



## Maryland Health Benefit Exchange

### **REQUEST FOR PROPOSALS**

### IT Consulting and Technical Support Services Indefinite Delivery, Indefinite Quantity (IDIQ)

**SOLICITATION NO.: BPM031490**

**Issue Date: October 12, 2022**

Updated RFP 11/10/2022

#### **NOTICE**

A Prospective Offeror that has received this document from the Maryland Health Benefit Exchange's website,

<https://emma.maryland.gov/page.aspx/en/usr/login?ReturnUrl=%2fpage.aspx%2fen%2fbuy%2fhomepage>,

or a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this RFP should immediately contact the Procurement Officer and provide the Prospective Offeror's name and mailing address so that addenda to the RFP or other communications can be sent to the Prospective Offeror.

**Minority Business Enterprises Are Encouraged to Respond to this Solicitation**

**STATE OF MARYLAND NOTICE  
TO OFFERORS/CONTRACTORS**

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

**Title:** IT Consulting and Technical Support Services IDIQ

**Project eMMA #:** BPM031490

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

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

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

REMARKS:

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

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

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

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

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

**Request for Proposals:** IT Consulting and Technical Support Services IDIQ

**Solicitation Number:** BPM031490

**RFP Issue Date:** October 12, 2022

**RFP Issuing Office:** Maryland Health Benefit Exchange

**Procurement Officer:** Shirelle Green  
750 East Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
hix.procurement@maryland.gov

**Contract Monitor:** Venkat Koshanam  
Chief Information Officer  
750 East Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
venkat.koshanam@maryland.gov

**Proposals are to be submitted via :** eMMA

**Pre-Proposal Conference Date:** November 2, 2022, 2022 11:00 AM Local Time

**Question and Answers Closes:** November 14, 2022 @ 10:00 AM

**Proposal Due (Closing) Date and Time:** November 28, 2022 @ 1:00 PM Local Time

**MBE Subcontracting Goal:** 0%

**Contract Type:** Indefinite Delivery Indefinite Quantity (IDIQ)

**Contract Duration:** Three Year Base Term with 2 One Year Options

**Federal Funding:** Yes

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## SECTION 1 – MINIMUM QUALIFICATIONS

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### 1 Offeror Minimum Qualifications

There are no Offeror Minimum Qualifications for this procurement.

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## SECTION 2 – CONTRACTOR REQUIREMENTS: SCOPE OF WORK

### 2.1 Summary Statement

2.1.1 The Maryland Health Benefit Exchange (MHBE) is issuing this Request for Proposals (RFP) to procure information technology (IT) Consulting and Technical Support Services for MHBE's IT initiatives, projects and operations, including initiatives, projects and tasks that support MHBE's Qualified Health Plan (QHP), Medicaid, Dental and other healthcare eligibility, enrollment and related functions. The Master Contracts awarded as a result of this solicitation will provide MHBE with a flexible means of obtaining IT resources quickly and efficiently through the issuance of Task Order Requests for Resumes (RFR) specific to its needs. Capitalized words not defined in this RFP shall have the meanings in the Definitions attached as Appendix I to this RFP, which is hereby incorporated into the RFP.

2.1.2 MHBE intends to award Master Contracts to all Offerors that the MHBE determines to be qualified. Offerors may propose to one, several or all functional areas.

Specific RFRs will be issued, as needed, throughout the term of the Master Contract. All eligible Master Contractors will be invited to compete. Based on the evaluation of responses, and as specified in the RFR, a single or multiple Master Contractor(s) will be selected for award. A specific TO Agreement will then be entered into between the MHBE and the selected Master Contractor(s), which will bind the Master Contractor(s) to the contents of its Proposal, including its price. An RFR, TO Agreement, or Proposal may not in any way conflict with or supersede the MHBE Master Contract.

### 2.2 Background and Purpose

The Maryland Health Benefit Exchange ("MHBE"), an independent unit of State government, provides accessible, affordable health coverage to Marylanders. MHBE is responsible for the Maryland Health Connection (MHC), the State's health insurance marketplace under 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 thereunder (the "ACA").

The MHC's underlying mission-critical information technology (IT) systems and applications are collectively referred to as the HBX System ("HBX" or "System"). The HBX has two major web application components, namely, the Consumer Portal (CP) that consumers access to seek health insurance coverage and the Worker Portal (WP) which supports more than 2,000 social and health exchange workers, producers, and navigators to provide various services to the consumers. Further, MHBE's flagship MobileApp "EnrollMHC" attracting more than 60% of consumer traffic is available in iOS and Android platforms. The HBX also has a SHOP (Small Business Health Option) portal and an associated mobile app, and other ancillary systems such as the Marketing Portal, Broker Portal, and an integrated Salesforce CRM solution. The HBX has processed over 13 million health insurance enrollment transactions since November 2014.

The HBX System is built on an open-source-driven architecture utilizing a backbone API service built on Java EE and hosted on Amazon Web Services (AWS) cloud platform. The applications are developed in Java, PHP, AngularJS, React Native, RESTful Spring API and Hibernate to deliver multiple components including REST APIs used across web and mobile applications. The AWS cloud infrastructure provides a

Docker container based Continuous Integration/Continuous Deployment (CI/CD) environment for application components in the system. The backend API runtimes are hosted on JBoss Enterprise Platform and Apache Tomcat servers. EDB PostgreSQL is the database platform used for transactional database operations, while the System relies on MongoDB as its NoSQL document-based database repository for Enterprise Content Management (ECM). Informatica ETL facilitates file-based data interchange with external systems such as carriers (834 EDI) and other partner agencies. JBoss Fuse provides the service integration layer (ESB) in the System that facilitates services-based integration for real-time data exchange with external partners including Federal Data Services Hub (FDSH), other state agencies and for intra-system integration between the components in the HBX ecosystem. Other key components in the HBX ecosystem are: Corticon Business Rules Engine, which hosts the domain business rules and configurations for the system; correspondence/document generation API built using open-source Eclipse BIRT and MongoDB; Web Identity and Access Management solution, built using Sailpoint IIQ and ForgeRock OpenAM; Business Process Workflow Engine built using open-source Camunda BPM; and Salesforce CRM implemented for customer engagement and call center operations. The HBX system also includes a robotic process automation (RPA) component which provides AI and OCR based automated document verification solutions and various other process automations for improved operational efficiency.

The MHBE utilizes contractor resources to develop, implement, maintain and support its HBX and ancillary systems, and provide IT services covering a wide variety of functional areas such as the Application Development, Electronic Data Interface (EDI) Operations, System Operations, Testing & Quality Assurance, Independent Verification & Validation (IV&V), IT Audit and Compliance, Infrastructure, Security, Database & Document Management, Reporting, Deployment, Maintenance and Operations (M&O), and the Project/Program Management Office (PMO) functions.

## 2.3 Scope of Work - Requirements

2.3.1 The scope of this solicitation encompasses the following 10 functional areas:

- 1) Enterprise Service Provider (ESP) – (Section 2.5.1)
- 2) Web and Internet Systems – (Section 2.5.2)
- 3) Electronic Document Management – (Section 2.5.3)
- 4) Software Engineering – (Section 2.5.4)
- 5) System Management and Maintenance – (Section 2.5.5)
- 6) Information System Security – (Section 2.5.6)
- 7) Application Service Provider – (Section 2.5.7)
- 8) IT Auditing, Testing and Quality and Assurance Services – (Section 2.5.8)
- 9) IT Management Consulting Services – (Section 2.5.9)
- 10) Documentation/Technical Writing – (Section 2.5.10)

The scope of services contained herein is intended to outline the general requirements under this RFP. Specific details of scope, time and budget will be provided in each individual RFR. For more information on the basis and meaning of a Master Contract award. Award of a Master Contract shall entitle a selected vendor only to inclusion on the list of vendors eligible to respond to RFRs; award of a Master Contract does not constitute a promise or representation by MHBE that a selected vendor will receive any Task Order awards. Further, Master Contracts awarded as a result of this RFP shall not constitute requirements contracts. MHBE is free to obtain services identified in this RFP either through this RFP or through any other procurement vehicle permissible under Maryland law.

MHBE reserves the right to remove any person associated with the Contract issued pursuant to this RFP, including any related Task Order, at any time for any reason.

## 2.4 General Requirements

Depending upon the requirements of individual RFRs, the following applies:

### 2.4.1 *Hardware (Equipment), Software and Data*

The Master Contractor may be required by MHBE to provide its consultants a Laptop with Windows operating system, Microsoft Office suite, anti-virus software, and any other standard workplace software installed as per MHBE's prevailing security and workplace software/hardware standards. The laptop and the software installed will be evaluated and scanned by MHBE for any potential security vulnerabilities. MHBE may require configuration changes to the hardware and software supplied by the Master Contractor as necessary, in order for installation to be acceptable by MHBE security standards. The Master Contractor must make any required hardware and software configuration changes before its devices and installed software will be accepted by MHBE for use by its consultants. Configuration changes are not a change in scope and are not subject to equitable adjustment under the contract. At termination of the Task Order or at anytime during the contract period, the Contractor shall make the laptop or device available to MHBE for removal of any MHBE provided software and all personally identifiable information from the contractors' devices.

### 2.4.2 *Required Project Policies, Guidelines and Methodologies*

The Master Contractor shall keep itself informed of and comply with all applicable Federal, State and local laws, regulations, ordinances, policies, standards and guidelines affecting information technology projects applicable to its activities and obligations under this Contract, and it shall obtain and maintain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract. It is the responsibility of the Master Contractor to ensure adherence and to remain abreast of new or revised laws, regulations, policies, standards and guidelines affecting project execution.

These include but are not limited to:

- o Title 31 of the Insurance Article, Maryland Code Annotated
- o Title 14, Subtitle 35 of the Maryland Code of Regulations (COMAR)
- o The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as the same may be amended, including by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), regulations promulgated thereunder and related federal guidance
- o Minimal Acceptable Risk Standards for Exchanges including related security or privacy

requirements. Guidance can be found at: [MARS E 2-0 Minimum Accept Risk Standards for Exchanges-11102015](#)

- o IRS Publication 1075; guidance can be found at: <https://www.irs.gov/pub/irs-pdf/p1075.pdf>
- o The Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time Title XIX of the Social Security Act (the Medicaid statute), including any related regulations and guidance. Some information may be found at: <http://www.cms.gov/home/medicaid.asp>
- o Title XXI of the Social Security Act (the Children's Health Insurance Program statute), including any related regulations and guidance. Some information may be found at: <https://www.medicaid.gov/chip/index.html>
- o Medicaid Information Technology Architecture (MITA):  
[http://www.cms.gov/MedicaidInfoTechArch/04\\_MITAFramework.asp#TopOfPage](http://www.cms.gov/MedicaidInfoTechArch/04_MITAFramework.asp#TopOfPage)
- o 42 CFR – Part 433 - Subpart C - Mechanized Claims Processing and Information Retrieval Systems
- o 45 CFR – Part 95, Subpart F - Automatic Data Processing Equipment and Services - Conditions for Federal Financial Participation (FFP)
- o 45 CFR 95.617 –(a) The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with federal financial participation; (b) The U.S. Department of Health and Human Services reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.
- o [48 CFR, Subpart 9.4](#) Debarment, Ineligibility and Suspension from participating in federally funded programs.
- o MHBE Project Management Office (PMO) standards, policies, and project management methodologies that are generally consistent with the Project Management Institute's (PMI) Project Management Body of Knowledge (PMBOK) and/or industry standard Agile/Scrum Project Management Methodologies.
- o MHBE's 02.02.04 Debarment Policy and 05.03.02 Background Check to Protect Federal Tax Information for Maryland Employees and Consultants.

### *2.4.3 Warranties*

#### *2.4.3.1 General Warranties.*

During the term of the Contract, the Contractor covenants, represents and warrants to MHBE that its actions, whether through officers, employees, subcontractors or other agents, shall be as follows:

- A. The Contractor shall perform all services in accordance with high professional standards in the industry.
- B. The Contractor shall offer, in its response to any RFR, qualified individuals with suitable training, education, experience and skill to perform the services.
- C. The Contractor shall use commercially reasonable efforts to efficiently use any equipment, tools or services necessary to provide the services that are chargeable to the MHBE.
- D. The Contractor shall use commercially reasonable efforts to perform the services in the most cost-effective manner consistent with the required level of quality and performance.
- E. The Contractor shall perform the services in a manner that does not infringe the proprietary rights of any third party.
- F. The Contractor has duly authorized the execution, delivery and performance of the Contract.
- G. The Contractor shall maintain all equipment and software for which it has maintenance

responsibilities in good operating condition and will undertake all repairs and preventive maintenance in accordance with applicable manufacturer's recommendations.

- H. The Contractor shall not insert or activate any disabling code in the systems used to provide the services without the MHBE's prior written approval.
- I. The Contractor warrants that, in performing the services and delivering any Deliverables called for by this Contract, the Contractor shall not violate any Intellectual Property Rights of any third party, which warranty shall survive the expiration or termination of this Contract.
- J. Any Deliverables produced by or on behalf of the Contractor shall conform in all material respects to their mutually agreed specifications.
- K. Any technical documentation provided by the Contractor for the System pursuant to any Work Plan or otherwise will describe the technical details of the System, and the procedures for operating and maintaining the System, in terms reasonably understandable to a suitably trained and experienced information technology professional.
- L. The Contractor shall use commercially reasonable efforts to ensure that no viruses, harmful code or similar items are coded or introduced into the System by or through the fault of any Contractor Personnel.
- M. The Contractor shall follow State procedures for handling potentially biohazardous mail threats to be followed by Contractor Personnel working on the Contract who are working in office space leased or owned by the State.

