evaluation of the MHBE compliance program following the U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs (Updated June 2020).

### **1.1 Summary Statement**

- 1.1.1 It is MHBE's intention to obtain services, as specified in this RFP, through a Contract between the selected Offeror and the MHBE. MHBE is issuing this RFP in order to measure the effectiveness of its compliance program utilizing DOJ's Effective Compliance Program assessment tool and obtain best practice recommendations. The anticipated duration of services to be provided under this Contract is three (3) months
- 1.1.2 The MHBE intends to make a single award as a result of this RFP. See RFP Section 1.15 for more information.
- 1.1.3 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. The successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.



## 1.2 Abbreviations and Definitions

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

Term	Definition
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.
Agency	The Maryland Health Benefit Exchange (MHBE).
COMAR	Code of Maryland Regulations (available on-line at <a href="http://www.dsd.state.md.us">www.dsd.state.md.us</a> ).
Contract	The Contract awarded to the successful Offeror(s) pursuant to this RFP, the form of which is attached to this RFP as Attachment A.
Contract Commencement	The date the Contract is signed by the MHBE following execution by a successful Offeror and any required approvals of the Contract, including approval by the MHBE Board of Trustees, if such approval is required. See Section 1.4.
Contract Monitor	The MHBE representative identified in RFP § 1.6 who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring the Contract to ensure compliance with the terms and conditions of the Contract, 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.
Contractor(s)	The successful Offeror(s) awarded the Contract as a result of this RFP.
eMaryland Marketplace (eMMA)	Maryland's online procurement system.
Maryland Health Benefit Exchange (MHBE or Exchange or Agency)	The unit of Maryland State government issuing this RFP.
Maryland Health Connection (MHC)	The MHBE web-based eligibility and enrollment application.

Offeror	An entity that submits a proposal in response to this RFP
Procurement Officer	The MHBE representative identified in RFP § 1.5 who is responsible for the Contract, determining scope issues and is the only MHBE representative that can authorize changes to the Contract.
Proposal	As appropriate, either or both of an Offeror's Technical or Financial Proposal.
Request for Proposals (RFP) or Solicitation	This Request for Proposals for the MHBE, including any amendments / addenda thereto.
State	The State of Maryland
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 of a Subcontractor.
Total Evaluated Price	The Offeror's total evaluated price for services in response to this solicitation, included in the Financial Proposal with Attachment E – Financial Proposal Form, and used in the evaluation of Proposals (see RFP Section 5.3).

### 1.3 Contract Type

The Contract resulting from this solicitation shall be a **fixed price** in compliance with COMAR 21.06.03.06. (ATTACHMENT E).

### 1.4 Contract Duration

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is fully executed by both Parties (the "Commencement Date"), following any required approvals of the Contract, including approval by the MHBE Board of Trustees.
- 1.4.2 The duration of the Contract will be for a base term of three months from the Commencement Date for the provision of all services required by the Contract and the requirements of this solicitation.
- 1.4.3 The Contractor's obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification



obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

### **1.5 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:

Tracey D. Gamble  
Procurement Officer  
Maryland Health Benefit Exchange  
750 East Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
Phone Number: 410-547-8152  
E-mail: [hix.procurement@maryland.gov](mailto:hix.procurement@maryland.gov)

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

### **1.6 Contract Monitor**

The Contract Monitor is:

Ms. Caterina Paniligan  
Chief Compliance Officer  
Maryland Health Benefit Exchange  
750 East Pratt Street, 6th Floor  
Baltimore, MD 21202  
Phone Number: 410-547-1838  
Email: [caterina.paniligan@maryland.gov](mailto:caterina.paniligan@maryland.gov)

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

### **1.7 Pre-Proposal Conference**

A Virtual Pre-Proposal Conference (the Conference) will be held on **July 25, 2022, beginning at 1:00 PM** Local Time. 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 subsequent to 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 and the MHBE website. See RFP Section 1.8.



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 July 22 (final date for submission of Attachment D). The Pre-Proposal Conference Response Form is included as **Attachment D** 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 (final date for request for special accommodations). The MHBE will make a reasonable effort to provide such special accommodation.

## **1.8 eMarylandMarketplace**

Each Offeror is required 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.

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

In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to <https://emma.maryland.gov>, click on "New Vendor Register Now" to begin the process, and then follow the prompts.

## **1.9 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 following e-mail address: [hix.procurement@maryland.com](mailto:hix.procurement@maryland.com). 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 (**see above email address**) in a timely manner. Questions are requested to be submitted by 2:00 PM, July 29, 2022. 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 distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.

## **1.10 Procurement Method**

This Contract will be awarded in accordance with the Competitive Sealed Proposals method under Section II.B of MHBE's Procurement Policies and Procedures.



### **1.11 Proposals Due (Closing) Date and Time**

The Proposal shall be submitted to the Procurement Officer electronically via one unencrypted link at <https://marylandhealthconnection.sharefile.com/r-rd99be93fb0364a519b769c369e4cc98e> . The proposal shall be submitted no later than **August 8, 2022, 11:00 AM** Local Time 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 this section 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 this section for receipt of Proposals.

**Proposals must be submitted electronically per the instructions above and in the Information Summary Sheet on page 3 of this RFP . 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).

### **1.12 Multiple or Alternate Proposals**

Multiple and/or alternate Proposals will not be accepted.

### **1.13 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.

### **1.14 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 4.4.2.2 “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 MHBE is required to make an independent determination whether the information must be disclosed.

### **1.15 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

DOJ Audit of MHBE Compliance Program – RFP #BPM029704

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 5 for further award information.

### **1.16 Oral Presentation**

The MHBE may request Offerors 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.

### **1.17 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 if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

### **1.18 Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for Proposals, the MHBE shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the MHBE's procurement web page and through eMMA. 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 a timely Proposal 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 (see RFP Section 4.4.2.3). 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.

### **1.19 Cancellation of the RFP and Discretion to Award the Contract**

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, to waive or permit the cure of minor irregularities, and to 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.

## **1.20 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, in providing a demonstration, or in performing any other activities related to submitting a Proposal in response to this solicitation.

## **1.21 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 A).

## **1.22 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 (“Role”) must be included in the Offeror’s Proposal. If applicable, subcontractors utilized in meeting the established MBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see Section 1.33 “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 Contractor shall 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.

## **1.23 Substitution of Personnel**

### **A. Continuous Performance of Key Personnel**

Unless substitution is approved per paragraphs B-D 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, except with the prior written approval of the Contract Monitor.

B. Definitions

For the purposes of this section, the following definitions apply:

**Extraordinary Personal Circumstance** – means any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and that 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** – means 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** – means 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.

C. Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in paragraph D of this section.

1. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute 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.

D. Replacement Circumstances

1. Voluntary Key Personnel Replacement

To voluntarily replace any Key Personnel, the Contractor shall submit a substitution request as described in paragraph C 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 D.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

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 D.1 of this section.).

Under any of the circumstances set forth in this paragraph D.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph C 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. 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 C 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.

4. Directed Personnel Replacement

- a. 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 4.b. 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 C 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.

- b. 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.

## 1.24 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 RFP **Attachment A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal may be rejected if it takes exception to these terms or fails to state that it has taken no exceptions (reference RFP Section 4.4.2.4).**

### **1.25 Bid/Proposal Affidavit**

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

### **1.26 Contract Affidavit**

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor shall be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. This Contract Affidavit is also required to be submitted by the Contractor 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), note that a business entity that is organized outside of the State of Maryland is considered to be a “foreign” business.

### **1.27 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 that it shall not become so in arrears during the term of the Contract if selected for Contract award.

### **1.28 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. The SDAT website can be found at [Pages - Businesses in Maryland](#).

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.

### **1.29 False Statements**

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

1.29.1 In connection with a procurement contract a person may not willfully:

- (a) Falsify, conceal, or suppress a material fact by any scheme or device;
- (b) Make a false or fraudulent statement or representation of a material fact; or
- (c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

1.29.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.

1.29.3 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 five years or both.

### **1.30 Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Bidder/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 Bidder/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>

### **1.31 Prompt Payment Policy**

This procurement and the Contract 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 must comply with the prompt payment requirements outlined in the Contract, Section 29.3 "Prompt Payment" (see **Attachment A**). Additional information is available on GOMA's website at:

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

### **1.32 Electronic Procurements Authorized**

- A. Unless otherwise prohibited by law, MHBE may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Md. Code Ann., Commercial Law Article, Title 21.
- B. 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 the Contract.

- C. “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.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 “Payments by Electronic Funds Transfer”), the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct the procurement using eMMA or e-mail to issue:
    - (a) the solicitation (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 Bid protest or Contract claim.
  2. An Offeror or potential Offeror may use e-mail 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, but only on the terms specifically approved and directed by the Procurement Officer;
    - (d) submit a "No Bid/Proposal Response" to the solicitation; and
    - (e) submit documents determined by the MHBE to require original signatures (contract execution or modifications).
  3. 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. Notwithstanding the foregoing provisions of this Section 1.32, 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.

### **1.33 Minority Business Enterprise Goal**

#### **1.33.1 Establishment of Goal**

An overall MBE subcontractor participation goal of **0%** of the total contract dollar amount as set forth in the Offeror's Price Proposal (Attachment E), including all option years, has been established for this procurement.

There are no MBE subcontractor participation subgoals for this procurement.

#### **1.34 Federal Funding Acknowledgement**

1.34.1 There are programmatic conditions that apply to this Contract due to Federal funding (refer to RFP **Attachment F**).

1.34.2 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.

1.34.3 This Contract contains federal funds. The source of these federal funds is Medicaid. The CFDA number is 93.778. Execution of a Contract awarded as a result of this RFP indicates the Contractor's agreement with all federal funding terms and conditions that apply to contractors receiving federal funds from Medicaid, including the provisions described in RFP **Attachment F**.

#### **1.35 Conflict of Interest Affidavit and Disclosure**

Offerors shall complete and sign the Conflict-of-Interest Affidavit and Disclosure (RFP **Attachment G**) 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 G** 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.

#### **1.36 Non-Disclosure Agreement**

All Offerors are advised that this solicitation and any resultant Contract is subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as RFP **Attachment H**. 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.

#### **1.37 Non-Exchange Entity Agreement**

Based on the MHBE's determination that the Contract awarded as a result of this RFP will involve the Contractor's Access to PII protected under 45 C.F.R. § 155.260, the Contractor shall be considered a

Non-Exchange Entity under 45 C.F.R. § 155.260(b)(1). Therefore, pursuant to 45 C.F.R. § 155.260(b)(2), the recommended awardee shall execute a Non-Exchange Entity Agreement as set forth in RFP

**Attachment I.** 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. Should the Non-Exchange Entity 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 Executive Director, may withdraw the recommendation for award and make the award to the responsible Bidder/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

### **1.38 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 K.** 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/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

### **1.39 Nonvisual Access**

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

### **1.40 Mercury and Products That Contain Mercury**

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

### **1.41 Performance Bond**

This Performance Bond section does not apply to this RFP.

### **1.42 Surety Bond Assistance Program**

This Surety Bond section does not apply to this RFP

## **SECTION 2 – MINIMUM QUALIFICATIONS**

### **2.1 Offeror Minimum Qualifications**

The Offeror shall have at least ten (10) years of experience within the past seven (7) years with:

---

DOJ Audit of MHBE Compliance Program – RFP #BPM029704



- (1) providing auditing services to assess the effectiveness of Corporate Compliance programs, including their enterprise risk management tools and posture.
- (2) providing auditing services and recommendations to organizations under corporate integrity agreements, the outcome of which enabled the organization to successfully complete the agreement.
- (3) audits of organizations utilizing industry recognized tools such as Health Care Compliance Association 7 Elements of an Effective compliance program, the joint HCCA and U.S. Health and Human Services Office of Inspector General Measuring Compliance Program Effective, A Resource Guide, March 27, 2017, Corporate Compliance programs, and/or the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Enterprise Risk Management (ERM) framework for Compliance Programs.

As proof of meeting this requirement, the Offeror shall submit five (5) references who can attest to the Offeror's above experience with the information required in Section 4.4.2.10 for each reference. One of the references must be from a State or Federal government agency, from the past seven (7) years, that collectively are able to attest to the Offeror's required years of experience in providing Corporate Compliance Program effectiveness audits.

In addition, the Offeror shall be a Certified Public Accountant, Certified in Healthcare Compliance, Certified Fraud Examiner, and/or have a J.D. with requisite experience. The Offeror shall be an active member in the Healthcare Compliance Association, Society of Corporate Compliance and Ethics, Association of International Certified Professional Accountants, American Institute of CPA, Chartered Institute of Management Accounts, and/or another industry best practice organization.

As proof of meeting this requirement, the Offeror shall provide with it's proposal current certificate issued by the requisite accrediting body evidencing the Offeror's certification.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

### **SECTION 3 – SCOPE OF WORK**

#### **3.1 Introduction**





The Maryland Health Benefit Exchange was established under Title 31 Maryland Insurance Code Ann. § 31-102. It is a quasi-independent unit of State government, and it provides Maryland residents and small businesses the forum from which to explore health insurance plans, compare rates, and determine their eligibility for tax credits, cost sharing reductions (CSR) and public assistance programs such as Medicaid and the Maryland Children's Health Insurance Program (MCHP). In order to provide such determinations, consumers and small businesses entrust MBHE with confidential personally identifiable information, federal agencies entrust MBHE with highly confidential federal tax information and State and Federal agencies entrust MHBE to ensure effective and efficient use of federal and State funds while minimizing fraud, waste, and abuse.

Under the Board's guidance, MHBE has a Chief Compliance Officer who leads the agency's Compliance program. The Chief Compliance Officer developed a Compliance and Ethics Plan and program utilizing the U.S. Department of Justice's Sentencing Guidelines seven elements of an effective compliance program. MHBE performed its first annual compliance program assessment fiscal year 2021 (July 1, 2020 to June 30, 2021) in 2022, and used the DOJ's Evaluation of Corporate Compliance Programs tool as a basis.

The purpose of this solicitation is to have an external party conduct a comprehensive evaluation of the MHBE compliance program following the U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs (Updated June 2020).

### **3.2 Scope of Work**

The following Scope of Work outlines the Exchange's overall expectations. Potential Bidders are encouraged to develop their own, more detailed approach in response to this RFP. The successful Offeror shall provide a comprehensive evaluation of MHBE's Compliance Program in compliance with all applicable State and federal laws in effect at the time the services are offered, including the Affordable Care Act and its regulations together with any regulations promulgated thereunder following the U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs.

MHBE requires the successful Offeror to:

- 3.2.1 conduct a comprehensive evaluation of MHBE's Compliance program's effectiveness that address DOJ's three key questions:
  - A. Is the corporate compliance program well designed?
  - B. Is the Program Being Applied Earnestly and in Good Faith?
  - C. Does the Compliance Program Work in Practice?
- 3.2.2 provide an evaluation that combines on-site and remote documentation reviews, meetings -and interviews with members of the MHBE Board of Trustees Finance and Audit Committee, senior leaders, middle managers, hired and contracted staff, and third-party vendors.

3.2.3 provide best practice recommendations to improve Board governance of MHBE's Compliance program.

3.2.4 provide a report of the auditor's findings, best practice recommendations and commensurate documentation and/or resources to improve MHBE's Compliance program.

### **3.3 State Staff and Roles**

In addition to the Procurement Officer and Contract Monitor, the following State staff will be made available:

- A. MHBE's Senior and Middle Management Leadership
  - 1) The State will provide access to MHBE's Senior and middle management Leadership for interview purposes.
- B. Finance Audit Committee of the MHBE Board of Trustees
  - 1) The State will provide access to Finance Audit Committee members for interview purposes
- C. MHBE State Employee and Third-party Contracted Staff
  - 1) The State will provide access to randomly selected employee and contracted staff members for interview purposes
- D. Audit Compliance Manager
  - 1) The State will provide an Audit Compliance Manager who will be responsible for coordinating meetings, documentation requests, and follow up action items to facilitate an efficient audit process.

### **3.4 OTHER STATE RESPONSIBILITIES**

- A. The State will provide access to a virtual private network and its intranet to facilitate the Offeror's communication and coordination with MHBE representative, as necessary.
- B. The State will provide to the Offeror space to allow normal office working facilities as necessary to facilitate on-site work and in-person interviews.
- C. The State is responsible for providing required information, data, and documentation, to facilitate the Contractor's performance of the work and will provide such additional assistance and services as is specifically set forth.

### **3.5 RESPONSIBILITIES AND TASKS**

#### **3.5.1 PERFORM DOJ EFFECTIVE COMPLIANCE PROGRAM EVALUATION**

- A. The Offeror will perform the DOJ Effective Compliance Program evaluation for FY2022 between mid-August through October 30, 2022. The three key areas and subareas to be assessed included:
  1. Is the corporate compliance program well designed?  
Comprehensiveness of the program as it relates to the environment – type of business and complexity of regulations
    - Risk management process
    - Policies and Procedures
    - Training and Communication
    - Confidential Reporting Structure and Investigation Process
    - Third Party Management
  2. Is the Program Being Applied Earnestly and in Good Faith?
    - Commitment by Senior and Middle Management
    - Autonomy and Resources
    - Incentives and Disciplinary Measures
  3. Does the Compliance Program Work in Practice?
    - Continuous Improvement, Periodic Testing, and Review
    - Investigation of Misconduct
    - Analysis and Remediation of Any Underlying Misconduct
- B. To ensure effective use of resources, the Offeror will perform the assessment using a combination of video-teleconferencing, electronic submission of documents and reports, and on-site presentations, as necessary.
- C. The Offeror will hold a kick-off meet to establish the parameters of the audit, including timeframe and scope and provide an initial document request.
- D. The Offer will review documentation and interview MHBE FACB members, senior leaders, middle managers, employees and third-party staff, and third-party vendors as part of its assessment process.
- E. The Offeror will communicate regularly with the Contract Monitor and Audit Compliance Manager about status of the assessment and any additional documentation or interview needs to allow for an efficient assessment.

### **3.5.2 PROVIDE A COMPREHENSIVE ASSESSMENT REPORT WITH BEST PRACTICE RECOMMENDATIONS**

- A. The Offeror will complete a draft report one (1) week prior to a discussion meeting in which a discussion of the auditor's findings, management's responses, and any clarifying information or documentation requests or provisions.
- B. The Offeror will prepare a report which contains an executive summary of the auditor's findings, comprehensive information regarding the outcomes of the three (3) key DOJ assessment areas and components, and recommendations of best practices and resources to improve MHBE's Compliance program no later than November 15, 2022.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

### **3.7 Staffing Requirements/Plan**

Effective resource planning, assignment, right skill sets, and personnel management are critical components of successful delivery of requirements defined in this RFP.

A draft staffing plan shall be submitted with the Contractor's Proposal (reference RFP Section 4.4.2.8)

Resumes for each of the Contractor's proposed staffing choices shall be submitted with the Contractor's Proposal (reference RFP Section 4.4.2.7) for the Key Personnel Roles described below.

- a. (a) Identification by name of the lead personnel the contractor proposes to assign to the engagement. Contract terms will not permit substitution of lead personnel without prior written approval of the State Contract Monitor.
- b. (b) For each individual that the prospective contractor proposes to assign to the engagement (excluding administrative support), the proposer should provide a summary of similar work or studies performed, a resume, and a statement indicating his/her planned responsibilities under the contract. Any limiting factors on the availability of these individuals should be identified. Auditors assigned to the engagement must have experience and expertise in performing federal compliance audits

### **3.8 Security Requirements**

#### **3.8.1 Employee Identification**

- a) 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.
- b) 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.

### **3.8.2 Criminal Background Check**

The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and shall provide the Contract Monitor with completed checks on all new employees prior to assignment. The Contractor may not assign an employee with a criminal record to work under this Contract unless prior written approval is obtained from the Contract Monitor.

### **3.9 Insurance Requirements**

- 3.9.1 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 \$3,000,000 aggregate.
- 3.9.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$2,000,000 per occurrence. This policy must provide coverage for all claims Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to the contract, including but not limited to claims which may arise from failure of Contractor's or subcontractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of confidential or private information, transmission of a computer virus or denial of service. Contractor shall maintain such insurance for a period of at least ten (10) years following expiration or termination of the Contract.
- 3.9.3 Within five (5) Business Days of recommendation for Contract award, the Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
- a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
  - b. Commercial General Liability as required in Section 3.9.1.
  - c. Errors and Omissions/Professional Liability as required in Section 3.9.2.

### **3.10 Invoicing**

#### **3.10.1 General**

- 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.

### **3.11 MBE Reports**

There are no MBE subcontractor participation goals nor subgoals for this procurement.

## **SECTION 4 – PROPOSAL FORMAT**

### **4.1 Proposal Submission**

- A. The Proposal shall be submitted to the Procurement Officer electronically via one unencrypted link at <https://marylandhealthconnection.sharefile.com/r-rd99be93fb0364a519b769c369e4cc98e>. The subject line in the link shall state “DOJ Audit of MHBE Compliance Program RFP #BPM029704 Proposal” including the Offeror’s name.

B. The e-mail shall provide the following attachments:

1. One attachment labeled “DOJ Audit of MHBE Compliance Program RFP #BPM029704 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 “DOJ Audit of MHBE Compliance Program RFP #BPM029704 Financial” containing the Financial Proposal contents, signed and in Excel and PDF format.
3. A third attachment labeled “DOJ Audit of MHBE Compliance Program RFP #BPM029704”, 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 1.14 “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.

## 4.2 Proposals

- 4.2.1 Beginning with Tab B (see RFP Section 4.4.2.3), all pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; see RFP Sections 4.4.2.1 and 4.4.2.2), should be numbered using small Roman numerals (ex. i, ii, iii, iv, v, etc.).
- 4.2.2 Subject to the Maryland Public Information Act and any other applicable law or regulation, Proposals and any modifications to Proposals will be shown only to MHBE employees, members of the Evaluation Committee, or other persons deemed by the MHBE to have a legitimate interest in them.

## 4.3 Electronic Delivery

Offerors shall e-mail their Proposals as instructed in RFP Section 4.1 above to the Procurement Officer listed in the Key Information Summary Sheet, page3.

## 4.4 Volume I – Technical Proposal

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

### 4.4.1 Format of Technical Proposal

The RFP sections are numbered for ease of reference. Section 4.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 4.4.2.1 “Title and Table of Contents,” Section 4.4.2.2 “Claim of Confidentiality,” Section 4.4.2.3 “Transmittal Letter,” Section 4.4.2.4 “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 3.2.1 Response . . . ; "Section 3.2.2 Response . . . ," etc.). This Proposal organization will allow MHBE officials and the Evaluation Committee (see RFP Section 5.1) to "map" Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

**4.4.2 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:

**4.4.2.1 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.

**4.4.2.2 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 1.14 "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.

**4.4.2.3 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:

- Name and address of the Offeror;
- Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- Solicitation Title and Solicitation Number that the Proposal is in response to;
- Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- Offeror's eMMA number;
- Offeror's MBE certification number (if applicable);
- Acceptance of all MHBE RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.2.4); and
- Acknowledgement of all addenda to this RFP.



#### 4.4.2.4 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 (see RFP Section 1.22 for more information).

The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), 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 A), or any other attachments, the Executive Summary shall so state.**

#### 4.4.2.5 Minimum Qualifications Documentation (Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 2 “Offeror Minimum Qualifications.”

#### 4.4.2.6 Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)

- a. The Offeror shall address each Scope of Work requirement (Section 3) 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 MHBE 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 (Section 3) 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.
- b. 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 and techniques to be used by the Offeror in providing the required services as outlined in RFP Section 3, 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. Project deadlines considered Contract deliverables must be recognized in the Work Plan.
- c. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the MHBE’s

Contract Monitor should problems arise under the Contract and explain 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 3.6.

#### **4.4.2.7 Experience and Qualifications of Proposed Staff (Submit under TAB F)**

The Offeror shall identify the number 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 proposed Key Personnel, including 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 an Organizational Chart outlining personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

#### **4.4.2.8 Staffing Plan**

The Offeror shall provide a draft Staffing Plan with the Technical Proposal. The Staffing Plan shall describe the Offeror's staffing approach and team organizational structure for the Offeror and any proposed Subcontractors, to complete all phases of work, functions, requirements, roles, and duties associated with this RFP.

The Offeror shall explain in its Staffing Plan how each individual meets the requirements of the proposed Key Personnel Role. All proposed staffing for Key Personnel Roles is subject to approval by MHBE. MHBE reserves the right to reject the Offeror's candidates for any Key Personnel Role. In such an event, the Offeror shall be required to provide an alternative resource for that Key Personnel Role. The MHBE reserves the right to interview individuals proposed for Key Personnel Roles, if desired, prior to approval of any Key Personnel staffing.

The MHBE and its stakeholders will interact with the Contractor's Key Personnel staff on an ongoing basis, and as such the Offeror shall submit in its plan an organizational chart for Key Personnel Staffing that describes how the Offeror's Key Personnel will interact with MHBE staff and key State stakeholders. The Plan must also include the Offeror's tasks to onboard and orient new Key Personnel staff to the project, specifically its tools and techniques.

The Staffing Plan deliverable will be updated and submitted as Final to the MHBE Contract Monitor within 30 calendar days of NTP.

#### **4.4.2.9 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:

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

#### **4.4.2.10 References (Submit under TAB H)**

At least three (5) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. 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:

- a. Name of client organization;
- b. Name, title, telephone number, and e-mail address, if available, of POC for client organization; and
- c. Value, type, duration, and description of services provided.

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

#### **4.4.2.11 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:

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;
- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and

- f. 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.

#### **4.4.2.12 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:

- a. Dunn and Bradstreet Rating;
- b. Standard and Poor's Rating;
- c. Lines of credit;
- d. Evidence of a successful financial track record; and
- e. Evidence of adequate working capital.

#### **4.4.2.13 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 3.9. See Section 5.5 for the required insurance certificate submission for the recommended Offeror.

#### **4.4.2.14 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 subcontracting goal. 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. See Sections 4.4.2.7 and 4.4.2.8 for additional Offeror requirements related to Subcontractors.

#### **4.4.2.15 Legal Action Summary (Submit under TAB M)**

This summary shall include:

- a. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;

- b. A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- c. 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
- d. In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

#### **4.4.3 Additional Required Technical Submissions (Submit under TAB N)**

4.4.3.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB N that follows the material submitted in response to Section 4.4.2.

- a. Completed Bid/Proposal Affidavit (**RFP Attachment B**).
- b. If applicable, a signed statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. **\*refer to RFP Section 1.22.**
- c. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**RFP Attachment L-1A**) **\*refer to RFP Section 1.33.**
- d. Federal Funding Acknowledgement (**Attachment F**); **refer to RFP Section 1.34.**
- e. Completed Conflict of Interest Affidavit and Disclosure (**Attachment G**) **\*refer to RFP Section 1.35.**

#### **4.5 Volume II – Financial Proposal**

The Financial Proposal shall contain all price information in the format specified in **RFP Attachment E**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

### **SECTION 5 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE**

#### **5.1 Evaluation Committee**

Evaluation of Proposals will be performed in accordance with Section II.B of MHBE's Procurement Policies and Procedures 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.

#### **5.2 Technical Proposal Evaluation Criteria**

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance.