## 2.5 Functional Area Descriptions

Requests for Resumes (RFRs) will be issued to Master Contractors of a single functional area only. Scope of an RFR may cross over into more than one functional area. However, the MHBE will make a determination of the most appropriate functional area, prior to release of the RFR. MHBE, on a case-by-case basis, will determine which functional area is the most appropriate.

The examples of services listed in this section are not all inclusive of the services available under the Master Contract.

### 2.5.1 Functional Area One – Enterprise Service Provider (ESP)

- A) Description – Services to ensure that information systems are designed to capitalize on agency architectures and State IT standards, provide interoperability with other systems and networks, be reliable and maintainable, and make the most cost-effective use of COTS products, Information Technology and agency-wide resources.
- B) Examples of Potential Services:
  - 1. Deliver stated levels of performance, interoperability, and maintenance support within the known constraints of an agency's IT infrastructure;
  - 2. Testing the appropriate configurations of two or more hardware or software components of information systems or telecommunications networks.

### **2.5.2 Functional Area Two – Web and Internet Systems**

A) Description – A broad range of business solutions and support using the capabilities of the web and Internet; design, develop, test, implement and maintain web sites, portals, web applications and web services and the associated hardware, software, network and security components that comprise these solutions.

B) Examples of Potential Services:

1. Design, develop, test, implement and maintain secure and accessible web and internet solutions such as web site portals, web applications and web services for various business processes including requisitions, quotes, purchase orders, notices of award, electronic payments, etc.;
2. Provide scalable security solutions for web and internet services at the network and application level such as secure sockets layer certificates, user authentication and single sign on (SSO), application firewalls, intrusion detection system (IDS) monitoring, public key infrastructure (PKI) and digital signatures;
3. Design, develop, implement and maintain web graphics and site content, including electronic catalogs of goods and services, to ensure accuracy and timeliness of information published to the web;
4. Create web-based applications interfacing with traditional mainframe system;
5. Apply new and emerging technologies to develop scalable web applications;
6. Assist in the implementation and customization of web services, COTS solutions including, but not limited to eCommerce/Electronic Data Interchange (EC/EDI);
7. Provide data transformation solutions between disparate systems;
8. Monitor performance of web-based solutions including, but not limited to, traffic, usage statistics and surveys;
9. Provide configuration management control services and solutions

### **2.5.3 Functional Area Three – Electronic Document Management**

A) Description – Service to establish and/or maintain electronic document imaging, document management, document workflow, and associated technologies.

B) Examples of Potential Services:

1. Workflow analysis;
2. Document indexing/queuing and workload management;
3. System/application/network design;
4. Application prototyping;
5. Implementation and support services;
6. System interface development;
7. System migration strategies;
8. Document conversion (hardcopy to electronic or electronic to new system/media or OCR to database);
9. Performance monitoring/measurement;
10. System stress testing/benchmarking; and/or
11. Document and records retention/archiving.

## **2.5.4 Functional Area Four – Software Engineering**

A) Description – Service to provide full life cycle of a software system development. Process definition; requirements management (project planning, quality assurance, project tracking and oversight, organizational process focus); software metrics; software process assessments; software capability evaluations; software project management; software certification; software validation and verification; open systems; software architecture; software reengineering; software reuse; component based software; software security; supervising software configuration management; and CASE tools.

B) Examples of Potential Services:

1. Provide ongoing system, applications maintenance and troubleshooting;
2. Analyze and document complex system requirements;
3. Design software tools and subsystems to support software reuse and domain analyses and manage their implementation;
4. Interpret software requirements, design specifications to code, manage software development and support (using formal specifications, data flow diagrams, and other accepted design techniques and tools), integrate and test software components;
5. Estimate software development costs and schedules;
6. Support software licensing and renewal processes;
7. Review existing programs and assist in making refinements, performance improvements, and improving current techniques; and/or
8. Estimate and track software quality attributes.

## **2.5.5 Functional Area Five – Systems Management and Maintenance**

Systems Management and Maintenance services include Data Center and System Operations Technical Support/Operations and Help Desk Services.

### **2.5.5.1 Data Center and System Operations Technical Support**

A) Description - Planning, analysis, troubleshooting, integration, acquisition, installation, operations, maintenance, training, documentation, and administration services for computer centers.

B) Examples of Potential Services:

1. Provide operations and maintenance support;
2. Analyze and assess equipment and performance degradation, including determination of hardware, software, and/or other technical changes necessary to meet operational requirements;
3. Implement and maintain backup and disaster recovery systems and processes;
4. Develop standard operating procedures for the data center and associated systems/applications;
5. Perform hardware/software testing, installation, and maintenance;
6. Migrate data from system A to system B, which may require data QA/QC, data cleansing, data conversion and manipulations management;
7. Develop requirements/specifications for hardware, software, and/or services;
8. Develop and maintain a configuration management and lifecycle management programs for all supported hardware and software applications;

9. Perform network-based detection of viruses and unauthorized software and facilities to counter/eliminate/control;
10. Manage and administer user identifications; passwords; and security keys; and
11. Provide a secure data center facility to host mission critical applications.
12. Develop/provide user manuals, programmer maintenance manuals, system design documentation;

#### 2.5.5.2 Help Desk Services

- A) Description - Centralized technical assistance service to support end user problem resolution, and the distribution of general information concerning the effective use of IT.
- B) Examples of Potential Services:
  1. Troubleshoot problems encountered using microcomputer software;
  2. Develop/provide user manuals, programmer maintenance manuals, and system design documentation;
  3. Provide user training in a variety of areas (e.g., desktop publishing, end-user security awareness training, telecommunications, operating systems, software packages);
  4. Analyze and assess equipment and performance degradation, including determination of hardware, software, and/or other technical changes necessary;
  5. Provide assistance in maintaining inventory control and location records of State-owned IT equipment/software and disposal of property as required;
  6. Collect statistics on hardware/software/system problems, security incidents, maintenance service calls, and user base;
  7. Analyze new applications, perform software maintenance, and make appropriate enhancements to existing systems;
  8. Assist customer personnel in identifying their requirements and/or problems;
  9. Review implementation plans for applications to ensure that the system resources are available to support applications in both the long and short term;
  10. Perform configuration management of software and hardware, including computers and network equipment across the enterprise; and
  11. Centrally administer software licenses, including dynamic allocation.

### 2.5.6 **Functional Area Six – Information System Security**

The security of information and computing resources at all organizational levels; including software/application and data security support, as well as disaster recovery planning and risk assessment.

#### 2.5.6.1 Hardware/Software/Application/Network/Cloud Security Support

- A) Description - Strategies and solutions to defend IT hardware, software, network, cloud and telecommunications resources against adversaries such as viruses, worms and hackers, and other malicious sources, and any other internal and external threats to the hardware, operating systems and applications in a client/server, networked and/or cloud environments.



B) Examples of Potential Services:

1. Analyze system accesses and roles;
2. Provide operational and analytical support related to security for computing platforms (i.e. PC, servers, mobile platforms) and networks;
3. Analyze and evaluate new and emerging security technologies as well as vendor security products for their applicability and feasibility of use in securing hardware/software IT and telecommunications resources;
4. Support customer security operations, including assisting customers with analyzing, developing and implementing security methodologies and safeguards to protect their IT and telecommunications assets;
5. Provide technical training for all aspects of information security relative to personal computers, file servers, and networks;
6. Design, test, install and support network security systems; and/or
7. Provide virus detection, elimination, and prevention support.

2.5.6.2 Disaster Recovery and Risk Assessment

A) Description - Disaster recovery planning and risk assessment in support of the mitigation of risks to IT and telecommunications systems and infrastructure. Through quantitative risk analyses establish recovery time and recovery point objectives, effective mitigation strategies, and documented disaster recovery plans. Assess adequacy of existing management, operational, and technical controls in safeguarding assets against waste, loss, unauthorized access/use, misappropriation to establish the consequences/impact of the potential threats on operations and service delivery requirements.

B) Examples of Potential Services:

1. Review, develop, update and/or integrate disaster recovery, continuity of operations plans, contingency plans, and risk assessments; and
2. Identify, develop and/or implement mitigation strategies to increase the effectiveness of operations and the continuity of service

**2.5.7 Functional Area Seven – Application Service Provider**

A) Description - Provide services related to software, hardware and networking technologies to offer hosted-service based applications.

B) Examples of Potential Services – Application and support of applications such as, but not limited to:

1. Finance;
2. Human resources;
3. E-commerce;
4. Procurement;
5. Materials management;
6. Production;
7. Order management and other legacy systems;
8. Collaboration and automation tools;
9. Web-hosting;
10. Knowledge management;

11. Back-office solutions;
12. e-business and e-commerce applications;
13. Data warehousing; and/or
14. Information services (e.g., financial information, and legal research).

## **2.5.8 Functional Area Eight – IT Auditing, Testing and Quality Assurance Services**

Including, but not limited to IT auditing, and quality assurance, research and analysis, software/applications testing and system validation services.

### **2.5.8.1 Information Systems Auditing and Quality Assurance**

- A) Description – Quality assurance audits of IT systems to ensure that systems perform to documented specifications in areas such as: data security, customer privacy, data accuracy, business processes, and customer satisfaction. In support of these efforts, auditing expertise to either perform or validate internal quality assurance audits for large- and medium-scale information technology projects in various environments (i.e., mainframe, mini computers, client/server, WAN/LAN).
- B) Examples of Potential Services:
  1. Perform or validate quality assurance audits (including Independent Validation and Verification [IV&V]) of IT systems during the development process and report to a State agency on findings and recommend mechanisms to correct the issues identified in the audits; and/or
  2. Develop an action plan that corrects audit findings and report to a State agency on the results of these corrective actions.
  3. Manage action plans to achieve desired outcomes.

### **2.5.8.2 Software/Applications Testing and Validation Services**

- A) Description – Performing software validation and testing; writing test cases, business cases, and use cases; mapping requirements to test scenarios, validating new functionality, performing regression testing, integration testing, interface testing, and testing of downstream functions.
- B) Examples of Potential Services:
  1. Perform System, Integration, Regression and User Acceptance Testing for various software applications, including but not limited to HBX and its ancillary systems, mobile applications and cloud solutions.
  2. Perform User Acceptance Testing and Validation for large-scale enhancements.
  3. Develop testing documentation, test cases, test scenarios and test strategy.
  4. Track and communicate system anomalies,
  5. Work with vendors, internal resources and other state agencies to identify, track, test and validate system/applications issues.
  6. Work with the business stakeholders to understand requirements, translate the requirements into test cases/test scenarios/test strategies, prepare and execute test plans, sign-off on all system/application validations for deployment.
  7. Perform test scripts automation and
  8. Manage testing plans/testing resources to achieve desired outcomes.

## **2.5.9 Functional Area Nine – IT Management Consulting Services**

The IT Management Consulting Services include any of the following types of services: IT enterprise architecture, systems review for architectural consistency, strategic planning assistance, project management services, Master Contractor assessments and risk assessment analysis.

### **2.5.9.1 IT Enterprise Architecture Development**

- A) Description – Define, design, develop, implement and maintain enterprise architecture plans, strategies, inventories and recommendations to support enterprise architecture (EA) at the agency level.
- B) Examples of Potential Services:
1. Document and assess the current condition of the State/agency's EA(s). This analysis may require documentation at the system or subsystem level;
  2. Recommend an EA strategy for the State/agency with potential interim steps or phases for implementation based on the current condition survey mentioned above;
  3. Provide recommendations for the development, implementation, assessment and maintenance of architectural principles, policies, standards and practices;
  4. Provide data architecture, applications architecture, technology architecture, enterprise architecture planning, information systems architecture, and architecture trade-off analysis;
  5. Conduct analyses and provide architecture impact assessments of proposed changes in information resources as directed;
  6. EA tool set development, implementation and management;
  7. Provide expertise to identify opportunities for integration and economies of scale across systems and/or organizations through the development or creation of enterprise architecture; and
  8. Provide consultation on architecture improvement and recommendations on coordinating IT investments and initiatives across the agency's business processes.

### **2.5.9.2 Systems Review for Architectural Consistency**

- A) Description - Engineering assistance to integrate systems based on architectural standards and common infrastructures. In particular, recommendations for systems development, acquisition, and operations and to leverage common infrastructures effectively among various agency missions and services. Such application reviews may cover a variety of IT system environments from simple personal computer (microprocessor) and workstation applications; to local area networks (LAN) and wide area networks (WAN), to distributed processing systems; to web-based interactive systems; to large and very complex cloud architecture solutions.
- B) Examples of Potential Services:
1. Assess system design of applications to ensure consistency between systems and enterprise architectures and best integration with common infrastructure before development (i.e., code generation);
  2. Evaluate and determine the adequacy and appropriateness of the proposed systems architecture and applications for the planned systems; and
  3. Assess risks related to systems development plans and change proposals to existing and target architecture at the systems and enterprise levels.

### 2.5.9.3 Strategic Planning Assistance

A) Description - Assistance in developing long-range IT plans, IT-enabled business plans, and program effectiveness measures related to proposed IT investments. Assistance with agency-level strategic planning for IT to ensure consistency with State-level (i.e., enterprise) plans and initiatives.

B) Examples of Potential Services:

1. Analyze customer and citizen demand for IT-enabled services;
2. Evaluate current and emerging technologies and assist agencies with planning the tactical and strategic migration of business services to these technologies;
3. Develop IT strategic plans that align agency business and technology plans with State business technology and goals and objectives; and
4. Perform strengths, weaknesses, opportunities, and threats (SWOT) analyses, critical success factor analyses, strategic business planning, strategic information systems planning, electronic government assessments, and other techniques used to establish strategic information technology plans.

### 2.5.9.4 Project Management Services

A) Description - Successful IT project management services to ensure that IT project goals and objectives are met and that products are delivered on time, on budget and within scope, as well as meet the business objectives originally intended.

B) Examples of Potential Services:

1. Ensure strategic alignment of IT projects by establishing project goals and objectives that are consistent with stated agency business drivers;
2. Provide project planning, task prioritization, budget/cost analysis, scheduling, Release Management, Deliverables Management, IT Policy and Standards assessment and implementation, projections of staffing requirements, and performance measurements;
3. Assist the agency with project management of IT projects by assessing and modifying Project Management Plans (PMP), schedules, contracts and manages resources; delegating tasks; receiving, gathering, analyzing and disseminating information; setting goals and objectives; organizing project team and governance structures; understanding technology projects and preparing action and contingency plans; and
4. Perform independent assessment of IT contract performance, deliverables management, assessment of project management methodologies applied to projects and results and projects performed on time, on budget and within scope and meeting the business requirements originally intended.

### 2.5.9.5 Risk Assessment Analysis

A) Description – Assess the risks associated with costs, benefits, schedule, technical performance, human factors, safety and security. The analysis may include provisions for identifying risk areas, assessing risk factors, recommending appropriate resources to reduce risk factors, identifying and analyzing alternative actions available, identifying the most promising alternatives, and planning for implementation of risk reduction.

B) Examples of Potential Services:

1. Assess risks and review technical risk assessments of an IT project, including subsystem designs, architectures, and computer systems in terms of their impact on costs, benefits, schedule and technical performance;
2. Perform cost and schedule risk assessments to support various alternatives to meet mission need, recommend alternative courses of action when one or more interdependent segment(s) or phase(s) experience a delay, and recommend opportunities for new technology insertions;
3. Provide fraud detection and prevention expertise on services to internal and external customers; 4. Perform technical risk assessments at various points in the system life cycle;
5. Identify areas of technical risk when translating operational requirements into system level requirements;
6. Develop and/or evaluate potential methods of mitigating technical risks;
7. Update evaluations in order to determine and forecast operational needs and changes;
8. Provide presentations on reporting and operational enhancements;
9. Develop operational management reporting tools and programs to prevent or mitigate risks; and
10. Provide and/or develop risk management policies, procedures and guidelines.

**2.5.10 Functional Area Ten – Documentation/Technical Writing**

A) Description – Develop and/or maintain the following types of documentation: system documentation; user manuals; computer operations and program maintenance manuals; plans for training, testing, quality assurance, and contingency operations; and backup, recovery and restart procedures; technical writing for proposals, presentations, standard operating procedures (SOP), policies and procedures.

B) Examples of Potential Services:

1. Develop system documentation that captures functional, interface, integration, data, security, and internal control requirements, data sensitivity and criticality description, system/subsystem or modules, program, database design, security and internal control specifications;
2. Technical documentation including but not limited to, system documentation, user manuals, backup, recovery and restart procedures, computer operations, and program maintenance manuals, system training and/or agency training materials;
3. Document security specifications, develop system documentation for a new or existing system, develop technical specifications for a proposal, develop standard operating procedures, Update SDLC/testing documentation, document agency security policy and procedures.
4. IT procurement documentation such as guidelines for writing Task Orders; and/or Standard Operating Procedures (SOPs) and processes for the preparation of reports, presentations, meeting agenda, and/or policies and procedures.

## 2.6 Personnel Qualifications

**2.6.1 Minimum qualifications.** In response to each RFR, Master Contractors shall provide personnel that satisfy the personnel qualifications specified within Appendix II – Labor Categories (which is attached to this RFP and hereby incorporated into it by reference) for each of the labor categories required under the specific solicitation. The Master Contractors shall certify that all candidates meet the required qualifications. If minimum qualifications are not met, the RFR Evaluation Committee shall have the authority to make the following substitutions at its discretion:

- 2.6.1.1 Substitution of Education for Experience. A Bachelor's Degree or higher may be substituted for the general and specialized experience for those labor categories requiring a High School Diploma. A Master's Degree may be substituted for two years of the general and specialized experience for those labor categories requiring a Bachelor's Degree.
- 2.6.1.2 Substitution of Experience for Education. For labor categories where a College Degree in a specific discipline is required, two (2) years of experience in the related discipline for each year of college education substituted plus a college degree in any discipline may be substituted.
- 2.6.1.3 Substitution of Professional Certificates for Experience: Professional certification (e.g., Certified Novell Engineer, SQL Certified Database Administrator) may be substituted for up to two (2) years of specialized experience as a Networking Engineer. For labor categories where a specific Professional Certification is required, an equivalent Professional Certification may be substituted. Equivalence of Professional Certification will be determined at the sole discretion of the MHBE's Evaluation Committee.
- 2.6.1.4 Proof of professional certification shall be provided by the Master Contractor prior to award as required by the Procurement Officer.

**2.6.2** Master Contractors shall only propose staff available at the time and duration of the RFR performance period. One person shall never perform duties of multiple labor categories at the same time in any given RFR performance period.

**2.6.3 Preferred qualifications.** Specific areas of preferred expertise may be further requested in an RFR. Offerors proposing personnel that demonstrate such preferred qualifications may receive a higher technical evaluation ranking.

**2.6.4 Substitution of Personnel.**

- A) Individuals proposed and accepted as personnel for TO Agreements are expected to remain dedicated throughout the TO Agreement commitment. Substitutions will be allowed only when the Contract Monitor specifically agrees to the substitution in writing or due to an emergency circumstance as described in Paragraph B of this Section. All proposed personnel substitutes must have qualifications at least equal to that of the person initially proposed and evaluated and accepted in the TO Agreement. The burden of illustrating this comparison shall be the Master Contractor's. The resumes of the initially proposed personnel's relevant skills shall become the minimum requirement for qualifications for successor personnel for the duration of the TO Agreement term. If one or more of the personnel are unavailable for work under a TO Agreement for a continuous period exceeding 15

calendar days, the Master Contractor shall immediately notify the Contract Monitor and propose to replace personnel with personnel of equal or better qualifications within 15 calendar days of notification to the Contract Monitor. All substitutions shall be made in accordance with this provision.

- B) During the performance period for a TO Agreement, no substitutions of personnel will be permitted unless such substitutions are necessitated by an individual's sudden illness, death, or as otherwise approved by the Contract Monitor. In any of these events, the Master Contractor shall promptly notify the Contract Monitor and provide the information required by paragraph C. All proposed substitutions of personnel for other than emergency situations must be submitted in writing, at least 15 business days in advance of the proposed substitution, to the Contract Monitor, with the information required in paragraph C. The substitution shall become effective only after the Contract Monitor agrees to the substitution in writing.
- C) Resumes shall be signed by all substituting individuals and the Master Contractor.
- D) A Master Contractor shall ensure that a resource identified in an awarded Task Order is able to report for duty at the time specified in the RFR, or, if updated, in the Task Order (the "Start Time"). Master Contractors shall notify MHBE as soon as practicable after determining that any resource identified in an awarded Task Order is unavailable. MHBE shall have the right to cancel a Task Order Award if a resource becomes unavailable after the Notice of Task Order Award but prior to the Start Time. Any fully executed Task Order shall be deemed voidable by the MHBE in the event a resource becomes unavailable prior to the Start Time. After canceling a Task Order Award or voiding a Task Order, MHBE shall have the right to issue a Task Order Award to the next highest ranked candidate in the RFR competition.

## 2.7 Labor Categories

Exhibit II contains the Labor Categories associated with this RFP.

## SECTION 3 – CONTRACTOR REQUIREMENTS: GENERAL REQUIREMENTS

### 3.1 Insurance Requirements

#### **3.1.1 General Liability**

The Master 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.

#### **3.1.2 Automobile and/or Commercial Truck Insurance**

The Master Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

#### **3.1.3 Employee Theft Insurance**

The Master Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.

#### **3.1.4 Workers' Compensation**

The Master 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.

#### **3.1.5 Cyber Insurance**

The Master Contractor may be required by a particular RFR or TO to maintain Cyber Insurance for those contractors who will be handling personally identifiable information ("PII") and federal tax information ("FTI") with minimum limits per occurrence and in aggregate as stated in the RFR or TO.

#### **3.1.6 Certificates of Insurance**

The Master Contractor shall update certificates of insurance 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. General Liability, as required
- b. Automobile and/or Commercial Truck Insurance, as required
- c. Employee Theft Insurance, as required
- d. Workers' Compensation, as required

#### **3.1.7 State Inclusion on Insurance**

The State shall be listed as an additional insured on the policies with the exception of Worker's Compensation Insurance and General Liability Insurance. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier



provide the Contract Monitor, by certified mail, not less than 45 days advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.

### **3.1.8 Subcontractor Insurance**

The Master Contractor shall require that any subcontractors providing products/services under this Contract obtain and maintain similar levels of insurance and shall upon request by the Contract Monitor, provide the same documentation as is required of the Contractor.

### **3.1.9 Notification of Insurance after Award**

The recommended awardee must provide a certificate of insurance with the prescribed limits set forth in Section 3.1. "Insurance Requirements," naming the State as an additional insured if required, within five (5) Business Days from notice of recommended award.

## **3.2 Privacy and Security Requirements**

### **3.2.1 Employee Identification.**

3.2.1.1 Each person who is an employee or agent of the Master Contractor or subcontractor (Contractor Personnel) shall display MHBE identification badge at all times while on State premises. Upon request of authorized State personnel, each such Contractor Personnel shall provide additional photo identification.

3.2.1.2 At all times at any facility, Contractor 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 visual location at all times.

### **3.2.2 Information Technology**

3.2.2.1 The Master Contractor and Contractor Personnel shall comply with and adhere to the MHBE Security Policy and Procedures and MHBE Acceptable Use Policy. These policies may be revised from time to time and the Contractor shall comply with all such revisions.

3.2.2.2 The Master Contractor and Contractor Personnel shall not connect any of its own equipment to an Agency LAN/WAN or VPN without prior written approval by the Agency. The Master Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to an Agency LAN/WAN or VPN.

### **3.2.3 Security Clearance / Criminal Background Checks**

3.2.3.1 The Contractor shall perform background checks on its employees and subcontractors that are currently assigned or will be assigned to perform work under the Contract, following the requirements in this Section 3.2.3. The Contractor shall bear all costs associated with the background checks.

- 3.2.3.1.1 The background checks shall be performed only by recognized law enforcement agencies or through the Criminal Justice Information System (CJIS) for Contractor employees who access federal tax information or by third party companies that compile background information for all other Contractor employees. Any employees or subcontractors of the Contractor whose background checks return negative results as described in Section 3.2.3.4 and listed in Section 3.2.3.13 shall be ineligible to perform work under the Contract. MHBE reserves the right to disqualify from performing work under the Contract any employees or subcontractors of the Contractor whose background checks indicate conduct or associations that MHBE determines are inconsistent with the performance and/or security requirements set forth in this Contract. MHBE may also require the Contractor to perform additional background checks on Contractor Personnel. MHBE also shall have the right to audit compliance with the background check requirements in this RFP. The Master Contractor shall provide all background check information and documentation to MHBE upon request.
- 3.2.3.2 In meeting the requirements of this section the Contractor shall adhere to the following procedures:
- 3.2.3.3 All background checks shall be completed prior to the start date of Contractor Personnel. The background check shall include a search of federal and State records for felony and misdemeanor criminal convictions in all locations where the assigned employee has resided for the previous ten (10) years. Statewide county searches shall be performed in all states where such search mechanism is available. The background check shall also include a check of available national and State sex offender registries.
- 3.2.3.4 The Contractor shall verify and validate each person's Social Security number and verify the identity and work authorization of each person under United States immigration laws utilizing the E-Verify or other authorized systems and provide evidence of such prior to start date, and ongoing as necessary.
- 3.2.3.5 The Contractor shall not employ or contract with any individual for purposes of the work to be performed under this RFP who has a conviction in the past ten years for any felony or any of the misdemeanor offenses listed in section 3.2.3.13, below, or for whom a warrant is outstanding for one of these offenses. The foregoing shall not apply to a minor traffic or moving violation, a conviction that has been legally expunged, or a conviction for a misdemeanor that occurred while the person was under the age of twenty-one years.
- 3.2.3.6 An authorized representative of the Contractor shall certify annually to MHBE, in the format required by MHBE, that a background check has been performed on each current and new employee and subcontractor employee under the Contract and that no negative findings were uncovered. Such certifications shall be sent via electronic mail to the MHBE Compliance Officer at the beginning of each Contract year.