#### 5.2.1 Offeror's Technical Response to RFP Requirements and Work Plan (See RFP § 4.4.2.6)

The State prefers an Offeror's response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

#### 5.2.2 Offeror Qualifications and Capabilities, including proposed Subcontractors (See RFP § 4.4.2.9 – 4.4.2.15)

#### 5.2.3 Experience and Qualifications of Proposed Staff (See RFP § 4.4.2.7 - 4.4.2.8)

### 5.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see Section 5.4.2.4) 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 E** - Financial Proposal Form. Financial proposals, however, must be reasonably related to the technical proposal, as determined solely by the MHBE. Financial proposals which are inconsistent with the work offered in the technical proposal may not be ranked as more advantageous.

### 5.4 Selection Procedures

#### 5.4.1 General

The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at Section II.B of MHBE's 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 MHBE 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 MHBE 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.

#### **5.4.2 Selection Process Sequence**

- 5.4.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment L-1A**) is included and is properly completed, if applicable.
- 5.4.2.2 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 MHBE's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the MHBE. Offerors will be contacted by the State as soon as any discussions are scheduled.
- 5.4.2.3 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.
- 5.4.2.4 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.
- 5.4.2.5 When in the best interest of the MHBE, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The MHBE may make an award without issuing a request for a BAFO.

#### **5.4.3 Award Determination**

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Contractor shall 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 MHBE. In making this most advantageous Proposal determination, technical factors will receive greater weight than financial factors.

#### **5.5 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:

- a. Contract (**Attachment A**), see **RFP Section 1.24**
- b. Contract Affidavit (**Attachment C**), see **RFP Section 1.26**
- c. MBE **Attachments L-2 and L-3A/B**, within ten (10) Business Days, if applicable; see **RFP Section 1.33**

- d. MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments L-1B and L-1C**), if a waiver has been requested (if applicable; see **RFP Section 1.33**)
- e. Non-Disclosure Agreement (**Attachment H**); see **RFP Section 1.36**
- f. Non-Exchange Entity Agreement (**Attachment I**), if applicable; see **RFP Section 1.37**
- g. Copy of a current Certificate of Insurance with the prescribed limits set forth in RFP Section 3.9 “Insurance Requirements,” listing the State as an additional insured, if applicable, see **RFP Section 3.9**
- h. Business Associates Agreement (**Attachment K**), if applicable, see **Section 1.38**

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**



## RFP ATTACHMENTS

### **ATTACHMENT A – 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.

### **ATTACHMENT B – Bid/Proposal Affidavit**

This Attachment must be completed and submitted with the Technical Proposal (refer to RFP Section 1.25).

### **ATTACHMENT C – 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 (refer to RFP Section 1.26).

### **ATTACHMENT D – Pre-Proposal Conference Response Form**

It is requested that this form be completed and submitted as described in RFP Section 1.7 by those potential Offerors that plan on attending the Pre-Proposal Conference.

### **ATTACHMENT E – Financial Proposal Instructions and Form**

The Financial Proposal Form must be completed and submitted in the Financial Proposal package (refer to RFP Section 4.5).

### **ATTACHMENT F – Federal Funds Attachment**

If required, the Federal Funds Attachment must be completed and submitted with the Technical Proposal (refer to RFP Section 1.35). The terms and conditions in this attachment are incorporated into any resulting Contract with the Offeror.

### **ATTACHMENT G – Conflict of Interest Affidavit and Disclosure**

If required (refer to RFP Section 1.36), this Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENT H – Non-Disclosure Agreement**

If required (refer to RFP Section 1.37), 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 I – Non-Exchange Entity Agreement**

If required (refer to RFP Section 1.38), this Attachment is to 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 J – Performance Bond**

If required, submitted within five (5) Business Days of receiving notification of recommendation for award (refer to RFP Section 1.41).

**ATTACHMENT K – Business Associate Agreement**

If required (see Section 1.38) this Attachment is to 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 L – Minority Business Enterprise Forms**

If required (refer to RFP Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments **L-1** through **L-5**. Attachment **L-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 10 Business Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments **L-2** and **L-3A/B**.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

**ATTACHMENT A – CONTRACT**  
**DOJ AUDIT OF MHBE COMPLIANCE**

THIS CONTRACT (the “Contract”) is made as of the Effective Date defined below by and between \_\_\_\_\_ [Contractor’s name] (the “Contractor”) and the MARYLAND HEALTH BENEFIT EXCHANGE, a unit of the STATE OF MARYLAND (the “MHBE”). The Contractor and the MHBE each are a “Party” and, together, are the “Parties”.

In consideration of the premises and the covenants herein contained, 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.
- 1.3 “COMAR” means Code of Maryland Regulations.
- 1.4 “Contract Monitor” means the MHBE employee identified in Section 1.6 of the RFP as the Contract Monitor or a successor designated by the MHBE.
- 1.5 “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].
- 1.6 “Effective Date” means the date on which the last of the two Parties signs this Contract.
- 1.7 “eMMA” means eMaryland Marketplace.
- 1.8 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_, as supplemented and revised by the best and final offer dated \_\_\_\_\_.
- 1.9 “Minority Business Enterprise” (MBE) means an entity meeting the definition at COMAR 21.01.02.01B(54), which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.10 “RFP” means the Request for Proposals for DOJ Audit of MHBE Compliance Program, Solicitation # BPM029704, and any addenda thereto issued in writing by the MHBE.
- 1.11 “Procurement Officer” means the MHBE employee identified in Section 1.5 of the RFP as the Procurement Officer, or a successor designated by the MHBE.

- 1.12 “Proposal(s)” means, as appropriate, either or both of the Contractor’s Technical or Financial Proposal.
- 1.13 “State” means the State of Maryland and includes the MHBE.
- 1.14 “Technical Proposal” means the Contractor’s Technical Proposal, dated \_\_\_\_\_, as supplemented and revised by the best and final offer dated \_\_\_\_\_.

## **2. Scope of Contract**

- 2.1 The Contractor shall provide services as described in the RFP for DOJ Audit for MHBE Compliance Program and related services awarded in accordance with Exhibits A-G listed in this section and hereby incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. 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-Exchange Entity Agreement

Exhibit D – The Non-Disclosure Agreement

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

Exhibit F – The Contractor’s Technical Proposal

Exhibit G – 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 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided 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 are voidable at the election of MHBE.

**3. Period of Performance.**

- 3.1 The Contract shall start as of the date of full execution by the Parties. From this date, the Contract shall be for a period of four months.
- 3.2 Audit, confidentiality, document retention, and indemnification obligations under this Contract 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 in RFP Attachment E – Price Proposal, which is incorporated into this Contract as Exhibit G.
- 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 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 at hbe.finance@maryland.gov. Electronic funds transfer shall be used by the MHBE 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 eMarylandMarketplace vendor ID number is (Contractor's eMMA number).

**5. Patents, Copyrights, and Intellectual Property**

- 5.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 5.2 Except as provided in Section 5.4 of this Contract, the Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests,

maps, photographs, designs, software, graphics, mechanical, artwork, computations and data prepared by or for the Contractor for purposes of this Contract (Work Product) shall become and remain the sole and exclusive property of the State and shall be available to the MHBE at any time. The MHBE shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

- 5.3 Except as provided in Section 5.4 of this Contract, the Contractor agrees that at all times during the term of this Contract and thereafter, the Work Product shall be "works made for hire" as that term is interpreted under U.S. copyright law and shall be owned by the State. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product. In the event any Work Product is or may not be considered a work made for hire under applicable law, Contractor assigns and transfers to the State the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof. Contractor shall execute all documents and perform such other proper acts as the State may deem necessary to secure for it the rights pursuant to this section.
- 5.4 Notwithstanding anything to the contrary in this Contract, to the extent (i) the Work Product incorporates any commercial-off-the shelf software (COTS) and/or any Pre-Existing Intellectual Property or (ii) any COTS and/or Pre-Existing Intellectual Property (other than a computer's operating system, supported internet browser, browser accessibility software or hardware if needed by the user, and software required to access a commonly-available data transmission tool or export format) is required to access, install, build, compile or otherwise use the Work Product (such COTS and Pre-Existing Intellectual Property individually and collectively referred to herein as "Third-party Intellectual Property," which shall be the sole property of Contractor or its third-party licensors, as applicable), Contractor hereby grants, on behalf of itself and any third-party licensors, to the State a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right to use, execute, reproduce, display, perform, distribute copies of internally, modify and prepare derivative works based upon, such Third-party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended. "Pre-Existing Intellectual Property" means any program, utility or tool owned by Contractor or its third-party licensors that was created by Contractor or its third-party licensors independently from its performance of this Contract and not solely using funds from this Contract.
- 5.5 Subject to the terms of Section 6, Contractor shall defend, indemnify, and hold harmless the State, including, but not limited to, the Agency and its agents, officers, and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any claim the Work Product or any Third-party Intellectual Property infringes, misappropriates or otherwise violates any Third-party Intellectual Property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent, which consent may be withheld in the State's sole and absolute discretion. Contractor shall be entitled to control the defense or settlement of such claim (with counsel reasonably satisfactory to the State), provided that the State will, upon requesting indemnification hereunder: (a) provide reasonable cooperation to Contractor in connection with the defense or settlement of any such claim, at Contractor's expense; and (b) be entitled to

participate in the defense of any such claim. Contractor's obligations under this section will not apply to the extent any Third-party Intellectual Property infringes, misappropriates or otherwise violates any third-party intellectual rights as a result of modifications made by the State in violation of the license granted to the State pursuant to section 5.4; provided that such infringement, misappropriation or violation would not have occurred absent such modification.

- 5.6 Without limiting Contractor's obligations under Section 5.5, if all or any part of the Work Product or any Third Party Intellectual Property is held, or Contractor or the State reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the item in accordance with its rights under this Contract; (b) replace the item with an item that does not infringe, misappropriate or otherwise violate any third party intellectual property rights and, in the State's sole and absolute determination, complies with the item's specifications, and all rights of use and/or ownership set forth in this Contract; or (c) modify the item so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and, in the State's sole and absolute determination, complies with the item's specifications and all rights of use and/or ownership set forth in this Contract.
- 5.7 Except for any Pre-Existing Intellectual Property and Third-Party Intellectual Property, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State.
- 5.8 Contractor, on behalf of itself and its Subcontractors, hereby agrees not to incorporate, link, distribute or use any Third-party Intellectual Property in such a way that: (a) creates, purports to create or has the potential to create, obligations with respect to any State software (including any deliverable hereunder), including without limitation the distribution or disclosure of any source code; or (b) grants, purports to grant, or has the potential to grant to any third-party any rights to or immunities under any State intellectual property or proprietary rights. Without limiting the generality of the foregoing, neither Contractor nor any of its Subcontractors shall incorporate, link, distribute or use, in conjunction with the Work Product, any code or software licensed under the GNU General Public License ("GPL"), Lesser General Public License ("LGPL"), Affero GPL ("AGPL"), European Community Public License ("ECPL"), Mozilla, or any other open source license, in any manner that could cause or could be interpreted or asserted to cause any State software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or such other open source software.
- 5.9 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 [Licenses by Name | Open Source](#)



Initiative) (each an “Open Source License”). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its Subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its Subcontractors that is undertaken under this Contract as to any software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

- 5.10 The Contractor shall report to MHBE, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Work Product delivered under this Contract.

## **6. Indemnification**

- 6.1 Contractor shall indemnify, defend, and hold the State, its directors, officers, employees and agents harmless from third-party liability for tangible property damage, bodily injury and death, and for fraud or willful misconduct of Contractor, including all related defense costs and expenses (including reasonable attorneys’ fees and costs of investigation, litigation, settlement, judgments, interest and penalties) arising from or relating to the performance of the Contractor or its Subcontractors under this Contract.
- 6.2 The State has no obligation to provide legal counsel or defense to the Contractor or its Subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 6.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 6.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its Subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.
- 6.5 Section 6 shall survive expiration of this Contract.

## **7. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act or omission (any failures to act when Contractor has a duty to act) or negligence of the Contractor or any of its Subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract, 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.

## **8. Exclusive Use and Ownership**

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

## **9. Confidentiality**

- 9.1 Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law, including the ACA and 45 C.F.R. § 155.260, the Non-Exchange Entity Agreement referenced in Section 11.2, below, and the Non-Disclosure Agreement incorporated into this Contract pursuant to Section 2.1, above. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
- 9.2 More particularly, the Contractor agrees that its access to Personally identifiable Information under the Contract shall make it a "Non-Exchange Entity", as that term is defined in 45 C.F.R. § 155.260(b)(1). The Contractor therefore shall keep information obtained in the course of this Contract confidential in compliance with the ACA, including, without limitation, 45 C.F.R. § 155.260, and the Non-Exchange Entity Agreement incorporated into this Contract pursuant to Section 2.1, above. The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health, personally identifiable, and financial information. This obligation includes providing training and information to employees regarding confidentiality obligations as to personally identifiable, and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Agency for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health, personally identifiable, and financial information.

9.3 Section 9 shall survive expiration or termination of this Contract.

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

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

#### **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 sixty (60) days after filing the notice of claim, the Contractor shall submit the written claim to the Procurement Officer. 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 will 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 thirty (30) days of receipt of the final decision of the Procurement Officer, the Contractor may file an appeal to the Executive Director of the MHBE for claims for monetary amounts less than \$75,000, and to the Board of Trustees for either claims for monetary amounts over \$75,000 or for claims involving non-monetary relief. If submitted to the Executive Director, a final decision resolving the appeal will be issued by the Executive Director. If submitted to the Board of Trustees, the Board of Trustees may determine that a hearing would assist in the resolution of any appeal. The Board of Trustees may elect to hold the hearing itself or may refer the matter for a hearing to a panel consisting of two or more members of the Board of Trustees or may refer the matter to a neutral decision maker. A final decision resolving the appeal will be issued by a vote of the Board of Trustees. 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 Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.
- 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. Multi-year Contracts Contingent Upon Appropriations**

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

that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first

#### **15. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, sexual orientation, sexual identity, ancestry, or disability of a qualified individual with a disability; (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.