- 3.2.3.7 The Contractor shall ensure that the above background check requirements and procedures are included in its contracts with all permitted subcontractors. It shall be the responsibility of the Contractor to ensure that each subcontractor provided complies with the background check requirement, and the Contractor must include subcontractors in its certification to MHBE.
- 3.2.3.8 MHBE must be notified of any Contractor employee or subcontractor whose background report contains any offense(s) listed in Section 3.2.3.11 within 3 days of receipt of report. MHBE may audit background check compliance with 2 days' notice to Contractor.
- 3.2.3.9 Additional Requirements for Access to Federal Tax Information: In the event a Contractor's work requires access to federal tax information (FTI), MHBE must receive from the Internal Revenue Service authorization to provide each Master Contractor and its employee or contract personnel access to FTI.
- 3.2.3.10 The IRS requires 45-day advance notification to determine Master Contractor authorization for access to FTI.
- 3.2.3.11 Authorization is contingent upon suitability of results from a Federal Bureau of Investigation fingerprint background check and local law enforcement agency checks for any identified arrests where the resource lived, worked or attended school within the last 5 years. MHBE requires a ten (10)-year lookback period.
- 3.2.3.12 MHBE Human Resources will coordinate the FBI criminal background checks through utilization of the Criminal Justice Information System (CJIS), which takes approximately 5 to 30 days to return results.
- 3.2.3.13 MHBE reserves the right to review, using a process determined in MHBE's sole discretion, the CJIS criminal record check of all Contractor Personnel that will have access to Federal Tax Information.
- 3.2.3.14 For purposes of the criminal record standards in 3.2.3.11, an adjudication that results in a probation before judgment under Maryland Code, Criminal Procedure § 6-220, or a deferred adjudication under a comparable provision in another State, is to be regarded as a conviction.
- 3.2.3.15 If a background investigation reveals a conviction or outstanding warrant for any of the following offenses it shall be considered a negative result:
- Any felony.
  - Any of the following misdemeanors if the conviction is within the preceding ten years:
    - Theft;
    - Fraud of any type;
    - Counterfeiting/forgery/uttering;
    - Identity theft/Identity fraud;
    - Exploitation of a vulnerable or elder adult;
    - Burglary;
    - Bribery;
    - Extortion;
    - Misappropriation;
    - False statement/false report;
    - Credit card crimes including illegal credit card use;

- Perjury;
- Unlawful access to a computer/computer network;
- Unlawful distribution of an access code;
- Misuse of electronic communication or interactive computer service;
- Any offense deemed to render the individual unsuited to accessing PII, PHI or FTI, as determined on a case-by-case basis by the Contract Monitor, Human Resources Director and/or Compliance Officer, based on the nature of the offense and its relation to the duties of the resource.

### *3.2.4 Privacy and Security of PII, PHI and FTI*

#### **3.2.4.1 PII.**

The Master Contractor and Contractor Personnel shall comply with 45 CFR § 155.260 - Privacy and security of personally identifiable information – and all further requirements in the Non Exchange Entity Agreement, as discussed in Section 4.37 below. Pursuant to Minimum Acceptable Risk Standards for

State-based Exchange guidelines, as they may be updated from time to time, Contractor Personnel shall also complete MHBE-required training and attestation(s) to comply with MHBE’s Privacy and IT Security requirements prior to accessing PII.

#### **3.2.4.2 PHI.**

The Master Contractor and Contractor Personnel who have access to Protected Health Information as part of IT administrator work on Medicaid’s Salesforce Customer Relationship Management System (the “Medicaid CRM”) shall comply with all HIPAA requirements, including Master Contractor execution of a Business Associate Agreement, as set forth in Section 4.34, below. Contractor Personnel shall also complete MHBE-required training and attestation(s) prior to accessing PHI. As further set forth in Section 4.34, below, MHBE reserves the right to identify additional work subject to the HIPAA requirements set forth in this Section 3.2.4.3.

#### **3.2.4.3 FTI.**

The work under particular Task Orders issued pursuant to this RFP may require certain Contractor Personnel to access Federal Tax Information. All Contractor Personnel with access to Federal Tax Information must follow the requirements of IRS Publication 1075, including the background check requirements set forth in Section 3.2.3, above. An unfavorable background may result in the Task Order to be withdrawn. Further requirements governing access to FTI are set forth in the Non-Exchange Entity Agreement discussed in Section 4.37, below.

## **3.3 Problem Escalation Procedure**

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

The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.

- 3.3.2** The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any

change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- a. The process for establishing the existence of a problem;
- b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- d. Expedited escalation procedures and any circumstances that would trigger expedited them;
- e. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- g. A process for updating and notifying the Contract Monitor of any changes to the PEP.

Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law. For the avoidance of doubt, nothing in this section shall restrict the MHBE's ability to terminate a resource at any time for any lawful reason.

### 3.4 Invoicing

- a) All invoices for services shall be signed by the Contractor and submitted to the MHBE finance inbox at [hbe.finance@maryland.gov](mailto:hbe.finance@maryland.gov) and copied to the Contract Monitor no later than the 15<sup>th</sup> day of the month following the month in which services were performed and shall include, at the minimum, the following information:

- Contractor name
- Remittance address
- Federal taxpayer identification number
- Invoice period
- Invoice date
- Invoice number
- State assigned Contract number
- State assigned Purchase or Blanket Purchase Order number(s)
- Services provided with supporting documentation providing details
- Amount due

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

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

### 3.5 SOC 2 Type 2 Audit Report

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

### 3.6 MBE Reports

There are no MBE reporting requirements for this solicitation.

## SECTION 4 – Procurement instructions

### 4.1 Master Contract Type

The Master Contract shall be an Indefinite Quantity Contract as defined in COMAR 21.06.03.06. Labor Hour (LH) To awards, as described in each respective RFR, will be issued under the Master Contract, as appropriate to the type of services being requested. The rate card (Attachment F-1) provided by the Master Contractor with its Financial Proposal to this RFP will describe the maximum rates allowable under any issued Task Order; when providing a response to an RFR (a “Task Order proposal”), a Master Contractor may propose rates lower than those submitted in its initial Financial Proposal. All rates proposed are fully burdened and inclusive of any travel expenses; MHBE does not reimburse for any expenses.

- (a) The use of the Master Contract that results from this RFP by governmental entities who are potential participants is at the discretion of the governmental entity.
- (b) Participants may obtain their respective requirements by placing task orders against the Master Contract in accordance with the contract.
- (c) Payment, inspection and acceptance, exercise of warranty rights, and other contract rights and obligations are the responsibility of the participant placing the task order.
- (d) The participant who places the task order is responsible for securing performance from the contractor. The failure of the contractor to perform for a participant does not require the MHBE to default the contractor or otherwise to terminate the contract. Upon request of a participant, the MHBE may cooperate with the participant to attempt to secure performance.

### 4.2 Master Contract Duration

- 4.2.1 Any Master Contract resulting from this RFP shall be for a base period of three years, beginning on or about July 1, 2023 through June 30, 2026 with two additional one-year options exercised at the sole discretion of the MHBE.

### 4.3 Procurement Officer

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

Shirelle Green  
Procurement Officer  
Maryland Health Benefit Exchange  
750 East Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
Phone Number: 410-547-8155  
E-mail: [hix.procurement@maryland.gov](mailto:hix.procurement@maryland.gov)

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

#### 4.4 Contract Monitor

The Contract Monitor is:

Mr. Venkat Koshanam  
Chief Information Officer  
Maryland Health Benefit Exchange  
750 East Pratt Street, 6th Floor  
Baltimore, MD 21202  
Phone Number: 410-412-9595  
E-mail: venkat.koshanam@maryland.gov

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

#### 4.5 Pre-Proposal Conference

A Pre-Proposal Conference (the Conference) will be held as a video conference at the date and time indicated on the RFP Key Information Summary Sheet.

In order to receive an invitation to the video conference and ensure that appropriate video conferencing security measures are in place, MHBE requires the Offerors to e-mail the Pre-Proposal Conference Response Form (**Attachment A**) to the attention of the Procurement Officer at least three (3) Business Days prior to the Pre-Proposal Conference date. 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 at least three (3) Business Days prior to the Pre-Proposal Conference date. The Department will make a reasonable effort to provide such special accommodation.

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

The Conference will be summarized. As promptly as is feasible after the Conference, This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace Advantage and the MHBE procurement site located here: <http://www.marylandhbe.com/about-us/procurement/> .

#### 4.6 eMaryland Marketplace Advantage

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

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

## 4.7 Questions

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

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email at [hix.procurement@maryland.gov](mailto:hix.procurement@maryland.gov) in a timely manner prior to the Proposal due date. Questions are requested to be submitted by November 14, 2022 @10:00 AM. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be posted to eMMA and the MHBE procurement site in sufficient time for the answer to be taken into consideration in the Proposal.

## 4.8 Procurement Method

The Master Contract shall be awarded in accordance with the Competitive Sealed Proposals method under Section II.B of the MHBE Procurement Policies and Procedures.

## 4.9 Proposals Due (Closing) Date and Time

Proposals, in the number and form set forth in RFP Section 5.2 "Proposals" **must be received via eMMA only** no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

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

**Proposals may not be submitted in hard copy or by facsimile. Proposals will not be opened publicly.**

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

## 4.10 Multiple or Alternate Proposals

Neither multiple nor alternate Proposals will be accepted. Submitting Proposals for more than one functional area is not considered a multiple or alternate Proposal.



#### 4.11 Economy of Preparation

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

#### 4.12 Public Information Act Notice

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see RFP Section 5.4.1.3 "Claim of Confidentiality"). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

#### 4.13 Award Basis

A Contract shall be awarded to each responsible Offeror submitting a Proposal that has been determined to meet Proposal requirements, considering evaluation factors set forth in this RFP for providing the services as specified in this RFP. See RFP Section 6 for further award information. Note that award of a Master Contract under this RFP allows the Contractor to submit proposals in response to subsequent Requests for Resume in those functional categories for which the Contractor is eligible. Award of a Contract does not entitle a Contractor to any work under this RFP and is not a guarantee that the Contractor will be awarded a Task Order. Further, this RFP does not amount to a requirements contract and the MHBE reserves the right to hire resources through procurement vehicles other than or in addition to this RFP.

#### 4.14 Oral Presentation

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

#### 4.15 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers (see Section 6.5.2.4) if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

#### 4.16 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for Proposals, the MHBE shall post

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

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

#### 4.17 Cancellations

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

The MHBE also reserves the right to cancel any RFR, accept or reject any and all proposals submitted in response to an RFR, waive or permit the cure of minor irregularities during an RFR competition, conduct interviews with resources whose resumes Contractors have submitted in response to an RFR and require the submission of references for those resources. The MHBE also reserves the right, in its sole discretion, to award a Task Order based on the written proposals received in response to an RFR without interviews.

#### 4.18 Incurred Expenses

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

#### 4.19 Protest/Disputes

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

#### 4.20 Offeror Responsibilities

The selected Offerors shall be responsible for all products and services required by this RFP, as set forth in subsequent Task Orders. 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, substantiated and signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the ability and performance of the subsidiary in meeting the requirements of this RFP.

A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the MHBE 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 MHBE.

#### 4.21 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract (including all incorporated exhibits and appendices), attached herein as **Attachment I**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 5.4.1.2).**

#### 4.22 Proposal Affidavit

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

#### 4.23 Contract Affidavit

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

#### 4.24 Compliance with Laws/Arrearages

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

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

#### 4.25 Verification of Registration and Tax Payment

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

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

## 4.26 False Statements

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

- (a) In connection with a procurement contract a person may not willfully:
  - (1) falsify, conceal, or suppress a material fact by any scheme or device;
  - (2) make a false or fraudulent statement or representation of a material fact; or
  - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

## 4.27 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: [http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/X-1020130407.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/X-1020130407.pdf).

## 4.28 Prompt Payment Policy

The Contractor shall comply with the prompt payment requirements outlined in the Contract "Prompt Payment" clause (see **Attachment I**).

## 4.29 Electronic Procurements Authorized

- 4.29.1 Unless otherwise prohibited by law, the MHBE may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.29.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the

solicitation or Contract.

- 4.29.3 “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- 4.29.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.27 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section 4.29.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
- 4.29.5 The Procurement Officer may conduct the procurement using eMMA and e-mail to issue:
- (a) The solicitation (e.g., the RFP);
  - (b) Any amendments;
  - (c) Pre-Proposal conference documents;
  - (d) Questions and responses;
  - (e) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
  - (f) Notices of award selection or non-selection; and
  - (g) The Procurement Officer’s decision on any Proposal protest or Contract claim.
- 4.29.6 An Offeror or potential Offeror may use e-mail to:
- (a) Ask questions regarding the solicitation;
  - (b) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer; and
  - (c) Submit a "No Proposal Response" to the solicitation.
  - (d) Submit documents determined by the MHBE to require original signatures (contract execution or modifications).
- 4.29.7 The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- 4.29.8 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
- (a) Filing of Proposal Protests;
  - (b) Filing of Contract Claims;
  - (c) Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.
- 4.29.9 Any e-mail transmission is only authorized to the e-mail addresses for the identified person as provided in the solicitation, Contract, or direction from the Procurement Officer or Contract Monitor.

- 4.29.10 The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration utilizing e-mail, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- 4.29.11 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.

## 4.30 Minority Business Enterprise Goals

There is no MBE subcontractor participation goal for this procurement.

## 4.31 Federal Funding Acknowledgement

- 4.31.1 There are programmatic conditions that apply to this Contract due to federal funding. (See **Attachment D**).
- 4.31.2 The total amount of federal funds allocated for the MHBE is \$ 479.7 million in Maryland State fiscal year 2023. This represents 90.2 % of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 4.31.3 This Contract contains federal funds. The source of these federal funds is: Medicaid. The CFDA number is: 93.778. The conditions that apply to all federal funds awarded by the MHBE are contained in Federal Funds **Attachment D**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment D** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. The Contractor's submission of a proposal in response to this RFP shall be deemed its agreement to comply with all conditions set forth in the Federal Funds Attachment.

## 4.32 Conflict of Interest Affidavit and Disclosure

This procurement incorporates State Finance and Procurement Article 13-212.1, under which a person and their employer who assist or are involved in the drafting of specifications for a procurement are prohibited from submitting a proposal for that procurement, from assisting or representing another person, directly or indirectly, who is submitting a proposal for that procurement, and from participating in the implementation of those specifications, whether as a prime or subcontractor. Master Contractors will provide IT consulting and technical services for MHBE and must do so impartially and without any conflicts of interest.

Master Contractors must complete and submit the Conflict of Interest Affidavit included as **Attachment E** of this RFP and must, in accordance with its provisions, immediately advise MHBE if an actual or potential conflict arises after the date of the affidavit. This responsibility to advise MHBE of any actual or potential conflicts of interest shall include advising MHBE, contemporaneously with the submission of any response to an RFP, of any actual or potential conflict relating to the Master Contractor's response to

that particular RFR. If the Procurement Officer makes a determination before award of a TO Agreement pursuant to a respective RFR that facts or circumstances exist that give rise to or could in the future give rise to a conflict of interest as defined in COMAR 21.05.08.08A, the Procurement Officer may reject a TO Proposal in accordance with COMAR 21.06.02.03B.

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

#### 4.33 Non-Disclosure Agreement

All Offerors are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment F**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Proposal.

#### 4.34 HIPAA - Business Associate Agreement

Where MHBE determines that certain functions to be performed in accordance with a Task Order Agreement under this solicitation constitute Business Associate functions as defined in HIPAA, the recommended Task Order awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and in the form required by MHBE, to be substantially similar form to that set forth in **Attachment H**. This Agreement must be provided within five (5) Business Days of notification of proposed Task Order award, where noted in an RFR. 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, may withdraw the recommendation for Task Order award and make the award to the responsible Master Contractor with the next highest overall-ranked Task Order Proposal. Further, MHBE reserves the right to require a Master Contractor to execute a Business Associate Agreement within five (5) Business Days of MHBE's notification that work under any proposed or existing Task Order award requires access to PHI, regardless of whether the need for a BAA was identified in an RFR. MHBE reserves the right to terminate for convenience any existing Task Order for which a Master Contractor declines to sign a Business Associate Agreement.

#### 4.35 Nonvisual Access

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

#### 4.36 Mercury and Products That Contain Mercury

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

#### 4.37 Non-Exchange Entity Agreement

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 G**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Proposal. 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 Master Contract award.

#### 4.38 Compliance with Laws

Where MHBE determines the work under a Task Order may involve “carry[ing] out 1 [one] or more responsibilities of the Exchange” as that term is used in 42 U.S.C. § 18031(f)(3) and 45 CFR § 155.110, MHBE reserves the right to obtain all information necessary from a Master Contractor to determine whether the Master Contractor is, or has a relationship with, a health insurance issuer that is prohibited when handling work under the Task Order. *See* 45 C.F.R. § 155.110 (prohibiting an entity from carrying out one or more responsibilities of the Exchange where the entity is a health insurance issuer or treated as a health insurance issuer under subsection (a) or (b) of section 52 of the Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health insurance issuer”). Should MHBE determine that the Master Contractor is, or has a prohibited relationship with, a health insurance issuer, or has any other relationship prohibited by applicable law, MHBE shall deem the Master Contractor non-responsible for purposes of the RFR and particular Task Order award at issue.

#### 4.39 Contract Extended to Include Other State, Local and Nonprofit Entities

Pursuant to Maryland Health Benefit Exchange Procurement Policies and Procedures § II.G.4., other State, local and nonprofit entities may purchase from the Contractor services covered by this Contract at the same or lower prices chargeable to MHBE. All such purchases by other State, local and nonprofit entities:

- Shall constitute Contracts between the Contractor and that government or agency;
- Shall not constitute purchases by MHBE under this Contract;
- Shall not be binding or enforceable against MHBE,
- Shall not be subject to the Contract’s dispute clauses, and
- May be subject to other terms and conditions agreed to by the Contractor and the

purchaser.

Contractor bears the risk of determining whether or not the entity with which the Contractor is dealing is an eligible State, local and nonprofit entity.



## SECTION 5 – PROPOSAL FORMAT

### 5.1 Proposal Submission

- A. The Proposal shall be submitted via eMMA only to the Procurement Officer electronically via one unencrypted. The title line shall state “IT Consulting and Support Services IDIQ RFP #BPM031490 Proposal” including the Offeror’s name.
- B. The upload shall provide the following attachments:
  1. One attachment labeled “**IT IDIQ RFP #BPM031490 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 “**IT IDIQ RFP #BPM031490 Financial**” containing the Financial Proposal contents, signed and in a spreadsheet (Excel) format.
  3. A third attachment labeled “**IT IDIQ RFP #BPM031490 PIA**”, including the Technical Proposal and the Financial Proposal in searchable PDF format for Public Information Act (PIA) requests (this copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 4.12 “Public Information Act Notice”). If an Offeror chooses to submit its Proposal without identifying any information that is confidential/proprietary, it should still provide the third attachment required here and label it “IT IDIQ RFP #BPM031490 PIA”, even though no information therein will be redacted.

Maryland is Open for Business! eMaryland Marketplace *Advantage* (eMMA) is LIVE! Vendors can [CLICK HERE](#) to access eMMA along with answers to [Frequently Asked Questions](#) and [Quick Reference Guides](#). Any questions please contact the eMMA Help Desk at [emma.helpdesk@maryland.gov](mailto:emma.helpdesk@maryland.gov).

### 5.2 Proposals

**Note: Provide no pricing information in the Technical Proposal. Include pricing information only in the Financial Proposal.**

All pages of both Technical and Financial Proposals shall be consecutively numbered from beginning (Page 1) to end (Page “x”).

### 5.3 Electronic Delivery

Offerors shall submitted all files via eMMA **only** to the Procurement Officer listed in the Key Information Summary.

### 5.4 Technical Proposal

5.4.1 The Technical Proposal shall be prepared in a clear and precise manner. It shall address all appropriate points of this RFP, except the price information. All pages shall be consecutively numbered. The general outline of the Technical Proposal response will be as follows:

- Transmittal Letter – Technical Proposal
- Title and Table of Contents (Table of Tables and Table of Figures, as applicable)
- Claim of Confidentiality ( if applicable)

- Executive Summary
- Offeror General Information
- Past Performance, Including Contracts with the State
- Proof of Insurance
- Required Forms

Failure to follow these instructions may result in having the Technical Proposal being deemed unacceptable or classified as not reasonably susceptible of being selected for award.

#### *5.4.1.1 Transmittal Letter – Technical Proposal.*

A Transmittal Letter shall accompany the Technical Proposal. The Transmittal Letter shall be prepared on the Contractor's business stationery. The purpose of this letter is to transmit the Technical Proposal and acknowledge receipt of any amendments to the RFP; therefore, it should be brief. The letter shall be signed by an individual who is authorized to bind the firm to all statements, including services and prices, contained in the proposal.

#### *5.4.1.2 Title and Table of Contents (Table of Tables and Table of Figures, as applicable).*

The Technical Proposal shall begin with a title page bearing the name, address, eMMA# and Federal Tax ID# of the Offeror and the name and number of this RFP. A table of contents shall follow any Claim of Confidentiality (If applicable).

#### *5.4.1.3 Claim of Confidentiality (If applicable)*

Any information which is claimed to be confidential is to be noted by reference and included after the Title Page, and if applicable, also in the Offeror's Financial Proposal.

An explanation for each claim of confidentiality shall be included (see Section 4.12 "Public Information Act Notice"). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

#### *5.4.1.4 Executive Summary.*

The Offeror shall clearly identify the functional area(s) for which it is proposing, its eMaryland Marketplace Advantage number and Federal Tax ID Number in the Executive Summary. The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary". The Summary shall provide a broad overview of the contents of the entire proposal. The summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment I), or any other attachments. If there are no exceptions taken, the Offeror is to state that they have no exceptions to the requirements of this RFP, the Contract (Attachment I), 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.**

#### *5.4.1.5 Offeror General Information*

This section shall include:

- A) The Offeror's corporation/organization size, experience, services provided, the length of time the organization has been providing the services listed, and key business relationships.
- B) A section for each Functional Area proposed describing what part of that Functional Area (as described in Section 2.5) the Offeror has the ability to provide and how the Offeror qualifies to provide what is proposed.
- C) An Offeror must provide 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 Solicitation by included one or more of the following with its response:

- i. Dunn and Bradstreet rating
- ii. Standard and Poor's Rating,
- iii. Line of credit,
- iv. Evidence of a successful financial track record, and/or
- v. Evidence of adequate working capital.

*5.4.1.6 Past Performance - Must be provided for each functional area proposed (one example may be used for multiple functional areas; however, you must clearly list the functional areas that apply to that example).*

This section shall include the following:

- A) The Offeror shall provide evidence of its capabilities to provide the services outlined in Section 2.3 of this RFP for each functional area proposed.
- B) The Offeror shall provide an example of a successful project (on time, within budget, within scope) in each proposed functional area. The example(s) shall include the project name, the services provided, and the objectives satisfied.
- C) For each example project provided, the Offeror shall include a supporting reference with the following information:
  - i. Name of client organization; and,
  - ii. Name, title, and current telephone number of point of contact for client organization.
- D) State of Maryland Experience: If applicable, the Offeror shall submit a list of all contracts it currently holds, or has held within the past five years, with any government entity of the State of Maryland. For each identified contract, the Offeror shall provide:
  - i. The State contracting entity;
  - ii. A brief description of the services/goods provided;
  - iii. The dollar value of the contract;
  - iv. The term of the contract;
  - v. Whether the contract was terminated prior to the specified original contract termination date, and if yes, the reason(s) why;
  - vi. Whether any available renewal option was not exercised; and
  - vii. The State employee contact person (name, telephone number and email).

**Please Note:** It is critical that the contact information provided for any reference is current and accurate. The reference must be knowledgeable about the project and the Offeror's performance as well as be available to discuss the Offeror's performance. Information obtained regarding the Offeror's level of performance on State contracts may 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. The MHBE reserves the right to request additional references or utilize references not provided by an Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance.

*5.4.1.7 Proof of Insurance.*

A copy of the Offeror's current certificate of insurance described in Section 2.7, which, at a minimum, shall contain the following

1. Carrier (name and address);
2. Type of insurance;
3. Amount of coverage;
4. Period covered by insurance;
5. Exclusions.

#### *5.4.1.8 Required Forms*

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

- a. Completed Bid/Proposal Affidavit (RFP **Attachment C**).
- b. If applicable, a signed statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. **\*refer to RFP Section 4.20.**
- d. Federal Funding Acknowledgement (**Attachment D**); **refer to RFP Section 4.31.**
- e. Completed Conflict of Interest Affidavit and Disclosure (**Attachment E**) **\*refer to RFP Section 4.32.**
- f. A copy of the Offeror's W-9

## **5.5 Financial Proposal**

The Master Contractor shall submit one electronic version in MS Excel and a signed PDF of the Financial Proposal in the format requirements identified in Section 5.1. The Financial Proposal shall contain all cost information in the format specified in **Attachment B-2** for Functional Areas 1 through 11 Complete the cost sheets only as provided in the Price Proposal Instructions. **Offerors must propose pricing for all labor categories to be considered for Award.**

## SECTION 6 – EVALUATION AND SELECTION PROCESS

### 6.1 Evaluation Committee

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

### 6.2 Evaluation Criteria

Master Contracts will be awarded to all qualified Offerors in accordance with the Competitive Sealed Proposals procurement process under Section II. B of MHBE's Procurement Policies and Procedures and the criteria in this RFP, as set forth below.

### 6.3 Technical Proposal Evaluation Criteria

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

The criteria to be applied to each Technical Proposal are listed in descending order of importance:

- Offeror Overall Qualification (Section 5.4.1.5)
- Offeror Past Performance (Section 5.4.1.6)

### 6.4 Financial Criteria

Financial Proposals will be evaluated separately. Offerors shall propose prices for **all** labor categories, regardless of an Offeror's ability to provide resources for the labor category. Offerors shall provide prices for Contract years 1 through 5 for **all** labor categories listed in the Financial Proposal, Attachment B-2. These are the maximum prices the State will pay for all proposed labor categories.

### 6.5 Selection Procedures

#### 6.5.1 General Selection Process

Master Contracts will be awarded in accordance with the Competitive Sealed Proposals process under Section II.B of MHBE's Procurement Policies and Procedures. The Competitive Sealed Proposals method permits discussions and possible revision of Proposals during these discussions.

Accordingly, the MHBE may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the MHBE also reserves the right to make an award without holding discussions. In either case of holding discussions or not doing so, the MHBE 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 the review of those Proposals. If the MHBE finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, an Offeror's financial

Proposal will not be evaluated.