#### **16. 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.

#### **17. 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 rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

#### **18. Termination for Cause**

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.

## **19. 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).

## **20. Suspension of Work**

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

## **21. Delays and Extensions of Time**

- 21.1 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.
- 21.2 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.

## **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: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31. Additional information is available on the State Board of Elections website: [Campaign Finance \(maryland.gov\)](http://CampaignFinance(maryland.gov)).

#### **24. Documents Retention and Inspection Clause**

24.1 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, 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.

24.2 This Section 24 shall survive expiration or termination of the Contract.

#### **25. Compliance with Laws**

The Contractor hereby represents and warrants that:

- 25.1 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;
- 25.2 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;
- 25.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 25.4 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.

#### **26. Cost and Price Certification**

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



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.

## **27. 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.

## **28. Minority Business Enterprise Participation**

28.1 An overall MBE Subcontractor participation goal and subgoals have been established for this procurement as described in section 1.33 of the RFP.

## **29. Liquidated Damages**

- (a) This Contract requires the Contractor to make good faith efforts to comply with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- (b) Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or Contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
  - (i) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$37.00 per day until the monthly report is submitted as required.
  - (ii) Failure to include in its agreements with MBE Subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$258.00 per MBE Subcontractor.

- (iii) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE Subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.
- (iv) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- (v) Failure to promptly pay all undisputed amounts to an MBE Subcontractor in full compliance with the prompt payment provisions of this Contract: \$37.00 per day until the undisputed amount due to the MBE Subcontractor is paid.

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

### 29.3 MBE Prompt Pay Requirements

To ensure compliance with certified MBE subcontract participation goals, the Department or Agency 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.
  - (iv) Verification shall include a review of:
    1. The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE Subcontractors and the reason for nonpayment; and
    2. The monthly report of each certified MBE Subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the Subcontractor has not been paid.
- (b) If the Agency determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Agency requires, then the Agency 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 this Contract.



- (c) 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.

## **29. Insurance Requirements**

The Contractor shall maintain workers' compensation coverage, and property and casualty insurance as required in the RFP. The minimum limits of such policies must meet any minimum requirements established by law and the limits of insurance required by the RFP, and shall cover losses resulting from or arising out of Contractor action or inaction in the performance of services under the Contract by the Contractor, its agents, servants, employees or Subcontractors. Effective no later than the date of execution of the Contract, and continuing for the duration of the Contract term, and any applicable renewal periods, the Contractor shall maintain such insurance coverage and shall report such insurance annually or upon Contract renewal, whichever is earlier, to the Procurement Officer. The Contractor is required to notify the Procurement Officer in writing, if policies are canceled or not renewed 35 days in advance of such cancellation and/or nonrenewal. Certificates of insurance evidencing this coverage shall be provided within five (5) days of notice of recommended award. All insurance policies shall be issued by a company properly authorized to do business in the State of Maryland. The State shall be named as an additional named insured on the property and casualty policy and as required in the RFP.

## **30. Liability**

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

- 30.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 5 of this Contract;
- 30.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 30.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form Contractor's liability for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.

## **31. Commercial Nondiscrimination**

- 31.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for

Subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

31.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the MHBE, in all subcontracts.

31.3 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.

## 32. 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.

## 33. Notices

Unless otherwise expressly specified elsewhere in the RFP, Non-Exchange Entity Agreement or other provision incorporated into this Contract, 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: Procurement Officer  
750 E. Pratt Street, 6th Floor,  
Baltimore, MD 21202  
hix.procurement@maryland.gov

If to the Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### **34. 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 F of the RFP (including F-1 and F-2). Attachment F of the RFP is incorporated into this Contract pursuant to Section 2.1, above.

#### **35. Federal Funds Exclusion Requirements**

Contractor agrees that it will comply with federal laws (including §§ 1128 and 1156 of the Social Security Act and 42 CFR § 1001) that prohibit payments under certain federal healthcare programs to any individual or entity that is on the List of Excluded Individuals/Entities (LEIE) maintained by HHS. By executing this Contract, Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. Contractor agrees, further, during the term of this Contract, to check the LEIE prior to hiring or assigning individuals to work on this Contract, and to notify MHBE immediately of any identification of Contractor or an individual employee as excluded, and of any HHS action or proposed action to exclude Contractor or any of Contractor's employees.

#### **36. Miscellaneous**

36.1 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.

36.2 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.

[Signatures on next page(s)]



[Signature page to Consolidated Service Center RFP]

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

CONTRACTOR	MARYLAND HEALTH BENEFIT EXCHANGE
_____	_____
By:	By: Michele Eberle, Executive Director
_____	Or designee:
Date	
	_____
	_____
	Date
Approved for form and legal sufficiency this ____ day of _____, 2022.	
_____ Assistant Attorney General	

**ATTACHMENT B – BID/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 Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/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 Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Offeror herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/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. Bidder/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 Bidder/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 Bid/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 Bid/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 Bid/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 Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/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 Bids/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 Bids/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) §7205, 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 it 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 Bid/Proposal that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/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 Bid/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, the State Department of Assessments and Taxation, and the 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 Bid or Proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §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 Bid/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 BID/PROPOSAL**

**ATTACHMENT C – 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: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

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

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

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

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

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

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

- (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 Bid/Proposal Affidavit dated \_\_\_\_\_, 201\_\_\_\_, 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 D – PRE-PROPOSAL CONFERENCE RESPONSE FORM**

**Solicitation Number BPM028490**

**MHBE Consolidated Service Center**

Return via e-mail or fax this form to the Procurement Officer:

Maryland Health Benefit Exchange

750 East Pratt Street, 6<sup>th</sup> Floor

Baltimore, MD 21202

Email: [hix.procurement@maryland.gov](mailto:hix.procurement@maryland.gov)

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 § 1.7 “Pre-Proposal Conference”):

---

Signature

Title

---

Name of Firm (please print)



## **ATTACHMENT E - FINANCIAL PROPOSAL FORM**

Provided as a separate Excel Document

Submit in both an Excel and PDF format

## **ATTACHMENT E1- FINANCIAL PROPOSAL INSTRUCTIONS**

Provided as a separate Excel Document

Submit as both an Excel and PDF format



**ATTACHMENT F - 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 as 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 F-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 F-2

### DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<b>1. Type of Federal Action:</b>  a. Contract b. Grant c. Cooperative Agreement d. Loan e. Loan guarantee f. Loan insurance	<b>2. Status of Federal Action:</b>  a. Bid/offer/application b. Initial award c. Post-award	<b>3. Report Type:</b>  a. Initial filing b. Material change  For Material Change Only:  Year _____ quarter _____  ate of last report _____
<b>4. Name and Address of Reporting Entity:</b>     <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee   Tier _____, if known: Congressional District, <i>if known</i> :	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>     Congressional District, <i>if known</i> :	
<b>6. Federal Department/Agency:</b>    	<b>7. Federal Program Name/Description:</b>   FDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b>   	<b>9. Award Amount, if known:</b>   	

<p><b>10. a. Name and Address of Lobbying Registrant</b></p> <p><i>(If individual, last name, first name, MI):</i></p>	<p><b>11. Individuals Performing Services</b> <i>(including address if different from No. 10a) (last name, first name, MI):</i></p>
<p><b>1. Amount of Payment</b> <i>(check all that apply)</i></p> <p>_____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p><b>3. Type of Payment</b> <i>(check all that apply)</i></p> <p><input type="checkbox"/> a. retainer</p> <p><input type="checkbox"/> b. one-time</p> <p><input type="checkbox"/> c. commission</p> <p><input type="checkbox"/> d. contingent fee</p> <p><input type="checkbox"/> e. deferred</p> <p><input type="checkbox"/> f. other; specify: _____</p>
<p><b>2. Form of Payment</b> <i>(check all that apply)</i></p> <p><input type="checkbox"/> a. cash      <input type="checkbox"/> b. in-kind, specify:</p> <p style="text-align: center;">nature</p> <p>_____</p> <p style="text-align: center;">value:</p> <p>_____</p>	
<p><b>4. 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:</b></p> <p>attach Continuation Sheet(s) SF-LLLA, if necessary)</p>	
<p><b>15. Continuation Sheet(s) SF-LLLA attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	

<p>6. 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>		
<p><b>Federal Use Only</b></p>		<p>Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)</p>		

## 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.
- (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.

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 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.  
  
(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 G – 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 H – 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 Systems Operations Support for the HBX, Solicitation #MDM0031023850 (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 I-1. Contractor shall update ATTACHMENT I-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 I-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: \_\_\_\_\_





## NON-DISCLOSURE AGREEMENT - ATTACHMENT H-1

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

Printed Name and Address of Individual/Agent Date	Employee (E) or Agent (A)	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



## NON-DISCLOSURE AGREEMENT – ATTACHMENT H-2

### 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)

**MARYLAND HEALTH BENEFIT EXCHANGE  
ATTACHMENT I - NON-EXCHANGE ENTITY AGREEMENT**

This Non-Exchange Entity Agreement (this “Agreement”) is made by and between the Maryland Health Benefit Exchange, a public corporation and independent unit of the government of the State of Maryland (“MHBE”) and \_\_\_\_\_ (the “Non-Exchange Entity”), as of the Effective Date defined below. Each of MHBE and the Non-Exchange Entity is a “Party” to this Agreement and shall collectively be known as the “Parties”.

**RECITALS**

WHEREAS, MHBE is a state-based exchange established pursuant to 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, the “ACA”), and particularly pursuant to 45 C.F.R. § 155.100, as well as pursuant to Title 31 of the Insurance Article of the Maryland Code Annotated, and

WHEREAS, the Non-Exchange Entity submitted a proposal in response to that certain Maryland Health Benefit Exchange Request for Proposals: Consolidated Service Center, Solicitation No. \_\_\_\_\_ (the “RFP”); and

WHEREAS, the Non-Exchange Entity has been notified of award or awarded a contract (the “Underlying Agreement”) pursuant to the RFP; and

WHEREAS, the execution of this Agreement is required pursuant to the RFP, which is incorporated into the Underlying Agreement and is a part thereof; and

WHEREAS, MHBE and the Non-Exchange Entity enter into this Agreement effective as of the effective date of the Underlying Agreement (the “Effective Date”), pursuant to which the Non-Exchange Entity shall provide services to perform the functions set forth in the Underlying Agreement, as well as in any subsequent Task Orders issued pursuant to the Underlying Agreement; and

WHEREAS, the relationship between MHBE and the Non-Exchange Entity shall involve access to Personally Identifiable Information (“PII”), as that term is

defined herein, for purposes authorized under the ACA and, more particularly, under 45 C.F.R. §155.200; and

WHEREAS, the Non-Exchange Entity's access to PII submitted to the Exchange shall make the entity a "Non-Exchange Entity", as that term is defined in 45 C.F.R. §155.260(b)(1); and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, MHBE and the Non-Exchange Entity each acknowledge and agree that they enter into this Agreement for the purposes, among others as may be detailed herein, of ensuring the confidentiality, privacy and security of data accessed by the Non-Exchange Entity or exchanged between the Parties under this Agreement and compliance with the requirements of the ACA, including 45 C.F.R. §155.260(b)(2) and, regardless of whether otherwise applicable to the Non-Exchange Entity, 45 C.F.R. §155.270(a); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements, Data Use Agreements or Non-Exchange Entity Agreements the Non-Exchange Entity and MHBE may have entered into prior to the date hereof;

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

## AGREEMENT

- A. **Recitals**. The Recitals are true and correct in all respects, are incorporated into this Agreement and form a part of this Agreement.
- B. **Definitions**. For purposes of this Agreement, the Parties agree that the following definitions apply, regardless of whether the identified word is capitalized herein:
  - 1. **Breach** shall mean the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses personally identifiable information or (2) an authorized user accesses or potentially accesses personally identifiable information for an other than authorized purpose (as defined by OMB Memorandum M-17-12 (Jan. 3, 2017)).

2. “Incident” means an occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies (as defined by OMB Memorandum M-17-12).
  3. “Personally Identifiable Information” or “PII” shall mean personally identifiable information as defined by OMB Memorandum M-17-12 (January 3, 2017) (“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”).
  4. “Unsecured PII” shall include, but not be limited to, electronic PII that is not encrypted by use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.
- C. **Permitted Uses and Disclosure of PII by the Non-Exchange Entity.**
1. Non-Exchange Entity may only use or disclose PII as necessary to perform the services set forth in the Underlying Agreement or as required by law.
  2. Non-Exchange Entity agrees to limit uses, disclosures and requests for PII to the minimum necessary to accomplish its intended purposes.
  3. Non-Exchange Entity shall not use or disclose PII in a manner that would violate 45 C.F.R. § 155.260 if done by MHBE.
  4. Except as otherwise limited in this Agreement, Non-Exchange Entity agrees to disclose PII for the proper management and administration, or legal responsibilities of the Non-Exchange Entity only when (i) such disclosures are required by law, or (ii) Non-Exchange Entity obtains reasonable assurances from the person to whom the information is disclosed that the information 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 Non-Exchange Entity of any instances of which it is aware in which the confidentiality of the information has been breached.