### **6.5.2 Selection Process Sequence**

- 6.5.2.1 The first step in the process will be an evaluation for technical merit. The purpose of this evaluation will be to assure Offeror's full understanding of the State's requirements and the Offeror's ability to perform.
- 6.5.2.2 Offerors must confirm in writing any substantive clarification of, or change in, their Proposals made in the course of clarification requests. Any such written clarification or change then becomes part of the Offeror's Proposal.
- 6.5.2.3 The Financial Proposal of each qualified Offeror will be evaluated separately from the technical evaluation. After a review of the Financial Proposals of qualified Offerors, the Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- 6.5.2.4 When in the best interest of the MHBE, the Procurement Officer may permit Offerors who have submitted acceptable Proposals to revise their initial Proposals and submit, in writing, best and final offers.

### **6.5.3 Award Determination**

Upon completion of all discussions and negotiations, the Procurement Officer will recommend award of a Master Contract to all technically qualified Offeror(s).

## **6.6 Documents Required upon Notice of Recommendation for Contract Award**

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

- (1) Contract (**Attachment I**),
- (2) Contract Affidavit (**Attachment J**),
- (3) Non-Disclosure Agreement (**Attachment F**), if applicable; \*see **Section 4.33**,
- (4) Non-Exchange Entity Agreement (**Attachment G**), \*see **Section 4.37**
- (5) Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.1 "Insurance Requirements," listing the State as an additional insured, if applicable; \*see **Section 3.1**

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## RFP ATTACHMENTS

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

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

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

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

### **ATTACHMENT C –Proposal Affidavit**

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

### **ATTACHMENT D – Federal Funds Attachment**

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

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

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

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

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

### **ATTACHMENT G – Non-Exchange Entity Agreement**

If required (see RFP Section 4.37), 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 H – Business Associate Agreement**

If required (see RFP Section 4.34) this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for applicable Task Order award..

### **ATTACHMENT I – Contract**

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

### **ATTACHMENT J – 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.

## **Appendix I - Definitions**

## **Appendix II – Labor Categories**

This attachment provides a description of the labor categories for which MHBE anticipates issuing related RFR under this RFP.

## **Appendix III – Sample Request for Resume**

## **Appendix IV – Sample Task Order Agreement**

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## ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM

Solicitation Number #BPM031490

### IT Consulting and Technical Support Services IDIQ

A Pre-Proposal Video Conference will be held at the date and time indicated in the RFP Key Information Summary Sheet.

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

Please indicate:

\_\_\_\_\_ Yes, the names and email IDs of the attendees are as below:

- |    |        |            |
|----|--------|------------|
| 1. | <Name> | <Email ID> |
| 2. | <Name> | <Email ID> |

\_\_\_\_\_ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.1 "Pre-Proposal Conference"):

<hr/>	
Signature	Title
<hr/>	
Name of Firm (please print)	

## ATTACHMENT B – FINANCIAL PROPOSAL INSTRUCTIONS & FORM

### B-1: FINANCIAL PROPOSAL INSTRUCTIONS

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

The Financial Proposal Form is used to identify the Offeror's EVALUATED PROPOSAL PRICE for each labor category across all contract years. Follow these instructions carefully when completing your Financial Proposal Form:

- a. On the Labor rates B-2 spreadsheet, record the hourly labor rate for all 5 years and all labor categories. Offerors **MUST** propose to all labor categories regardless of their ability to fill positions for that labor category. Offerors proposing to multiple functional areas are not permitted to submit a separate B-2 for each functional area proposed..
- b. All Prices shall be the actual ceiling price the MHBE shall pay for the proposed labor category per this RFP and may not be contingent on any other factor or condition in any manner.
- C) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- E) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- F) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- G) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission.
- H) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- I) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03, and may cause the Proposal to be rejected.
- J) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the MHBE and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- K) All Financial Proposal prices entered are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other

amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts, expenses (including parking expenses) or travel costs will be paid.

- L) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the MHBE does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.
- M) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

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## B-2: FINANCIAL PROPOSAL FORM

Provided as a separate Excel Document.

Submit in both an Excel and PDF format.

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## ATTACHMENT C – PROPOSAL AFFIDAVIT

### A. AUTHORITY

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

### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

#### B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES

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

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

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

### C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted

bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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#### **D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
  - (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
  - (d) §7206, Fraud and False Statements, or
  - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

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

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

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure Act; and
- (ii) Not overturned on judicial review;

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

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure Act; and
- (ii) Not overturned on judicial review;

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

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure Act; and
- (ii) Not overturned on judicial review; or

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

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## **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, contractors or vendors 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).

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

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

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

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**G. SUBCONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

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

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

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

**I. CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

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

**J. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

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

**K. CERTIFICATION REGARDING INVESTMENTS IN IRAN**



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

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

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

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

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

I FURTHER AFFIRM THAT:

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

**M. I FURTHER AFFIRM THAT:**

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

**N. ACKNOWLEDGEMENT**

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

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

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

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

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

**ATTACHMENT D - 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. Rights to Inventions Made Under a Contract or Agreement. The Federal award funding certain Task Orders awarded under this Contract in whole or in part meets the definition of “funding agreement” under 37 CFR 401.2 (a). Therefore, the Contract resulting from the RFP is subject to regulations governing patents and inventions issued by the Department of Commerce at 37 CFR part 401, certain other property rights provisions of the Code of Federal Regulations and the following grant(s) from the U.S. Department of Health and Human Services, Centers for Medicaid & Medicare Services: CFDA number 93.778. The federal government shall have the rights set forth in 42 C.F.R. 433.112, 45 C.F.R. 75.322 (HHS uniform grant requirements related to Intangible Property and Copyrights) and 45 C.F.R. 95.617 (HHS software and ownership rights related to Medical Assistance and the Children’s Health Insurance Programs), including a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

D. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—This Contract contains federal funds in excess of \$150,000. The Contractor therefore agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the MHBE’s Chief Compliance Officer, the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

E. 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 contain 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 verifying 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. Evidence of regular monitoring by the Contractor shall be maintained and provided to the

MHBE Contract Monitor and/or Compliance Office upon request.

F. 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 non federal funds.

G. 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.*

H. 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.

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

J. 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 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 D-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 D-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 _____ Date 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>  CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a) (last name, first name, MI):</i>	
<b>11. Amount of Payment</b> <i>(check all that apply)</i> \$_____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment</b> <i>(check all that apply)</i> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
<b>12. Form of Payment</b> <i>(check all that apply)</i> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind, specify: nature _____ value: _____		
<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b>  (attach Continuation Sheet(s) SF-LLLA, if necessary)		

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

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

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

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

subcontracts, sub-grants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, the Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

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



ATTACHMENT E– 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 F – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“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 “Contractor”).

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for IT Consulting and Support Services IDIQ RFP #BPM031490 (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) as defined in 45 C.F.R. § 160.103 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”) and, if required, the Business Associate Agreement between the Parties. For the avoidance of doubt, should any provisions of this Non-Disclosure Agreement conflict with those in the Non-Exchange Entity Agreement or the Business Associate Agreement, the provisions of the Non-Exchange Entity Agreement or the Business Associate Agreement, as applicable under the circumstances, 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 or PHI as defined in any applicable Business Associate Agreement, Contractor shall follow the procedures set forth in the Non-Exchange Entity Agreement or Business Associate Agreement, respectively, for notifying the MHBE. Should the Confidential Information be other than PII or PHI, 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. Should the Confidential Information constitute PHI, the Contractor shall comply with the provisions of any applicable Business Associate 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 MHBE.
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.

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: _____	(Maryland Health Benefit Exchange)
By: _____ (SEAL)	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT F-1 - NON-DISCLOSURE AGREEMENT

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

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

## ATTACHMENT F-2 - NON-DISCLOSURE AGREEMENT

### CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the Maryland Health Benefit Exchange and

\_\_\_\_\_, 20\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”) is attached hereto and is hereby returned to the MHBE in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

DATE: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

## ATTACHMENT G – NON-EXCHANGE ENTITY AGREEMENT

### **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. § 155.110, 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: IT Consulting and Technical Support Services IDIQ, Solicitation No. BPM031490 (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 contractual relationship between MHBE and the Non-Exchange Entity set forth in the Underlying Agreement may 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 Non-Exchange Entity Agreements the Non-Exchange Entity and MHBE may have entered into prior to the date hereof concerning the subject matter herein;

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 have the meaning set forth in Office of Management and Budget Memorandum M-17-12, Preparing for and Responding to a Breach of Personally Identifiable Information, at 9 (Jan. 3, 2017) (hereafter “OMB Memorandum M-17-12”) (“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.”)

2. **“Incident”** shall mean the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner’s knowledge, instruction or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction. While certain adverse events (e.g., floods, fires, electrical outages, excessive heat, etc.) can cause system crashes, they are not considered incidents. An incident becomes a breach when there is the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.

3. **“Personally Identifiable Information”** or **“PII”** shall have the meaning set forth in OMB Memorandum M-17-12, at 8 (“The term PII refers to information that can be used to distinguish or trace an individual’s identity, either alone, or when combined with other information that is linked or linkable to a specific individual.”)

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 make uses and disclosures and requests for PII consistent with MHBE’s policies and procedures regarding minimum necessary use of PII.

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 Minimum Acceptable Risk Standards for Exchanges (MARS-E) as published in the following suite of documents: (1) Harmonized Security and Privacy Framework – Exchange Reference Architecture Supplement; (2) Minimum Acceptable Risk Standards for Exchanges – Exchange Reference Architecture Supplement; (3) Catalog of Minimum Acceptable Risk Controls for Exchanges – Exchange Reference Architecture Supplement; (4) ACA System Security Plan Procedures; (5) ACA System Security Plan Template; (6) ACA System Security Plan Workbook; and (7) IRS ACA Safeguard Procedures Report Template.
- 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 and/or 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. Limit disclosure of the information and details relating to a PII loss only to those with a need to know.
- g. 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. Should the work of Non-Exchange Entity under the Underlying Agreement, including any Task Order Agreement thereunder, require access to Federal Tax Information, as that term is defined in IRS Publication 1075 (“FTI”), Non-Exchange Entity shall comply with 26 U.S.C. §§ 6103(l)(21)(C) and 6103(n), as well as Internal Revenue Service Publication 1075, with respect to the minimum necessary use and safeguarding of FTI. Non-Exchange Entity further agrees that, in the event its work under the Underlying Agreement, including any Task Order Agreement thereunder, requires access to FTI, the Non-Exchange Entity shall comply with the IRS’ safeguarding contract language attached hereto as **EXHIBIT 1** and incorporated herein.

8. 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. Non-Exchange Entity shall provide such reports in substantially the same form as **EXHIBIT 2**, attached hereto.

9. 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;

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 2; 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.

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 a 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, including 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 third-party claims, MHBE's reasonable attorneys' fees, and expenses and costs that were reasonably incurred as a proximate result of Non-Exchange Entity's breach. 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:

Andrew Ratner  
Chief Compliance Officer  
Maryland Health Benefit Exchange  
750 E. Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
Mobile: [443 827 6558](tel:4438276558)  
Email: [aratner@maryland.gov](mailto:aratner@maryland.gov)

With a copy to:

Sharon Stanley Merriweather, Principal Counsel  
Office of the Attorney General  
Maryland Health Benefit Exchange Division  
750 E. Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
Phone: (410) 547-7873; (410) 598-3579  
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. 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.
7. 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.

8. 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.
9. 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. For the avoidance of doubt, such null and void prior agreements do not include the Underlying Agreement.

[Signatures next page(s)]

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 \_\_\_\_\_, 202\_\_.

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

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

Form Date: 2018-02-12 (IT IDIQ RFP)

**ATTACHMENT G - EXHIBIT 1**  
**[IRS SAFEGUARDING CONTRACT LANGUAGE]**

**I. PERFORMANCE**

In performance of the Underlying Agreement, the Non-Exchange Entity (hereinafter, "Contractor") agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information (as each is respectively defined in 26 U.S.C. § 6103(b)(1)-(b)(2), hereafter referred to as "return(s)" or "return information") made available in any format shall be used only for the purpose of carrying out the provisions of the Underlying Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of the Underlying Agreement. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The Contractor certifies that the data processed during the performance of the Underlying Agreement will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the MHBE or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (8) No work involving Federal Tax Information furnished under the Underlying Agreement will be subcontracted without prior written approval of the MHBE and the IRS.
- (9) The Contractor will maintain a list of employees authorized access. Such a list will be provided to the MHBE and, upon request, to the IRS reviewing office.
- (10) The MHBE will have the right to void the Underlying Agreement if the Contractor fails to provide the safeguards described above.

**II. CRIMINAL/CIVIL SANCTIONS**

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall



also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by 26 U.S.C. §§ 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of the Underlying Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Underlying Agreement. Inspection by or disclosure to anyone without an official need-to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by 26 U.S.C. §§ 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to agency [MHBE] records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the MHBE's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the MHBE's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of 26 U.S.C. §§ 7431, 7213, and 7213A (see IRS Publication 1075 Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075 Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See IRS Publication 1075 Section 10). For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **III. INSPECTION**

Each of the IRS and the MHBE, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under the Underlying Agreement for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Underlying Agreement safeguards.

**ATTACHMENT G - EXHIBIT 2**  
**[MHBE NOTIFICATION OF ACTUAL OR POTENTIAL**  
**BREACH OF PRIVACY – IT SECURITY INCIDENT REPORT]**

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

This notification is made pursuant 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 the wrong account? • Yes • No

If “yes,” in wrong account, Full Name of Account Owner:

(First) \_\_\_\_\_ (Middle) \_\_\_\_\_ (Last) \_\_\_\_\_  
Application ID \_\_\_\_\_ Document ID(s) \_\_\_\_\_

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: \_\_\_\_\_

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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

\_\_\_\_\_

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

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

Please securely email completed form to [caterina.pangilinan@maryland.gov](mailto:caterina.pangilinan@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 2018-01-18



## *ATTACHMENT H – SAMPLE BUSINESS ASSOCIATE AGREEMENT*

This Business Associate Agreement (the “Agreement”) is made by and between the Maryland Health Benefit Exchange, a business associate of the Maryland Department of Health solely for purposes of the Services, as defined below (hereinafter referred to as “Prime Business Associate” or “MHBE”) and \_\_\_\_\_ (Insert Name of Contractor) (hereinafter referred to as “Subcontractor Business Associate”). Each of Prime Business Associate and Subcontractor Business Associate is a “Party” and, together, are the “Parties.”

WHEREAS, Prime Business Associate has a business relationship with the Maryland Department of Health, a covered entity as defined under 45 C.F.R. 160.103 (hereinafter “Covered Entity” or “MDH”) pursuant to Covered Entity’s operation of the Maryland Medical Assistance Program (hereinafter, “Medicaid”); and

WHEREAS, Prime Business Associate provides certain information technology (“IT”) administrator services to Covered Entity for purposes of operating and maintaining the MDH Salesforce Customer Relationship Management system that Prime Business Associate configured and maintains, and Medicaid utilizes, in place of MDH’s outdated Provider Recipient Ombudsman Management Information System known as “PROMIS” (the “MDH CRM”) to manage interactions with its Medicaid applicants, enrollees and beneficiaries (the “Services”); and

WHEREAS, Covered Entity and Prime Business Associate memorialized their agreement related to the Services in that certain First Modification of the Salesforce Customer Relationship Management Integration MOU entered into by and between MHBE and the Medical Care Programs Administration, Office of Finance, a unit of MDH, as of the 30<sup>th</sup> of September, 2017 (the “MDH CRM Agreement”); and

WHEREAS, Prime Business Associate acknowledges that the business relationship memorialized in the MDH CRM Agreement may make it a “business associate” of MDH as set forth in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, Prime Business Associate has selected Subcontractor Business Associate to perform certain aspects of the Services, pursuant to one or more task order agreements, including but not limited to that certain Task Order Agreement dated as of \_\_\_\_\_ [Insert date of relevant Task Order here] under a master contract between the Parties dated as of July 1, 2018 (as amended, and together with all task order agreements issued thereunder, the “Master Contract”), which Master Contract was awarded pursuant to the Request for Proposals: Consulting and Technical Support Services Indefinite Delivery, Indefinite Quantity (IDIQ), Solicitation No. MDM0031036680 (the “RFP”); and

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

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

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

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

## **I. DEFINITIONS**

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- B. Specific definitions:
1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the parties to this agreement, shall mean each of the Prime Business Associate and the Subcontractor Business Associate.
  2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to this agreement, shall mean the Maryland Department of Health.
  3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
  4. Individually Identifiable Health Information. “Individually Identifiable Health Information” shall generally have the same meaning as “individually identifiable health information at 45 C.F.R. § 160.103.
  5. Maryland Department of Health Customer Relationship Management System or “MDH CRM”. “Maryland Department of Health Customer Relationship Management System” or “MDH CRM” shall mean the MDH Salesforce Customer Relationship Management system that Prime Business Associate configured and maintains, and Medicaid utilizes, in place of MDH’s outdated Provider Recipient Ombudsman Management Information System known as “PROMIS”.
  6. Master Contract. “Master Contract” shall mean the contract awarded by Prime Business Associate to Subcontractor Business Associate pursuant to the RFP.
  7. Protected Health Information. “Protected Health Information” or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103. For the avoidance of doubt, the individually identifiable health information to which the Subcontractor Business Associate has access to in, through or because of the MDH CRM shall be Protected Health Information under this Business Associate Agreement.
  8. Request for Proposals or “RFP”. “Request for Proposals” or “RFP shall mean the Request for Proposals: Consulting and Technical Support Services Indefinite Delivery, Indefinite Quantity (IDIQ), Solicitation No. MDM0031036680
  9. Subcontractor. “Subcontractor” shall generally have the same meaning as the term “subcontractor” at 45 C.F.R. § 160.103.

10. Subcontractor Business Associate. “Subcontractor Business Associate” shall mean [insert name of relevant Master Contractor here]. For the avoidance of doubt, Master Contractor is a “subcontractor”, as defined at 45 C.F.R. § 160.103, to which Prime Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of Prime Business Associate.

## **II. PERMITTED USES AND DISCLOSURES OF PHI BY SUBCONTRACTOR BUSINESS ASSOCIATE.**

- A. Subcontractor Business Associate may only use or disclose PHI as necessary to perform the Services as set forth in the Master Contract or as required by law.
- B. Subcontractor Business Associate agrees to make uses and disclosures and requests for PHI consistent with Prime Business Associate’s policies and procedures regarding minimum necessary use of PHI.
- C. Subcontractor Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity or Prime Business Associate.
- D. Subcontractor Business Associate shall only use and disclose PHI if each such use or disclosure complies with each applicable requirement of 45 C.F.R. § 164.504(e).
- E. Subcontractor Business Associate shall be responsible for full compliance with the relevant requirements of the HIPAA Rules to the same extent as Prime Business Associate and Covered Entity.
- F. Subcontractor Business Associate shall keep a log of the identity of its respective employees, contractors and/or subcontractors who are authorized to access the Protected Health Information under this Agreement. The log shall contain the name, department, email address, and phone number of each authorized individual and for what purpose access to PHI is provided.
- G. Except as otherwise limited in this Agreement, Subcontractor Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Subcontractor Business Associate, provided that disclosures are Required By Law, or Subcontractor Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Subcontractor Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- H. The Subcontractor Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the Prime Business Associate’s payment of Subcontractor Business Associate for its performance pursuant to the Master Contract.

- I. The Subcontractor Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

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

- A. Subcontractor Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;
- B. Subcontractor Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Subcontractor Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- D.
  - 1. Subcontractor Business Associate agrees to Report to Prime Business Associate any use or disclosure of PHI in violation of this Agreement or not provided for by the Master Contract of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;
  - 2. If the use or disclosure amounts to a breach of unsecured PHI, the Subcontractor Business Associate shall ensure its report:
    - A. Is made to Prime Business Associate without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity regarding Section III.D.1, Business Associate must notify Prime Business Associate of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Subcontractor Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
    - B. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
    - C. Is in substantially the same form as Exhibit A hereto; and
    - D. If so directed by Prime Business Associate, includes a draft letter for the Prime Business Associate or Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
      - i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
      - ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
      - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;



- iv) A brief description of what the Covered Entity, Prime Business Associate and the Subcontractor Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
  - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
- E. To the extent permitted by the Master Contract, Subcontractor Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Subcontractor Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, and Subcontractor Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;
- F. To the extent applicable, and as directed by the Prime Business Associate, Subcontractor Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Prime Business Associate at the request of the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- G. To the extent applicable, and as directed by the Prime Business Associate, Subcontractor Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- H. Subcontractor Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Should an Individual make a request to Subcontractor Business Associate for an accounting of disclosures of his or her PHI pursuant to 45 CFR § 164.528, Subcontractor Business Associate agrees to promptly inform Prime Business Associate and provide Covered Entity with information in a format and manner sufficient to respond to the Individual's request. Further, upon request, and with reasonable notice, Subcontractor Business Associate shall provide Covered Entity and Prime Business Associate with an accounting of uses and disclosures of PHI provided by Covered Entity;
- I. Subcontractor Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Prime Business Entity, the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules. Where requested by the Secretary, 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, Subcontractor Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to the Covered Entity that seeks documents or other information held by Subcontractor Business Associate. Further, to the extent applicable, Subcontractor Business Associate shall, with reasonable notice, provide the Prime Business Entity, the

Covered Entity and/or the Secretary access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI;

- K. Subcontractor Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Subcontractor Business Associate of a use or disclosure of PHI by Subcontractor Business Associate in violation of the requirements of this Agreement.

#### IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Master Contract entered into following the RFP, as defined in the Recitals, and shall terminate when all of the PHI provided by Prime Business Associate, or the PHI created or received by Subcontractor Business Associate on behalf of Prime Business Associate, is destroyed or returned to Prime Business Associate, in accordance with the termination provisions in this Section IV, or on the date the Prime Business Associate terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Prime Business Associate, or the PHI created or received by Subcontractor Business Associate on behalf of Prime Business Associate, Subcontractor Business Associate's obligations under this Agreement shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Prime Business Associate.
- B. Termination for Cause. Upon Prime Business Associate's knowledge of a material breach of this Agreement by Subcontractor Business Associate, Prime Business Associate shall:
  - 1. Provide an opportunity for Subcontractor Business Associate to cure the breach or end the violation and, if Subcontractor Business Associate does not cure the breach or end the violation within the time specified by Prime Business Associate, terminate this Agreement; or
  - 2. Immediately terminate this Agreement if Subcontractor Business Associate has breached a material term of this Agreement and Prime Business Associate determines or reasonably believes that cure is not possible.
- C. Effect of Termination.
  - 1. Upon termination of this Agreement, for any reason, Subcontractor Business Associate shall return or, if agreed to by Prime Business Associate, destroy all PHI received from Prime Business Associate, or created, maintained, or received by Business Associate on behalf of Prime Business Associate, that the Subcontractor Business Associate still maintains in any form. Subcontractor Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Subcontractor Business Associate.
  - 2. Should Subcontractor 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, Prime Business Associate shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Master Contract and/or any task order thereunder.

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

## **V. CONSIDERATION**

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

## **VI. REMEDIES IN EVENT OF BREACH**

Subcontractor Business Associate hereby recognizes that irreparable harm will result to Prime Business Associate, and to the business of Prime Business Associate, in the event of breach by Subcontractor 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, Prime Business Associate shall be entitled to enjoin and restrain Subcontractor 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, Prime Business Associate is entitled to reimbursement and indemnification from Subcontractor Business Associate for third-party claims, Prime Business Associate's reasonable attorneys' fees, and expenses and costs that were reasonably incurred as a proximate result of Subcontractor Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Prime Business Associate may have for breach of any part of this Agreement or the Master Contract, including any task order thereunder, or which may be available to Prime Business Associate at law or in equity.

## **VII. MODIFICATION; AMENDMENT**

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

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

Should there be any conflict between the language of this Agreement and any other contract or agreement 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 Subcontractor Business Associate acknowledges that by accepting the PHI from Prime Business Associate, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Subcontractor Business Associate shall comply with the more restrictive protection requirement.

## X. MISCELLANEOUS

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Prime Business Associate and 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 Prime Business Associate. Any notice required under this Agreement to be given Prime Business Associate shall be made in writing to:

Andrew Ratner  
Chief Compliance Officer  
Maryland Health Benefit Exchange  
750 E. Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
Mobile: [443 827 6558](tel:4438276558)

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

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

\_\_\_\_\_

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

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

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

hereof.

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

[Signatures next page(s)]

[Signature page to Business Associate Agreement – MHBE Solicitation # BPM031490]

**PRIME BUSINESS ASSOCIATE:**

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

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

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

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

**SUBCONTRACTOR BUSINESS  
ASSOCIATE:**

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

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

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

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

**EXHIBIT A**

**FORM OF NOTIFICATION TO PRIME BUSINESS ASSOCIATE 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 (“Prime Business Associate” or “MHBE”) and \_\_\_\_\_ (“Subcontractor Business Associate”).

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

Description of the breach:

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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:

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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):

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

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Contact information to ask questions or learn additional information:

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

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

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

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Email Address:

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Phone Number:



## ATTACHMENT I – CONTRACT

### IT Consulting and Technical Services IDIQ

THIS CONTRACT (the “Contract”) is made this (“X<sup>th</sup>”) day of (month), (year) by and between (Contractor’s name) (“Contractor”) and the MARYLAND HEALTH BENEFIT EXCHANGE, a public corporation and independent unit of the government of the State of Maryland (“MHBE”). Each of the Contractor and MHBE is a “Party” and, together, are the “Parties”.

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

#### 1. Definitions

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

- 1.1 “ACA” means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), together with regulations promulgated pursuant thereto.
- 1.2 “Agency” or “MHBE” means the Maryland Health Benefit Exchange, a public corporation and a unit of State government.
- 1.3 “COMAR” means Code of Maryland Regulations.
- 1.4 “Contract” means this agreement between (Contractor’s name) and the Maryland Health Benefit Exchange.
- 1.5 “Contract Monitor” means the following MHBE employee identified as the Contract Monitor or a successor designated by MHBE: Venkat Koshanam, Chief Information Officer.
- 1.6 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.7 “Effective Date” shall mean July 1, 2018, following full execution of the Contract by the Parties.
- 1.8 “eMMA” means eMaryland Marketplace Advantage.
- 1.9 “Financial Proposal” means the Contractor’s Financial Proposal dated\_\_\_\_\_.
- 0.10 “Procurement Officer” means the following MHBE employee identified as the Procurement Officer or a successor designated by the MHBE: Michelle Compton, Procurement Manager.
- 0.11 “Proposal(s)” means, as appropriate, either or both of the Contractor’s Technical or Financial Proposal.
- 0.12 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the

provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer

- 0.13 “RFP” means the Request for Proposals for IT Consulting and Technical Services Solicitation # BPM031490 and any addenda thereto issued in writing by the State.
- 0.14 “RFR” means a Request for Resume(s).
- 0.15 “Software” means the object code version of computer programs. Embedded code, firmware, internal code, microcode, and any other term referring to software that is necessary for proper operation is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. “Software” also includes any upgrades, updates, bug fixes or modified versions or backup copies of the Software licensed to the State by Contractor or an authorized distributor.
- 1.17 “State” means the State of Maryland, including the Maryland Health Benefit Exchange.
- 1.18 “Task Order Agreement” or “TO Agreement” means a signed agreement between MHBE and the Contractor selected via either a TORFP or an RFR to perform work, as delineated in the Task Order Agreement.
- 1.19 “Task Order Proposal” means the technical and financial response by a Contractor to a TORFP or RFR.
- 1.20 “Task Order Request for Proposals” (TORFP) means a solicitation document containing a description by MHBE of the individual project for which proposals will be solicited.
- 1.21 “Technical Proposal” means the Contractor’s Technical Proposal dated\_\_\_\_\_.
- 1.22 Capitalized terms not defined herein shall have the meanings the RFP provides.
- 1.23 All references in Sections 2.2, 2.3, 4.2 through 4.4 and 6 through 38 herein to this “Contract” shall be deemed to pertain, as appropriate, to this Contract or any TO Agreement hereunder, or both.