5. Non-Exchange Entity shall not directly or indirectly receive remuneration in exchange for any PII of an individual. For the avoidance of doubt, this provision shall not preclude Non-Exchange Entity from receiving payment for the provision of services set forth in the Underlying Agreement or that are required by law.
6. Non-Exchange Entity shall not use or disclose PII for the purposes of marketing a product or service unless necessary to perform the services set forth in the Underlying Agreement or required by law. For the purposes of this provision, “marketing” shall mean a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

D. **Duties of the Non-Exchange Entity Relative to PII.**

1. The Non-Exchange Entity shall not use or disclose PII other than as permitted or required by the Agreement or as required by law.
2. The Non-Exchange Entity shall use appropriate administrative, technical and physical safeguards to protect the privacy of PII including, without limitation, by storing electronic PII in encrypted format.
3. Non-Exchange Entity shall use privacy and security standards at least as protective as MHBE has established and implemented for itself. For example, and without limitation, Non-Exchange Entity shall comply with the standards, implementation specifications, operating rules, and code sets adopted in 45 C.F.R. Parts 160 and 162, regardless of whether otherwise made applicable to Non-Exchange Entity pursuant to 45 C.F.R. § 155.270(a), to provide for the secure exchange of PII and to prevent use or disclosure of PII other than as provided in the Agreement. Further, Non-Exchange Entity shall:
  - a. comply with the latest version of Minimum Acceptable Risk Safeguards for Exchanges (MARS-E) – currently MARS-E V2.2.
  - b. Implement administrative, physical and technical safeguards to protect PII accessed pursuant to this Agreement and the Underlying Agreement from loss, theft or inadvertent disclosure.
  - c. Safeguard PII at all times, regardless of whether or not the Non-Exchange Entity’s employee, contractor, or agent is at his or her regular duty station.
  - d. Ensure that laptops and other electronic devices/media containing PII are encrypted, session locked and password protected.

- e. Send emails containing PII only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
  - f. Apply data encryption to protect MHBE data, especially PII, from improper disclosure or alteration.
  - g. Apply FIPS 140-2/3 cryptographic mechanisms to protect information during transmissions for data at rest and in transit. Allow for the creation of a secure connection before sharing private data.
  - h. Limit disclosure of the information and details relating to a PII loss only to those with a need to know.
  - i. Restrict access to PII only to those authorized employees, contractors, and agents who need such data to perform their official duties in connection with purposes identified in this Agreement and the Underlying Agreement; such restrictions shall include, at a minimum, role-based access that limits access to those individuals who need it to perform their official duties in connection with the uses of data authorized in this Agreement and the Underlying Agreement (“authorized users”). Further, the Non-Exchange Entity shall advise all users who will have access to the data provided under this Agreement and the Underlying Agreement of the confidential nature of the data, the safeguards required to protect the data, and the civil and criminal sanctions for noncompliance contained in the applicable State and federal laws.
4. Non-Exchange Entity shall monitor, periodically assess, and update its security controls and related system risks, to ensure the continued effectiveness of those controls.
5. Non-Exchange Entity shall inform MHBE of any change in its administrative, technical or operational environments to the extent any are material in the Underlying Agreement.
6. Non-Exchange Entity shall require any agents or downstream entities to which access to PII is granted in connection with the Underlying Agreement to adhere to the same privacy and security standards and obligations to which Non-Exchange Entity hereby agrees.
7. Non-Exchange Entity shall report to MHBE any use or disclosure of PII not permitted by this Agreement or required by law, including any Breaches of PII of which it becomes aware. Non-Exchange Entity further agrees to report to MHBE any Incident of which it becomes aware without unreasonable delay, and in no case later than five (5)

calendar days after the Incident. Further, Non- Exchange Entity shall report all suspected or confirmed Incidents involving loss or suspected loss of PII to MHBE within *one* (1) hour of discovery.

8. If the use or disclosure amounts to a Breach of Unsecured PII, the Non-Exchange Entity shall ensure its report:

- a. Is made to MHBE 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 the avoidance of doubt, Non-Exchange Entity must notify MHBE of an incident involving the acquisition, access, use or disclosure of PII in a manner not permitted under 45

C.F.R. § 155.260 or this Agreement within five (5) calendar days after an Incident even if Non- Exchange Entity has not conclusively determined within that time that the Incident constitutes a Breach as defined by this Agreement;

- b. Includes the names of the individuals whose unsecured PII has been, or is reasonably believed to have been, the subject of a Breach;
- c. Is in substantially the same form as **EXHIBIT 1** attached hereto; and
- d. Includes a draft letter for MHBE to review and approve prior to Non- Exchange Entity's notification of the affected individuals that their unsecured PII has been, or is reasonably believed to have been, the subject of a Breach. The notification must include, 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) The types of Unsecured PII that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account



number, 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) The toll-free telephone numbers and addresses for the major consumer reporting agencies;
- v) The toll-free telephone numbers, addresses and web site addresses for (1) the Federal Trade Commission; and (2) the Maryland Office of the Attorney General;
- vi) A brief description of what MHBE and the Non-Exchange Entity are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
- vii) Contact procedures for the affected individuals to ask questions or learn additional information, which shall include a telephone number, toll-free telephone number if one is maintained and postal address and may include an email address and web-site address.

9. If the use or disclosure amounts to a Breach of Unsecured PII, the Non-Exchange Entity shall provide MHBE the date the breach notification(s) are mailed to the affected individual(s).

10. To the extent permitted by the Underlying Agreement, Non-Exchange Entity may use agents and subcontractors. The Non-Exchange Entity shall ensure that any subcontractors or agents that create, receive, maintain, or transmit PII on behalf of Non-Exchange Entity agree to the same restrictions, conditions and requirements that apply to Non-Exchange Entity with respect to such information.

11. Non-Exchange Entity agrees to maintain and make available the information required to prove an accounting of disclosures of PII to MHBE or, as directed by MHBE, to an individual.

12. Non-Exchange Entity agrees to make its internal practices, books, and records, including PII, available to MHBE and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance with the ACA's privacy and security regulations as well as with the standards MHBE has established pursuant to 45 C.F.R. § 155.260, as set forth in 45 C.F.R. § 155.280(a).
13. Non-Exchange Entity agrees to mitigate, to the extent practicable, any harmful effect known to Non-Exchange Entity of a use or disclosure of PII by Non-Exchange Entity in violation of the requirements of this Agreement.

**E. Term and Termination.**

1. Term. The Term of this Agreement shall be effective as of the Effective Date defined above and shall terminate when all of the PII provided by MHBE to the Non-Exchange Entity, or the PII created or received by Non-Exchange Entity on behalf of MHBE, is destroyed or returned to MHBE, in accordance with the termination provisions in this Section E, or on the date MHBE terminates for cause as authorized in paragraph (2) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PII provided by MHBE to Non-Exchange Entity, or the PII created or received by Non-Exchange Entity on behalf of MHBE, Non-Exchange Entity'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 MHBE.
2. Termination. Upon MHBE's knowledge of a material breach of this Agreement by Non-Exchange Entity, MHBE:
  - a. Shall provide an opportunity for Non-Exchange Entity to cure the breach or end the violation and, if Non-Exchange Entity does not cure the breach or end the violation within the time specified by MHBE, may terminate this Agreement; or
  - b. May immediately terminate this Agreement if Non-Exchange Entity has breached a material term of this Agreement and MHBE determines or reasonably believes that cure is not possible.
3. Effect of Termination.

- a. Upon termination of this Agreement, for any reason, Non-Exchange Entity shall return or, if agreed to by MHBE, destroy all PII received from MHBE, or created, maintained, or received by Non-Exchange Entity on behalf of MHBE, which the Non-Exchange Entity maintains in any form. Non-Exchange Entity shall retain no copies of the PII. This provision shall apply to PII that is in the possession of subcontractors or agents of Non-Exchange Entity.
  - b. Should Non-Exchange Entity make an intentional or grossly negligent Breach of PII in violation of this Agreement or applicable law, MHBE shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, as well as the Underlying Agreement.
- 4. Survival. The obligations of Non-Exchange Entity under this Section shall survive the termination of this Agreement.
- F. **Consideration.** Non-Exchange Entity recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by MHBE in choosing to continue or commence a business relationship with Non-Exchange Entity.
- G. **Remedies in the Event of Breach.** Non-Exchange Entity hereby recognizes that irreparable harm will result to MHBE, and to the business of MHBE, in the event of breach by Non-Exchange Entity 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 C or D above, MHBE shall be entitled to enjoin and restrain Non-Exchange Entity from any continued violation of Sections C or D. Furthermore, in the event of breach of Sections C or D by Non-Exchange Entity, MHBE is entitled to reimbursement and indemnification from Non-Exchange Entity for MHBE's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Non-Exchange Entity's breach. Furthermore, pursuant to 45 C.F.R. §155.260(g), any disclosure of PII made knowingly and willfully will be subject to civil monetary penalties of not more than \$25,000 as adjusted annually under 45 C.F.R. part 102 per person or entity, per use or disclosure, in addition to other penalties that may be prescribed by law. The remedies contained in this Section G shall be in addition to, not in lieu of, any action for damages and/or any other remedy MHBE may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to MHBE at law or in equity.

- H. **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 MHBE to comply with the requirements of the ACA and, were it to become or imminently be applicable, the Health Insurance Portability and Accountability Act of 1996, as amended, together with all regulations promulgated thereto, and any other applicable law.
- I. **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.
- J. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, including, without limitation, Title 12 of the State Government Article of the Annotated Code of Maryland, but without regard to its choice of law provisions. This Agreement is not intended to modify the Parties' respective obligations to comply with all applicable federal, state and local laws, rules, and regulations, including but in no way limited to any and all laws, rules, and regulations related to privacy protection and confidentiality.
- K. **Miscellaneous.**
1. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit MHBE to comply with the ACA and its provisions with respect to the privacy and security of personally identifiable information.
  2. Regulatory References. A reference in this Agreement to a section in the ACA, including any regulations promulgated thereto, means the section as in effect or as amended.
  3. Notice to MHBE. Any notice required under this Agreement to MHBE shall be made in writing to:  
  
Caterina Pañgilinan  
Chief Compliance Officer  
Maryland Health Benefit Exchange  
750 E. Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202



Phone: (410) 547-1838

Email: [caterina.pangilinan@maryland.gov](mailto:caterina.pangilinan@maryland.gov)

With a copy to:

Sharon S. Merriweather, Principal Counsel  
Office of the Attorney General  
Maryland Health Benefit Exchange

750 E. Pratt Street, 6<sup>th</sup> Floor

Baltimore, MD 21202

Phone: (410) 547-7378

Email: [sharon.merriweather@maryland.gov](mailto:sharon.merriweather@maryland.gov)

4. Notice to Non-Exchange Entity. Any notice required under this Agreement to be given Non-Exchange Entity shall be made in writing to:

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

5. Method of Notice. Notices shall be sufficient if made by email and acknowledged within 24 hours by reply email, or delivered by a nationally recognized overnight carrier, such as FedEx, or via U.S. Mail-Certified Delivery, Return Receipt Requested.
6. Notice of Legal Requests. Non-Exchange Entity shall give notice to MHBE upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the MHBE's data under this Agreement, or which in any way might reasonably require access to the data of the MHBE, unless prohibited by law from providing such notice. The Non-Exchange Entity shall not respond to subpoenas, service of process and other legal requests related to MHBE without first notifying the MHBE, unless prohibited by law from providing such notice.
7. 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.

8. 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.
9. Terms. All of the terms of this Agreement are contractual and not merely recital and none may be amended or modified except by a writing executed by all parties hereto.
10. 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.

**MHBE:**

**NON-EXCHANGE ENTITY:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and legal  
sufficiency this \_\_\_\_\_ day  
of \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
Assistant Attorney General  
Maryland Health Benefit  
Exchange

Form: 02.03.22

**ATTACHMENT I-2 MARYLAND HEALTH BENEFIT EXCHANGE (CLOUD Call  
Center)  
NON-EXCHANGE ENTITY AGREEMENT**

This Non-Exchange Entity Agreement (this “Agreement”) is made by and between the Maryland Health Benefit Exchange, a public corporation and independent unit of the government of the State of Maryland (“MHBE”) and \_\_\_\_\_ (the “Non-Exchange Entity”), as of the Effective Date defined below. Each of MHBE and the Non-Exchange Entity is a “Party” to this Agreement and shall collectively be known as the “Parties”.

**RECITALS**

WHEREAS, MHBE is a state-based exchange established pursuant to 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, the “ACA”), and particularly pursuant to 45 C.F.R. § 155.100, as well as pursuant to Title 31 of the Insurance Article of the Maryland Code Annotated, and

WHEREAS, the Non-Exchange Entity submitted a proposal in response to that certain Maryland Health Benefit Exchange Request for Proposals: Consolidated Service Center, Solicitation No. \_\_\_\_\_ (the “RFP”); and

WHEREAS, the Non-Exchange Entity has been notified of award or awarded a contract (the “Underlying Agreement”) pursuant to the RFP; and

WHEREAS, the execution of this Agreement is required pursuant to the RFP, which is incorporated into the Underlying Agreement and is a part thereof; and

WHEREAS, MHBE and the Non-Exchange Entity enter into this Agreement effective as of the effective date of the Underlying Agreement (the “Effective Date”), pursuant to which the Non-Exchange Entity shall provide services to perform the functions set forth in the Underlying Agreement, as well as in any subsequent Task Orders issued pursuant to the Underlying Agreement; and

WHEREAS, the relationship between MHBE and the Non-Exchange Entity shall involve access to Personally Identifiable Information (“PII”), as that term is



defined herein, for purposes authorized under the ACA and, more particularly, under 45 C.F.R. §155.200; and

WHEREAS, the Non-Exchange Entity's access to PII submitted to the Exchange shall make the entity a "Non-Exchange Entity", as that term is defined in 45 C.F.R. §155.260(b)(1); and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, MHBE and the Non-Exchange Entity each acknowledge and agree that they enter into this Agreement for the purposes, among others as may be detailed herein, of ensuring the confidentiality, privacy and security of data accessed by the Non-Exchange Entity or exchanged between the Parties under this Agreement and compliance with the requirements of the ACA, including 45 C.F.R. §155.260(b)(2) and, regardless of whether otherwise applicable to the Non-Exchange Entity, 45 C.F.R. §155.270(a); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements, Data Use Agreements or Non-Exchange Entity Agreements the Non-Exchange Entity and MHBE may have entered into prior to the date hereof;

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

## **AGREEMENT**

A. **Recitals**. The Recitals are true and correct in all respects, are incorporated into this Agreement and form a part of this Agreement.