## **2. Scope of Contract**

- 2.1 The Contractor shall provide consulting and technical services and materials for MHBE as described in Section 2.0 of the RFP, as well as the TO Agreement and the RFR, in one or more of the ten (10) functional areas identified in the RFP as follows:

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

These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and Exhibits A through J, the terms of this Contract shall control. If there is any conflict among Exhibits A through H, on the one hand, and Exhibit I or Exhibit J, as applicable, on the other, the terms of Exhibit I or Exhibit J, as applicable, shall control. If there is any conflict among Exhibits A through H, the order of precedence shown below shall determine the prevailing

provision.

Exhibit A - The RFP.

Exhibit B - Task Order Agreement (when executed).

Exhibit C - TORFP/RFR

Exhibit D - Master Contractor's response to the TORFP/RFR.

Exhibit E - The Technical Proposal to the RFP.

Exhibit F - The Financial Proposal to the RFP.

Exhibit G - Federal Funds Requirements and Restrictions, including its attachments (G-1, G-2, G-3).

Exhibit H - State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_.

Exhibit I - Non-Exchange Entity Agreement.

Exhibit J - Business Associate Agreement (when executed, where Contractor's execution required).

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

### **3. Period of Performance.**

- 3.1 The Contractor shall provide services and materials in accordance with this Contract and any TO Agreement issued hereunder.
- 3.2 The Contract shall be effective as of July 1, 2023 following its full execution by the Parties. From this date, the Contract shall be for a base period of three (3) years, beginning on or about July 1, 2023 and ending on or about June 30, 2026, unless terminated earlier as provided in this Master Contract and two, one-year renewal options at the sole discretion of the MHBE.
- 3.3 The Contractor shall provide services and materials under this Contract as of the date provided in a written Notice to Proceed from the Procurement Officer, as set forth in a Task Order Agreement or as directed by the Contract Monitor following the execution of a Task Order Agreement.
- 3.4 All maximum prices for rates as well as the terms offered in RFP Attachments B, B-1 and B-2 are binding on the Contractor for the term of the Contract.

#### **4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract and any TO Agreement, MHBE shall pay the Contractor in accordance with the rates established in the Contractor's TO/RFR Proposal, if incorporated into a Task Order Agreement, which may not exceed the rates and terms of Exhibit F, Contractor's Financial Proposal. TO Agreements that are on a time and materials basis shall include a not to exceed ("NTE") ceiling for payments. Any work performed by the Contractor in excess of the NTE ceiling amount of any TO Agreement without the prior written approval of the Contract Monitor is at the Contractor's risk of non-payment.
- 4.2 Invoices must be provided in the format and on the schedule identified in the TORFP/RFR, where the format and schedule are identified therein. Each invoice must reflect the Contractor's federal tax identification number, which is \_\_\_\_\_. The Contractor's eMM identification number is \_\_\_\_\_. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after MHBE's receipt of a proper invoice from the Contractor, acceptance by MHBE and pursuant to the conditions outlined in Consideration and Payment section of this Contract. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Invoices shall be submitted to the Contract Monitor via [hbe.finance@maryland.gov](mailto:hbe.finance@maryland.gov). Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's office grants Contractor an exemption. A TO Agreement may specify periodic payments based on deliverables or stages of completion. A TO Agreement may specify that a portion of the payments due will be withheld until completion of the TO Agreement. The amount withheld from each payment shall be paid to the Contractor within thirty (30) days of MHBE's acceptance of all deliverables required under the TO Agreement and receipt from the Contractor of a release in a form prescribed by the State for any claims arising out of or related to the TO/RFR Agreement.
- 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.

#### **5. TORFPs/RFRs**

A TORFP/RFR may specify terms in addition to the terms specified herein. Such additional terms may include warranties, deliverables, and acceptance test requirements. A TO Agreement may not limit the State's rights as provided by law, in this Contract, or in the RFP and may not change the terms of this Contract or the RFP.

#### **6. Rights to Records**

- 6.1 The Contractor agrees that all documents and materials including, but not limited to, Software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics,

mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

- 6.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in Section 8.2), and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 6.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 6.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 6.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **7. Exclusive Use**

- 7.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 7.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the MHBE or developed by Contractor relating to the Contract, except as provided for in Section 9 (“Confidential or Proprietary Information and Documentation”).

## **8. Patents, Copyrights, and Intellectual Property**

- 8.1 All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract .
- 8.2 Except for (1) information created or otherwise owned by the State or licensed by the State from

third parties, including all information provided by the MHBE to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights the Contractor grants to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the MHBE will have no rights to the same except as expressly granted in this Contract. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

- 8.3 Subject to the terms of Section 11 (Indemnification and Notification of Legal Requests), Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.
- 8.4 Without limiting Contractor’s obligations under Section 8.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 8.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals..
- 8.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on

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

- 8.7 The Contractor shall report to the MHBE, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 8.8 The Contractor shall not affix (or permit any third party to affix), without the MHBE’s consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the MHBE shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **9. Confidential or Proprietary Information and Documentation**

- 9.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, the ACA, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and the implementation of regulations promulgated pursuant thereto, 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 and/or cloud infrastructure, if applicable) 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 that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law, including the ACA and 45 C.F.R. § 155.260, and the Non-Exchange Entity Agreement, Non-Disclosure Agreement and any Business Associate Agreement incorporated into this Contract pursuant to Section 2.1, above. Each officer, employee and/or subcontractor to whom MHBE’s confidential information is to be disclosed shall be advised by the Contractor and bound by confidentiality and intellectual property terms substantially equivalent to those of this Contract. 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’s 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 MHBE 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 The Contractor acknowledges its duty to become familiar and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

9.4 If in connection with the procurement or at any time during the term of the Contract, the MHBE determines that functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.502 and in the form required by the MHBE.

9.5 This Section 9 shall survive expiration or termination of this Contract.

## **10. Loss of Data**

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

## **11. Indemnification and Notification of Legal Requests**

11.1 At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the



Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

- 11.2 The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 11.3 Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request.
- 11.4 Contractor shall comply with any written request issued by Procurement Officer or Office of the Attorney General to retain documents and electronically stored information in anticipation of litigation at no additional cost to the State.
- 11.5 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 11.6 Section 11 shall survive expiration or termination of this Contract.

## **12. 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.

## **13. Disputes**

- 13.1 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.

- 13.2 Within thirty (30) days of when the Contractor knows or should have known of the basis for a claim relating to the Contract, it shall file a written notice of claim on its letterhead to the Procurement Officer. Contemporaneously with, or within thirty (30) days after filing the notice of claim, the Contractor shall submit the written claim to the Procurement Officer. The claim shall be in writing and shall contain: (a) An explanation of the claim, including reference to all contract provisions upon which it is based; (b) The amount of the claim; (c) The facts upon which the claim is based; (d) All pertinent data and correspondence that the Contractor relies upon to substantiate the claim; and (e) a certification by a senior official, officer, or general partner of the Contractor or the subcontractor, as applicable, that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the contract adjustment for which the person believes the MHBE is liable. The Procurement Officer shall issue a final, written decision on the claim as expeditiously as possible. Any final decision of the Procurement Officer may award a Contract claim only for those expenses incurred not more than thirty (30) days before the contractor initially filed its notice of claim.
- 13.3 If the final decision of the Procurement Officer grants the claim in part and denies the claim in part, the MHBE shall pay the Contractor the undisputed amount. Payment of the partial claim shall not be construed as an admission of liability by the MHBE and does not preclude the MHBE from recovering the amount paid if a subsequent determination modifies the final decision.
- 13.4 Within thirty (30) days of receipt of the final decision of the Procurement Officer, the Contractor may file an appeal to the MHBE Executive Director for claims for monetary amounts less than \$50,000, and to the Board of Trustees for either claims for monetary amounts of \$50,000 or greater or for claims involving non-monetary relief. The Executive Director shall issue a final decision resolving the appeal of claims for monetary amounts less than \$50,000. The Board of Trustees shall issue a final decision resolving appeals of claims for \$50,000 or more and those for non-monetary relief. The Contractor's timely appeal to the Executive Director or the Board of Trustees shall be a strict condition precedent to the Contractor pursuing any legal rights which it alleges or which may exist in any other forum.
- 13.5 Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.
- 13.6 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.

#### **14. Maryland Law**

- 14.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 14.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or any purchase order or Notice to Proceed or Task Order issued under this Contract, or any software, or any software license required hereunder.
- 14.3 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.

**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, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**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 of a Task Order under this Contract, the Task Order 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 Task Order hereunder will be to discharge both the Contractor and the State of Maryland from future performance of the Task Order, 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 Task Order. 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 Default**

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

the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**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. Delays and Extensions of Time**

20.1 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.

20.2 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.

**21. Suspension of Work**

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

**22. Pre-Existing Regulations**

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

**23. 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, \$200,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

**24. Political Contribution Disclosure**

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

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

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

## **26. Right to Audit**

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

by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance unless otherwise noted herein

- 26.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the MHBE has the right to audit such subcontractor(s).
- 26.4 The Contractor and/or subcontractors shall cooperate with MHBE and MHBE's designated accountant or auditor and shall provide the necessary assistance for the MHBE or MHBE's designated accountant or auditor to conduct the audit.
- 26.5 This Section shall survive expiration or termination of the Contract.

## **27. Compliance with Laws**

The Contractor hereby represents and warrants that:

- 27.1 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;
- 27.2 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;
- 27.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 27.4 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.

## **28. Cost and Price Certification**

- 28.1 By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Proposal.
- 28.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

## **29. 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.

### **30. Liability**

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

- 30.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 8 ("Patents, Copyrights, and Intellectual Property") 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 a breach of Personally Identifiable Information or Federal Tax Information, as provided in the Non-Exchange Entity Agreement. For a breach of Protected Health Information, as provided in any Business Associate Agreement executed in conjunction with a Task Order.
- 30.4 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract where liability is not otherwise set forth as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability shall not exceed three (3) times the value of the Contract. Third-party claims arising under Section 11 ("Indemnification and Notification of Legal Requests") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third-party claims arising under Section 11 of this Contract, including for intellectual property infringement, bodily injury, damage to real property, damage to tangible personal property and claims related to breach of PII, FTI or PHI, shall be unlimited if the State is not immune from liability for claims arising under Section 11.

### **31. Commercial Nondiscrimination**

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

- 32.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the MHBE, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the contractor until payment to the subcontractor is verified;
  - (b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 32.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
- (a) Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
  - (b) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 32.3 An act, failure to act, or decision of a Procurement Officer or a representative of the MHBE, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
  - (b) Be used as evidence on the merits of a dispute between the MHBE and the contractor in any other proceeding; or
  - (c) Result in liability against or prejudice the rights of the MHBE.

## **33. Use of Estimated Quantities**

Unless specifically indicated otherwise in the State's solicitation or other controlling documents



related to the Scope of Work, any sample amounts provided are estimates only and the MHBE does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

**34. 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.

**35. Notices**

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

If to the State: Shirelle Green  
Procurement Officer, CMPO +GPS  
750 East Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**37. Parent Company Guarantee**

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

**38. Miscellaneous**

- 38.1 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.
- 38.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

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

CONTRACTOR

MARYLAND HEALTH BENEFIT  
EXCHANGE

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

\_\_\_\_\_  
By: Michele Eberle, Executive Director  
Or designee:

\_\_\_\_\_  
Date

PARENT COMPANY (GUARANTOR) (if  
applicable)

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Assistant Attorney General

## ATTACHMENT J – CONTRACT AFFIDAVIT

### A. AUTHORITY

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

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

#### I FURTHER AFFIRM THAT:

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

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

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

*Name and Department ID*

*Number:* \_\_\_\_\_ *Address:* \_\_\_\_\_

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

*Name and Department ID*

*Number:* \_\_\_\_\_ *Address:* \_\_\_\_\_

### C. FINANCIAL DISCLOSURE AFFIRMATION

#### I FURTHER AFFIRM THAT:

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

### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

#### F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

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

By: \_\_\_\_\_(printed name of Authorized Representative and Affiant)

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

**APPENDIX I – Abbreviations and Definitions**

**APPENDIX II – Labor Categories**

**APPENDIX III – Sample Request for Resume Form**

**APPENDIX IV – Sample Task Order Agreement**