B. **Definitions**. For purposes of this Agreement, the Parties agree that the following definitions apply, regardless of whether the identified word is capitalized herein:

1. **"Breach"** shall mean the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses personally identifiable information or (2) an authorized user accesses or potentially accesses personally identifiable information for an other than authorized purpose (as defined by OMB Memorandum M-17-12 (Jan. 3, 2017)).



2. “Incident” means an occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies (as defined by OMB Memorandum M-17-12).

3. “Personally Identifiable Information” or “PII” shall mean personally identifiable information as defined by OMB Memorandum M-17-12 (January 3, 2017) (“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”).

4. “Unsecured PII” shall include, but not be limited to, electronic PII that is not encrypted by use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.

C. **Permitted Uses and Disclosure of PII by the Non-Exchange Entity.**

1. Non-Exchange Entity may only use or disclose PII as necessary to perform the services set forth in the Underlying Agreement or as required by law.

2. Non-Exchange Entity agrees to limit uses, disclosures and requests for PII to the minimum necessary to accomplish its intended purposes.

3. Non-Exchange Entity shall not use or disclose PII in a manner that would violate 45 C.F.R. § 155.260 if done by MHBE.

4. Except as otherwise limited in this Agreement, Non-Exchange Entity agrees to disclose PII for the proper management and administration, or legal responsibilities of the Non-Exchange Entity only when (i) such disclosures are required by law, or (ii) Non-Exchange Entity obtains reasonable assurances from the person to whom the information is disclosed that the information 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 Non-Exchange Entity of any instances of which it is aware in which the confidentiality of the information has been breached.

5. Non-Exchange Entity shall not directly or indirectly receive remuneration in exchange for any PII of an individual. For the avoidance of doubt, this provision

shall not preclude Non-Exchange Entity from receiving payment for the provision of services set forth in the Underlying Agreement or that are required by law.

6. Non-Exchange Entity shall not use or disclose PII for the purposes of marketing a product or service unless necessary to perform the services set forth in the Underlying Agreement or required by law. For the purposes of this provision, “marketing” shall mean a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

D. **Duties of the Non-Exchange Entity Relative to PII.**

1. The Non-Exchange Entity shall not use or disclose PII other than as permitted or required by the Agreement or as required by law.

2. The Non-Exchange Entity shall use appropriate administrative, technical and physical safeguards to protect the privacy of PII including, without limitation, by storing electronic PII in encrypted format.

3. Non-Exchange Entity shall use privacy and security standards at least as protective as MHBE has established and implemented for itself. For example, and without limitation, Non-Exchange Entity shall comply with the standards, implementation specifications, operating rules, and code sets adopted in 45 C.F.R. Parts 160 and 162, regardless of whether otherwise made applicable to Non-Exchange Entity pursuant to 45 C.F.R. § 155.270(a), to provide for the secure exchange of PII and to prevent use or disclosure of PII other than as provided in the Agreement. Further, Non-Exchange Entity shall:

- a. comply with the latest version of Minimum Acceptable Risk Safeguards for Exchanges (MARS-E) – currently MARS-E V2.2.
- b. Implement administrative, physical and technical safeguards to protect PII accessed pursuant to this Agreement and the Underlying Agreement from loss, theft or inadvertent disclosure.
- c. Safeguard PII at all times, regardless of whether or not the Non-Exchange Entity’s employee, contractor, or agent is at his or her regular duty station.
- d. Ensure that laptops and other electronic devices/media containing PII are encrypted, session locked and password protected.
- e. Send emails containing PII only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
- f. Apply data encryption to protect MHBE data, especially PII, from improper disclosure or alteration.

- g. Apply FIPS 140-2/3 cryptographic mechanisms to protect information during transmissions for data at rest and in transit. Allow for the creation of a secure connection before sharing private data.
- h. Limit disclosure of the information and details relating to a PII loss only to those with a need to know.
- i. Restrict access to PII only to those authorized employees, contractors, and agents who need such data to perform their official duties in connection with purposes identified in this Agreement and the Underlying Agreement; such restrictions shall include, at a minimum, role-based access that limits access to those individuals who need it to perform their official duties in connection with the uses of data authorized in this Agreement and the Underlying Agreement (“authorized users”). Further, the Non-Exchange Entity shall advise all users who will have access to the data provided under this Agreement and the Underlying Agreement of the confidential nature of the data, the safeguards required to protect the data, and the civil and criminal sanctions for noncompliance contained in the applicable State and federal laws.

4. Non-Exchange Entity shall monitor, periodically assess, and update its security controls and related system risks, to ensure the continued effectiveness of those controls.

5. Non-Exchange Entity shall inform MHBE of any change in its administrative, technical or operational environments to the extent any are material in the Underlying Agreement.

6. Non-Exchange Entity shall require any agents or downstream entities to which access to PII is granted in connection with the Underlying Agreement to adhere to the same privacy and security standards and obligations to which Non-Exchange Entity hereby agrees.

7. Non-Exchange Entity shall report to MHBE any use or disclosure of PII not permitted by this Agreement or required by law, including any Breaches of PII of which it becomes aware. Non-Exchange Entity further agrees to report to MHBE any Incident of which it becomes aware without unreasonable delay, and in no case later than five (5) calendar days after the Incident. Further, Non-Exchange Entity shall report all suspected or confirmed Incidents involving loss or suspected loss of PII to MHBE within *one* (1) hour of discovery.

8. If the use or disclosure amounts to a Breach of Unsecured PII, the Non-Exchange Entity shall ensure its report:

a. Is made to MHBE 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 the avoidance of doubt, Non-Exchange Entity must notify MHBE of an incident involving the acquisition, access, use or disclosure of PII in a manner not permitted under 45 C.F.R. § 155.260 or this Agreement within five (5) calendar days after an Incident even if Non-Exchange Entity has not conclusively determined within that time that the Incident constitutes a Breach as defined by this Agreement;

b. Includes the names of the individuals whose unsecured PII has been, or is reasonably believed to have been, the subject of a Breach;

c. Is in substantially the same form as **EXHIBIT 1** attached hereto; and

d. Includes a draft letter for MHBE to review and approve prior to Non-Exchange Entity's notification of the affected individuals that their unsecured PII has been, or is reasonably believed to have been, the subject of a Breach. The notification must include, 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) The types of Unsecured PII that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, 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) The toll-free telephone numbers and addresses for the major consumer reporting agencies;
- v) The toll-free telephone numbers, addresses and web site addresses for (1) the Federal Trade

Commission; and (2) the Maryland Office of the Attorney General;

- vi) A brief description of what MHBE and the Non-Exchange Entity are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
- vii) Contact procedures for the affected individuals to ask questions or learn additional information, which shall include a telephone number, toll-free telephone number if one is maintained and postal address and may include an email address and web-site address.

9. If the use or disclosure amounts to a Breach of Unsecured PII, the Non-Exchange Entity shall provide MHBE the date the breach notification(s) are mailed to the affected individual(s).

10. To the extent permitted by the Underlying Agreement, Non-Exchange Entity may use agents and subcontractors. The Non-Exchange Entity shall ensure that any subcontractors or agents that create, receive, maintain, or transmit PII on behalf of Non-Exchange Entity agree to the same restrictions, conditions and requirements that apply to Non-Exchange Entity with respect to such information.

11. Non-Exchange Entity agrees to maintain and make available the information required to prove an accounting of disclosures of PII to MHBE or, as directed by MHBE, to an individual.

12. Non-Exchange Entity agrees to make its internal practices, books, and records, including PII, available to MHBE and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance with the ACA's privacy and security regulations as well as with the standards MHBE has established pursuant to 45 C.F.R. § 155.260, as set forth in 45 C.F.R. § 155.280(a).

13. Non-Exchange Entity agrees to mitigate, to the extent practicable, any harmful effect known to Non-Exchange Entity of a use or disclosure of PII by Non-Exchange Entity in violation of the requirements of this Agreement.

#### **E. Term and Termination.**

1. Term. The Term of this Agreement shall be effective as of the Effective Date defined above and shall terminate when all of the PII provided by MHBE to the Non-Exchange Entity, or the PII created or received by Non-Exchange Entity on behalf of MHBE, is destroyed or returned to MHBE, in accordance with the termination provisions in this Section E, or on the date MHBE terminates for cause as authorized in paragraph (2) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PII provided by MHBE to Non-Exchange Entity, or the PII created or received by Non-Exchange Entity on behalf of MHBE, Non-Exchange Entity'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 MHBE.

2. Termination. Upon MHBE's knowledge of a material breach of this Agreement by Non-Exchange Entity, MHBE:

- a. Shall provide an opportunity for Non-Exchange Entity to cure the breach or end the violation and, if Non-Exchange Entity does not cure the breach or end the violation within the time specified by MHBE, may terminate this Agreement; or
- b. May immediately terminate this Agreement if Non-Exchange Entity has breached a material term of this Agreement and MHBE determines or reasonably believes that cure is not possible.

3. Effect of Termination.

a. Upon termination of this Agreement, for any reason, Non-Exchange Entity shall return or, if agreed to by MHBE, destroy all PII received from MHBE, or created, maintained, or received by Non-Exchange Entity on behalf of MHBE, which the Non-Exchange Entity maintains in any form. Non-Exchange Entity shall retain no copies of the PII. This provision shall apply to PII that is in the possession of subcontractors or agents of Non-Exchange Entity.

b. Should Non-Exchange Entity make an intentional or grossly negligent Breach of PII in violation of this Agreement or applicable law, MHBE shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, as well as the Underlying Agreement.

4. Survival. The obligations of Non-Exchange Entity under this Section shall survive the termination of this Agreement.

F. **Consideration.** Non-Exchange Entity recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by MHBE in choosing to continue or commence a business relationship with Non-Exchange Entity.

G. **Remedies in the Event of Breach.** Non-Exchange Entity hereby recognizes that irreparable harm will result to MHBE, and to the business of MHBE, in the event of breach by Non-Exchange Entity 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 C or D above, MHBE shall be entitled to enjoin and restrain Non-Exchange Entity from any continued violation of Sections C or D. Furthermore, in the event of breach of Sections C or D by Non-Exchange Entity, MHBE is entitled to reimbursement and indemnification from Non-Exchange Entity for MHBE's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Non-Exchange Entity's breach. Furthermore, pursuant to 45 C.F.R. §155.260(g), any disclosure of PII made knowingly and willfully will be subject to civil monetary penalties of not more than \$25,000 as adjusted annually under 45 C.F.R. part 102 per person or entity, per use or disclosure, in addition to other penalties that may be prescribed by law. The remedies contained in this Section G shall be in addition to, not in lieu of, any action for damages and/or any other remedy MHBE may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to MHBE at law or in equity.

H. **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 MHBE to comply with the requirements of the ACA and, were it to become or imminently be applicable, the Health Insurance Portability and Accountability Act of 1996, as amended, together with all regulations promulgated thereto, and any other applicable law.

I. **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.



J. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, including, without limitation, Title 12 of the State Government Article of the Annotated Code of Maryland, but without regard to its choice of law provisions. This Agreement is not intended to modify the Parties' respective obligations to comply with all applicable federal, state and local laws, rules, and regulations, including but in no way limited to any and all laws, rules, and regulations related to privacy protection and confidentiality.

K. **Miscellaneous.**

1. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit MHBE to comply with the ACA and its provisions with respect to the privacy and security of personally identifiable information.

2. Regulatory References. A reference in this Agreement to a section in the ACA, including any regulations promulgated thereto, means the section as in effect or as amended.

3. Notice to MHBE. Any notice required under this Agreement to MHBE shall be made in writing to:

Caterina Pañgilinan  
Chief Compliance Officer  
Maryland Health Benefit Exchange  
750 E. Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
Phone: (410) 547-1838  
Email: [caterina.pangilinan@maryland.gov](mailto:caterina.pangilinan@maryland.gov)

With a copy to:  
Sharon S. Merriweather, Principal Counsel  
Office of the Attorney General  
Maryland Health Benefit Exchange  
750 E. Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
Phone: (410) 547-7378  
Email: [sharon.merriweather@maryland.gov](mailto:sharon.merriweather@maryland.gov)

4. Notice to Non-Exchange Entity. Any notice required under this Agreement to be given Non-Exchange Entity shall be made in writing to:





Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

5. Method of Notice. Notices shall be sufficient if made by email and acknowledged within 24 hours by reply email, or delivered by a nationally recognized overnight carrier, such as FedEx, or via U.S. Mail-Certified Delivery, Return Receipt Requested.

6. Notice of Legal Requests. Non-Exchange Entity shall give notice to MHBE upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the MHBE's data under this Agreement, or which in any way might reasonably require access to the data of the MHBE, unless prohibited by law from providing such notice. The Non-Exchange Entity shall not respond to subpoenas, service of process and other legal requests related to MHBE without first notifying the MHBE, unless prohibited by law from providing such notice.

7. 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.

8. 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.

9. Terms. All of the terms of this Agreement are contractual and not merely recital and none may be amended or modified except by a writing executed by all parties hereto.

10. 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.

**MHBE:**

**NON-EXCHANGE ENTITY:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and legal  
sufficiency this \_\_\_\_\_ day  
of \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
Assistant Attorney General  
Maryland Health Benefit  
Exchange



**ATTACHMENT I-3 - EXHIBIT 1 TO THE NON-EXCHANGE ENTITY AGREEMENT  
MHBE NOTIFICATION OF ACTUAL OR POTENTIAL  
PRIVACY – IT SECURITY INCIDENT REPORT**

Date Reported to MHBE: \_\_\_\_\_

This notification is made pursuant to the Non-Exchange Entity Agreement between the MARYLAND HEALTH BENEFIT EXCHANGE, a public corporation and independent unit of State government (“MHBE”) and reporting agency \_\_\_\_\_ (“Insert Non-Exchange Entity name”). Non-Exchange Entity hereby notifies MHBE that there has been an actual or potential breach of unsecured personally identifiable information (“PII”) that Non-Exchange Entity has used or has had access to under the terms of the Non-Exchange Entity Agreement. Please provide as much detail as possible.

1) Description of the breach:

---

---

---

---

2) Were documents inappropriately loaded into wrong account?    • Yes    • No

If “yes,” in wrong account, Full Name of Account Owner	Application ID	Document ID(s)
--	----------------	----------------

_____	_____	_____
(First)	(Middle)	(Last)

3) Was breach identified from work list or in application while assisting a customer?    • Yes    • No

4) Date of discovery of the breach: \_\_\_\_\_ Date of the breach: \_\_\_\_\_

5) Does the breach involve 500 or more individuals? Yes/No

6) Number of individuals “affected” (read: Number whose PII was exposed) by the breach: \_\_\_\_\_

(Please Complete Other Side)

7) Name(s) of individuals “affected” by the breach (read: whose PII was exposed): (attach list if over 5)

1. \_\_\_\_\_ Application ID \_\_\_\_\_
2. \_\_\_\_\_ Application ID \_\_\_\_\_
3. \_\_\_\_\_ Application ID \_\_\_\_\_
4. \_\_\_\_\_ Application ID \_\_\_\_\_
5. \_\_\_\_\_ Application ID \_\_\_\_\_

8) For each “affected” individual, explicitly list the types of unsecured PII that were involved in the breach (such as “full name”, “Social Security number”, “date of birth”, “Medicaid number”, “home address”, “account number”, “passport number,” or other number.. *(Please refrain from simply identifying the type of document)*:

Name(s) of “Affected” Party	Document ID #	Types of PII
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

9) Was breach caused by reporting entity? • Yes • No

If “yes,” Description of what Non-Exchange Entity is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

---



---



---



---

(Please Complete Other Side)



10) Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Please securely email completed form to [mhbeincident.report@maryland.gov](mailto:mhbeincident.report@maryland.gov) or call Cat Pañgilinan, MHBE Chief Compliance Officer, at 410-547-1838, if you have any questions. Thank You!

(FORM) MHBE Notification of Privacy-IT Security Incident Report 2021-01-13

ATTACHMENT J – PERFORMANCE BOND

Principal

Business Address of Principal

Surety

Obligee

A corporation of the State of  
and authorized to do business in the State of  
Maryland

STATE OF MARYLAND

By and through the following

Administration

Penal Sum of Bond (express in words and figures)

Date of Contract

, 20\_\_

Description of Contract

Date Bond Executed

, 20\_\_

Contract Number:

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

DOJ Audit of MHBE Compliance Program – RFP #BPM029704

WHEREAS, Principal has entered into or will enter into a contract with the State of Maryland, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each



member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

---

In Presence of: Individual Principal

Witness:

(Name)

as to

(SEAL)

---

In Presence of: Co-Partnership Principal

Witness:

(SEAL)

(Name of Co-Partnership)

as to

By:

(SEAL)

as to

(SEAL)

as to

(SEAL)





Attest:

Corporate Principal

(Name of Corporation)

AFFIX

as to

CORPORATE

Corporate Secretary

SEAL

By:

President

---

Attest:

(SEAL)

(Individual or Corporate Surety)

Signature

Title

SEAL

(Business Address of Surety)

---

Approved as to legal form and sufficiency this \_\_\_\_  
day of \_\_\_\_\_ 20\_\_

Asst. Attorney General

**ATTACHMENT K – BUSINESS ASSOCIATE AGREEMENT**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (this "Agreement") is made by and between the Maryland Health Benefit Exchange, a public corporation and independent unit of the government of the State of Maryland ("MHBE"), the Maryland Medical Assistance Program (a unit of the Maryland Department of Health, herein referred to as "Covered Entity") and \_\_\_\_\_ (herein known as "Business Associate"). MHBE, Covered Entity and Business Associate shall collectively be known as the "Parties."

WHEREAS, MHBE has a business relationship with Business Associate that is memorialized in a separate agreement (the "Underlying Agreement") which may necessitate Business Associate to be considered a "business associate" of the Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent regulations (45 CFR Parts 160 and 164), as 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 MHBE and Business Associate may involve the exchange of Protected Health Information ("PHI," as that term is defined under HIPAA) between Business Associate and Covered Entity; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, MHBE, 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 §§ 4-30I *et seq.*) ("MCMRA"); and

NOW THEREFORE, the premises having been considered with acknowledgement 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. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

B. Breach. "Breach" shall have the same meaning as the term "breach" in 45 CFR §164.402.

C. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.

D. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

E. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered entity.

F. Required by Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.501.

G. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.

H. Unsecured Protected Health Information. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary or as otherwise defined in §13402(h) of the HITECH Act.

## **II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE**

A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of MHBE as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy rule.

B. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e).

C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

## **III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI**

A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement, the MCMRA, or as Required By Law.

B. Business Associate shall implement administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity.

C. Business Associate shall immediately notify MHBE and Covered Entity of any use or disclosure of PHI in violation of this Agreement.

D. In addition to its obligations in Section III.C., Business Associate shall document and notify Covered Entity of a Breach of Unsecured PHI. Business Associate's notification to MHBE and Covered Entity hereunder shall:

1. Be made to MHBE and Covered Entity without unreasonable delay and in no case later than 45 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 MHBE and Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 FR Part E within 45 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 this HIPAA;

2. Includes the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;

3. Be in substantially the same form as EXHIBIT A hereto; and

4. Includes a draft letter for MHBE or the Covered Entity to utilize to notify the 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:

- a) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

- b) A brief 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);

- c) Any Steps the Individuals should take to protect themselves from potential harm resulting from the Breach;

- d) A brief description of what MHBE, the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and

- e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, Web site, or postal address.

E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent possible, any harmful effects of said disclosure that are known to it.

F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of MHBE or Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

G. To the extent applicable, Business Associate shall provide access to PHI in a Designated Record Set at reasonable times, at the request of MHBE or Covered Entity, or, as directed by MHBE or Covered Entity, to an individual in order to meet the requirements under 45 C.F.R. §164.524.

H. To the extent possible, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that MHBE or Covered Entity pursuant to 45 C.F.R. §164.526 at the request of MHBE, Covered Entity or an Individual.

I. Business Associate shall, upon request with reasonable notice, provide MHBE or Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to MHBE or Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business Associate agrees to promptly provide MHBE or Covered Entity with information in a format and manner sufficient to respond to the individual's request.

K. Business Associate shall, upon request with reasonable notice, provide MHBE and Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.

L. Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to MHBE or Covered Entity that seek documents or other information held by Business Associate.

M. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR §164.502(j)(1).

N. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### IV. TERM AND TERMINATION

A. Term. The Term of this Agreement shall be effective as of the effective date of the Underlying Agreement and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate on behalf of MHBE or Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section IV.

B. Termination for Cause. Upon MHBE or Covered Entity's knowledge of a material breach of this Agreement by Business Associate, MHBE or 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 MHBE or Covered Entity, terminate this Agreement;
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
3. If neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination.

1. Except as provided in paragraph C(2) or this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of MHBE or Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or

agents or Business Associate. Business Associate shall not retain any copies of the PHI.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to MHBE or Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

3. 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 MCMRA, MHBE shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the underlying 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 MHBE and 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, MHBE and 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, MHBE and Covered Entity is entitled to reimbursement and indemnification from Business Associate for MHBE and/or 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 (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

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 Privacy Rule and HIPAA.

**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 the holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy and 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 MHBE. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Caterina Pañgilinan

Chief Compliance Officer

Maryland Health Benefit Exchange

750 E. Pratt Street, 6th Floor

Baltimore, MD 21202

Phone: (410) 547-1838

Email: [caterina.pangilinan@maryland.gov](mailto:caterina.pangilinan@maryland.gov)

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





[Designated MDH Representative]

Maryland Department of Health

201 W. Preston Street

Baltimore, MD 21201-2301

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

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

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

F. 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.

G. 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.

H. 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.

I. 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: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Maryland Health Benefit Exchange:**

By: \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Form of Notification to Covered Entity of**

**Breach of Unsecured PHI**

This notification is made pursuant to Section III.2.D(3) of the Business Associate Agreement between the MARYLAND HEALTH BENEFIT EXCHANGE, a public corporation and independent unit of State government (“MHBE”), the Maryland Medical Assistance Program (a unit of the Maryland Department of Health, herein referred to as “Covered Entity or MDH”), and \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies MHBE and MDH 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: \_\_\_\_\_

---

Email

Address: \_\_\_\_\_

**Attachment L. Minority Business Enterprise (MBE) Forms**

**L-1A  
MBE UTILIZATION AND FAIR  
SOLICITATION AFFIDAVIT & MBE PARTICIPATION  
SCHEDULE**

**PART 1 - INSTRUCTIONS**

***PLEASE READ BEFORE COMPLETING THIS  
DOCUMENT***

**THIS FORM INCLUDES INSTRUCTIONS AND THE MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE WHICH MUST BE SUBMITTED WITH THE BID/PROPOSAL. IF THE BIDDER/OFFEROR FAILS TO ACCURATELY COMPLETE AND SUBMIT THIS AFFIDAVIT AND SCHEDULE WITH THE BID OR PROPOSAL, THE PROCUREMENT OFFICER SHALL DEEM THE BID NON-RESPONSIVE OR SHALL DETERMINE THAT THE PROPOSAL IS NOT REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD UNLESS THE INACCURACY IS DETERMINED TO BE THE RESULT OF A MINOR IRREGULARITY THAT IS WAIVED OR CURED IN ACCORDANCE WITH COMAR 21.06.02.04.**

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the

Maryland Department of Transportation (“MDOT”). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.

4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System (“NAICS”) Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm’s NAICS Code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term “Graduated” follows the Code in the MDOT MBE Directory.
5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall

MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.  
[http://www.goMDsmallbiz.maryland.gov/Documents/MBE\\_Toolkit/MBEPrimeRegulation\\_QA.pdf](http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf)
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**
- ✓ Regular Dealer (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials,

supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

*Example for illustrative purposes of applying the 60%*

*rule: Overall contract value: \$2,000,000*

*Total value of supplies: \$100,000*

*Calculate Percentage of Supplies to overall contract value: \$100,000 divided by \$2,000,000 = 5%*

***Apply 60% Rule - Total percentage of Supplies/Products 5% x 60% = 3%***

***3% would be counted towards achieving the MBE Participation Goal and Subgoal, if any, for the MBE supplier in this example.***

- ✓ **Manufacturer:** A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
- ✓ **Broker:** With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.
- ✓ **Furnish and Install and other Services:** The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS code(s) to furnish and install materials necessary for successful contract completion may be counted in full. Includes the participation of other MBE service providers in the proper NAICS code(s) may be counted in full.

9. **Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

*Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.*

10. **CAUTION:** The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable),



then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).

11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

**Subgoals (if applicable)**

Total African American MBE Participation:	_____ %
Total Asian American MBE Participation:	_____ %
Total Hispanic American MBE Participation:	_____ %
Total Women-Owned MBE Participation:	_____ %

**Overall Goal**

Total MBE Participation (include all categories):	_____ %
---	---------

## **PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE**

**THIS MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT AND MBE PARTICIPATION SCHEDULE MUST BE COMPLETED IN ITS ENTIRETY AND INCLUDED WITH THE BID/PROPOSAL. IF THE BIDDER/OFFEROR FAILS TO ACCURATELY COMPLETE AND SUBMIT THIS AFFIDAVIT AND SCHEDULE WITH THE BID OR PROPOSAL AS REQUIRED, THE PROCUREMENT OFFICER SHALL DEEM THE BID NON-RESPONSIVE OR SHALL DETERMINE THAT THE PROPOSAL IS NOT REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD.**

In connection with the bid/proposal submitted in response to Solicitation No. \_\_\_\_\_,  
I affirm the following:

### **1. MBE PARTICIPATION (PLEASE CHECK ONLY ONE)**

☐ I acknowledge and intend to meet IN FULL both the overall certified Minority  
Business Enterprise (MBE) participation goal of\_\_percent and all of the following subgoals:

- \_\_\_\_\_ percent for African American-owned MBE firms
- \_\_\_\_\_ percent for Hispanic American-owned MBE firms
- \_\_\_\_\_ percent for Asian American-owned MBE firms
- \_\_\_\_\_ percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

**OR**

☐ After making good faith outreach efforts prior to making this submission, I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 4 Signature Page in order to be considered for award.

### **ADDITIONAL MBE DOCUMENTATION**

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment L-1C)
- (b) Outreach Efforts Compliance Statement (Attachment L-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments L-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

### **INFORMATION PROVIDED TO MBE FIRMS**

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.

## PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (i) CERTIFIED MBEs I INTEND TO USE, (ii) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (iii) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

Prime Contractor	Project Description	Project/Contract Number

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. **MBE PRIMES:** PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

### SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p> <input type="checkbox"/> African American-Owned  <input type="checkbox"/> Hispanic American- Owned  <input type="checkbox"/> Asian American-Owned  <input type="checkbox"/> Women-Owned  <input type="checkbox"/> Other MBE Classification         </p> <p>NAICS code: _____</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE <b>overall participation goal</b> (up to 50% of the overall goal): _____% <b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the <b>subgoal</b>, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p> <input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)  <input type="checkbox"/> Manufacturer (count 100%)  <input type="checkbox"/> Broker (count reasonable fee/commission only)  <input type="checkbox"/> Furnish and Install and other Services (count 100%)         </p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products / services from suppliers, wholesalers, regular dealers and brokers) _____%</p> <p><b>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule). Total percentage of Supplies/Products _____% x 60% = _____%</p> <p><b>C. Percentage amount of fee where the MBE Prime firm is being used as broker</b> (count reasonable fee/commission only) _____%</p> <p>Description of the work to be performed with MBE prime's own forces:</p>
---	---

**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input checked="" type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p><input type="checkbox"/> NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input checked="" type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)___%</p> <p><b>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule)). Total percentage of Supplies/Products___% X 60% =___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only)___%</p> <p>Description of the work to be performed:</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p><input type="checkbox"/> (If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE Firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)___%</p> <p><b>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule)). Total percentage of Supplies/Products___% X 60% =___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only)___%</p> <p>Description of the work to be performed:</p>

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p><input type="checkbox"/> If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p>Broker (count reasonable fee/commission only)</p> <p>Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that for the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)___%</p> <p><b>B. Percentage of the total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule). Total percentage of Supplies/Products___% X 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only)___%</p> <p>Description of the work to be performed:</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p>Broker (count reasonable fee/commission only)</p> <p>Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)___%</p> <p><b>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule)). Total percentage of Supplies/Products___% X 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b>___%</p> <p>Description of the work to be performed:</p>

CONTINUE ON SEPARATE PAGE IF NEEDED

## PART 4 – SIGNATURE PAGE

To complete Affidavit committing to MBE(s) or requesting waiver,  
Bidder/Offeror must sign below:

**I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT: (I) I HAVE REVIEWED THE INSTRUCTIONS FOR THE MBE UTILIZATION & FAIR SOLICITATION AFFIDAVIT AND MBE SCHEDULE, AND (II) THE INFORMATION CONTAINED IN THE MBE UTILIZATION & FAIR SOLICITATION AFFIDAVIT AND MBE SCHEDULE IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.**

\_\_\_\_\_  
Bidder/Offeror Name  
(PLEASE PRINT OR TYPE)

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## L-1B WAIVER GUIDANCE

### GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the Offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

#### I. Definitions

**MBE Goal(s)** – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

**Good Faith Efforts** - The “Good Faith Efforts” requirement means that when requesting a waiver, the Offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether the Offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the Offeror has made. The efforts employed by the Offeror should be those that one could reasonably expect the Offeror to take if the Offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the Offeror's good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the Offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the Offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the Proposal items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

**MBE Firms** – “MBE Firms” refers to firms certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State's MBE Program.

#### II. Types of Actions Agency will Consider

The Offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the Offeror's Good Faith Efforts when the Offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

##### A. Identify Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements
  - (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
  - (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.
2. Identified Items of Work by Offerors



- (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.
- (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts.

**B. Identify MBE Firms to Solicit**

1. MBE Firms Identified in Procurements

- (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
- (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Offerors

- (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
- (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

**C. Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:

- (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
- (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
- (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. "All" Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Offeror provides written solicitations.

3. "Electronic Means" includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested MBE.

4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

- (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
- (b) in writing *via* a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

- (a) attending any pre-Proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
- (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

**D. Negotiate with Interested MBE Firms**

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
  - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
  - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
  - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. The Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for the Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:
  - (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (c) percentage that the MBE subcontractor's quote represents of the overall contract amount;
  - (d) number of MBE firms that the Offeror solicited for that portion of the work;
  - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
  - (f) number of quotes received by the Offeror for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
7. The Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
  - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment,

existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.

- (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the project goal.

#### **E. Assisting Interested MBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBE Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

### **III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other Proposals or offers and subcontract Proposals or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether the Offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other Offerors in meeting the contract. For example, when the apparent successful Offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Offeror could have met the goal. If the apparent successful Offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Offeror having made Good Faith Efforts.

### **IV. Documenting Good Faith Efforts**

At a minimum, the Offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 Business Days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

#### **A. Items of Work (Complete Good Faith Efforts Documentation Attachment L-1C, Part 1)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

#### **B. Outreach/Solicitation/Negotiation**

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a).  
**(Complete Outreach Efforts Compliance Statement - L-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
  - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) **(Complete Good Faith Efforts Attachment L-1C- Part 2, and submit letters, fax cover sheets, e-mails, etc. documenting solicitations);** and
  - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

#### **C. Rejected MBE Firms (Complete Good Faith Efforts Attachment L-1C, Part 3)**

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
  2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and
-

Non-MBE firms proposing on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **L-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

**D. Other Documentation**

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
  2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.
-

**L-1B - Exhibit A**  
**MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of Minority firm)

located at \_\_\_\_\_  
(Number) (Street)  
(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_

in \_\_\_\_\_ County by \_\_\_\_\_  
(Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the work/service or unable to prepare a Proposal for this project for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

\_\_\_\_\_  
(Signature of Minority Firm's MBE Representative) (Title) (Date)

\_\_\_\_\_  
(MDOT Certification #) (Telephone #)

\*\*\*\*\*

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
(Signature of Prime Contractor) (Title) (Date)

**D-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO**  
**SUPPORT WAIVER REQUEST**

PAGE OF \_\_\_\_

Prime Contractor:	Project Description:	PROJECT/CONTRACT
Offeror Company Name, Street Address, Phone		Solicitation #:

Parts 1, 2, and 3 must be included with this certificate along with all documents supporting your waiver request.

I affirm that I have reviewed **Attachment D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-1C** Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

Company: \_\_\_\_\_

Company Name (please print or type)

By: \_\_\_\_\_

Signature of Authorized Representative

Printed Name: \_\_\_\_\_

Printed Name

Title: \_\_\_\_\_

Title

Date: \_\_\_\_\_

Date

Address: \_\_\_\_\_

Company Address

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**  
**PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS**

PAGE\_ OF \_\_\_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

Identify those items of work that the Offeror made available to MBE Firms. This includes, where appropriate, those items the Offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the Offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the procurement?	Does Offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why not.
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER  
REQUEST PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF  
SOLICITATIONS**

PAGE\_ OF \_\_\_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
<i>Offeror Company Name, Street Address, Phone</i>		<b>Solicitation #:</b>

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (**Attachment L-1B - Exhibit A**). If the Offeror used a Non-MBE or is self-performing the identified items of work, Part 4 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: Spoke with: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: Spoke with: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing

☐ Please check if Additional Sheets are attached.



**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER**

**REQUEST PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED**

**MBE QUOTES PAGE** OF \_\_\_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT NUMBER:</b>
<i>Offeror Company Name, Street Address, Phone</i>		<b>Solicitation #:</b>

This form must be completed if Part 1 indicates that an MBE quote was rejected because the Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/ section number from Proposal)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	<input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	<input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	<input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	<input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	<input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	<input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

☐ Please check if Additional Sheets are attached.

**L- 2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Offeror identified subcontracting opportunities in these specific work categories:

---

---

---

2. Attached to this form are copies of written solicitations (with Proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

---

---

---

**4. Please Check One:**

- ☐ This project does not involve bonding requirements.
- ☐ Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

---

---

---

**5. Please Check One:**

- \_\_\_\_\_ Offeror did attend the pre-Proposal conference.
- \_\_\_\_\_ No pre -Proposal meeting/conference was held.
- \_\_\_\_\_ Offeror did not attend the pre-Proposal conference.

PLEASE PRINT OR TYPE

Company:

---

Company Name (please print or type)

By:

---

Signature of Authorized Representative

Printed Name:

---

Printed Name

Title:

---

Title

Date:

---

Date

Address:

---

Company Address

---

**L-3A**  
**CERTIFIED MBE SUBCONTRACTOR PARTICIPATION**  
**CERTIFICATION**

**INSTRUCTIONS:**

**PRIME CONTRACTOR:** After completing SECTIONS A, B, and D, provide this form to *each* certified Minority Business Enterprise subcontractor (MBE) listed on the MBE Participation Schedule (Attachment L-1A) allowing sufficient time for the MBE to respond within the required timeframe.

**CERTIFIED MBE SUBCONTRACTOR:** Complete SECTION C to acknowledge and certify the information in SECTION A. Return the completed form directly to the Procurement Officer identified in SECTION D within 10 days after notice from the Prime Contractor of the State's intent to award the Contract. Provide a copy to the Prime Contractor.

***IF THIS FORM IS NOT RETURNED WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PRIME CONTRACTOR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.***

**SECTION A**

Provided that (Prime Contractor) \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation Number \_\_\_\_\_, (Prime Contractor) \_\_\_\_\_ intends to enter into a subcontract with (Certified MBE Subcontractor) \_\_\_\_\_ with MDOT Certification Number \_\_\_\_\_ committing to participation by (Certified MBE Subcontractor) \_\_\_\_\_ of at least \$ \_\_\_\_\_ which equals \_\_\_\_\_% of the Total Contract Value for the following products/services:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

The Contractor and certified MBE each acknowledge that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. The Contractor and certified MBE each solemnly affirms under the penalties of perjury that: (i) the information provided in this Certified MBE Subcontractor Participation Certification is true to the best of its knowledge, information and belief, and (ii) 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 MBE in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the MBE to identify the MBE in its Bid/Proposal;
- (2) fail to notify the MBE before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the MBE in the performance of the Contract; or

(4) pay the MBE solely for the use of its name in the Bid/Proposal.

PAGE 2 – CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION

**SECTION B – Prime Contractor**

Signature of Representative:

Printed Name and Title:

Prime Firm's Name: \_\_\_\_\_ Federal

Identification Number: \_\_\_\_\_ Street Address, City,

State, Zip Code:

Phone: \_\_\_\_\_ Date: \_

**SECTION C – Certified MBE Subcontractor**

Signature of Representative:

Printed Name and Title:

MBE Firm's Name: \_ Federal Identification

Number: \_\_\_\_\_ Street Address, City, State, Zip

Code:

Phone: \_\_\_\_\_ Date: \_\_\_\_\_

**SECTION D**

*This completed form is due to the Procurement Officer on or before: \_*

Solicitation #: \_\_\_\_\_ Solicitation Title: \_\_\_\_\_ Agency/Dept.: \_\_\_\_\_ Procurement Officer: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_ Email: \_\_\_\_\_ Street Address, City, State, Zip Code:

**L-3B**  
**MBE PRIME PROJECT**  
**PARTICIPATION CERTIFICATION**

**Please complete and submit this form to attest to each specific item of work that your MBE firm has listed on the MBE Participation Schedule (Attachment L-1A) for purposes of meeting the MBE participation goals. This form must be submitted within 10 Business Days of notification of apparent award. If the Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that Proposal is not susceptible of being selected for Contract award.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$\_\_\_\_\_ which equals to \_\_\_\_% of the Total Contract Amount for performing the following goods and services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE) For Construction Projects, General Conditions must be listed separately	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

**MBE Prime Contractor**

Company: \_\_\_\_\_

*Company Name (please print or type)*

FEIN: \_\_\_\_\_

*Federal Identification Number*

Company Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

*Signature of Authorized Representative*

Date:

---



**L-4A**  
**Minority**  
**Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid Invoice**  
**Report**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

Prime Contractor:			Contact Person:		
Address:					
City:			State:		ZIP:
Phone:		FAX:		E-mail:	
MBE Subcontractor Name:			Contact Person:		
Phone:		FAX:		E-mail:	
Subcontractor Services Provided:					
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>			<b>List dates and amounts of any outstanding invoices:</b>		
	<b>Invoice #</b>	<b>Amount</b>		<b>Invoice #</b>	<b>Amount</b>
1.			1.		
2.			2.		
3.			3.		
4.			4.		
<b>Total Dollars Paid: \$</b>			<b>Total Dollars Unpaid: \$</b>		

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment L-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment L-4B**.
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

\_\_\_\_\_  
Contract Monitor Name

\_\_\_\_\_  
Contracting Unit

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Email

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Signature (Required)

\_\_\_\_\_  
Date

**L-4B  
Minority  
Business Enterprise Participation  
MBE Prime Contractor Report**

MBE Prime Contractor:	Contract #:	
Certification Number:	Contracting Unit:	
Report #:	Contract Amount:	
Reporting Period (Month/Year):	Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals:	
<b>MBE Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>		Project Begin Date:
		Project End Date:

Contact Person:			
Address:			
City:	State:	ZIP:	
Phone:	FAX:	E-mail:	

Invoice Number	Value of the Work	NAICS Code	Description of Specific Products and/or Services

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

\_\_\_\_\_  
Contract Monitor Name

\_\_\_\_\_  
Contracting Unit

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Email

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Signature (Required)

\_\_\_\_\_  
Date

**L-5  
Minority**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Report is due by the 10th of the month following the month the services were performed.</b>	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:					
MDOT Certification #:					
Contact Person:					
Address:					
City:			State:		ZIP:
Phone:		FAX:		E-mail:	
<b>Subcontractor Services Provided:</b>					
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>			<b>List dates and amounts of any unpaid invoices over 30 days old.</b>		
	<b>Invoice Amount</b>	<b>Date</b>		<b>Invoice Amount</b>	<b>Date</b>
1.			1.		
2.			2.		
3.			3.		
4.			4.		
<b>Total Dollars Paid: \$</b>			<b>Total Dollars Unpaid: \$</b>		
Prime Contractor:			Contract Person:		

**Return one copy of this form to the following addresses (electronic copy with signature and date is preferred):**

\_\_\_\_\_  
Contract Monitor Name

\_\_\_\_\_  
Contracting Unit

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Email

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Signature (Required)

\_\_\_\_\_  
Date