



**STATE OF MARYLAND  
MARYLAND HEALTH BENEFIT EXCHANGE (MHBE)**

**REQUEST FOR PROPOSALS (RFP)**

**Solicitation Title: Small Business  
Premium Aggregation and Billing Solution**

**RFP NUMBER: BPM043384**

**ISSUE DATE: JUNE 17<sup>TH</sup>, 2024**

**NOTICE**

A Prospective Offeror that has received this document from a source other than eMarylandMarketplace (eMMA) <https://procurement.maryland.gov> should register on eMMA.

**See Section 4.2.**

**MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO RESPOND TO THIS SOLICITATION.**

## VENDOR FEEDBACK FORM

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Summary Sheet below for contact information).

**Title: Small Business- Premium Aggregation and Billing**  
**Solicitation No: BPM043384**

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:
  - Other commitments preclude our participation at this time
  - The subject of the solicitation is not something we ordinarily provide
  - We are inexperienced in the work/commodities required
  - Specifications are unclear, too restrictive, etc. (Explain in REMARKS section)
  - The scope of work is beyond our present capacity
  - Doing business with the State is simply too complicated. (Explain in REMARKS section)
  - We cannot be competitive. (Explain in REMARKS section)
  - Time allotted for completion of the Proposal is insufficient
  - Start-up time is insufficient
  - Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
  - Proposal requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
  - MBE or VSBE requirements (Explain in REMARKS section)
  - Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
  - Payment schedule too slow
  - Other: \_\_\_\_\_
2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

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

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

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

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

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

**STATE OF MARYLAND**  
**MARYLAND HEALTH BENEFIT EXCHANGE (MHBE)**  
**REQUEST FOR PROPOSALS (RFP)**  
**KEY INFORMATION SUMMARY SHEET**

<b>Request for Proposals</b>	<b>Small Business Premium Aggregation and Billing Solution</b>
<b>Solicitation Number:</b>	BPM043384
<b>RFP Issue Date:</b>	June 17 <sup>th</sup> , 2024
<b>RFP Issuing Office:</b>	MARYLAND HEALTH BENEFIT EXCHANGE (MHBE)
<b>Procurement Officer:</b>  <b>e-mail:</b> <b>Office Phone:</b>	Shirelle Green 750 E. Pratt Street, 6 <sup>th</sup> , floor, Baltimore, MD 21202 Shirelle.green1@maryland.gov 410-547-8151
<b>Proposals are to be sent to:</b>	Via eMaryland Marketplace advantage: <a href="https://emma.maryland.gov">https://emma.maryland.gov</a>
<b>Pre-Proposal Conference:</b>	<b>June 26, 2024, @10:00 am via google meeting.</b> PRE PROPOSAL CONFERENCE0 SMALL BUSINESS Wednesday, June 26 · 10:00 – 11:00am est. Google Meet joining info Video call link: <a href="https://meet.google.com/aec-kubk-tfm">https://meet.google.com/aec-kubk-tfm</a> Or dial: (US) +1 361-245-0129 PIN: 572 439 150# More phone numbers: <a href="https://tel.meet/aec-kubk-tfm?pin=2124477718388">https://tel.meet/aec-kubk-tfm?pin=2124477718388</a>
<b>Questions Due Date and Time</b>	July 11, 2024 @ 10:00 am
<b>Proposal Due (Closing) Date and Time:</b>	July 26, 2024 @ 10:00 am
<b>MBE Subcontracting Goal:</b>	10%
<b>VSBE Subcontracting Goal:</b>	None
<b>Contract Type:</b>	Firm Fixed Price
<b>Contract Duration:</b>	Three -year base with two one -year options.

<b>Primary Place of Performance:</b>	750 E. Pratt Street, 6 <sup>th</sup> Floor, Baltimore, MD 21202
<b>SBR Designation:</b>	No
<b>Federal Funding:</b>	No

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## 1 Minimum Qualifications

### 1. Offeror Minimum Qualifications

- 1.1.1 Offeror must have demonstrated experience providing premium aggregation and billing in public exchanges or similar organizations in the last five years.
- 1.1.2 Offeror must have one current contract providing a premium aggregation and billing solution for a state-based exchange small business program or similar organization within the last year.
- 1.1.3 Offeror must have one contract in the last seven years, not including the current contract mentioned above, providing a premium aggregation and billing solution for a state-based exchange small business program or similar organization.

As part of the determination to be considered reasonably susceptible of being selected for award, the Offeror must document in its Proposal that, within the last seven (7) years, the following Minimum Qualifications have been met:

**Required Documentation 1.1.1:** Provide details of the Offeror's experience working with public exchanges or similar organizations and with carriers operating within those marketplaces. Provide the name of every client that has contracted with the Bidder for marketplace-related information technology solutions and/or business process supports in the last five years, the contract dates, and a short description of the scope of services for each contract.

**Required Documentation 1.1.2:** As proof of meeting this requirement, the Offeror shall provide with its Proposal a reference from the current contract that collectively is able to attest to the Offeror's time frame of, and activities performed under, the current contract. All references must be on the company's letterhead from which the reference is coming from. All references must include the contact person's name, telephone number, email address, the value of the contract, and the terms/duration of the contract.

**Required Documentation: 1.1.3:** The Offeror must submit documentation which demonstrates one contract in the last seven years that shows Offeror's experience, term of the contracts and value. Documentation shall include a reference from the past contract that collectively is able to attest to the Offeror's time frame of, and activities performed under, the current contract. All references must be on the company's letterhead from which the reference is coming from. All references must include the contact person's name, telephone number, email address, the value of the contract, and the terms/duration of the contract.

2. Offeror Shall provide at least two references which demonstrated experience providing premium aggregation and billing in public exchanges or similar organizations within the last seven years.

## 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 services to implement, host, maintain, and provide end-user support to a back-end premium aggregation and billing solutions for Small Business.
- 2.1.2 It is the State's intention to obtain goods and services, as specified in this RFP, from a Contract between the selected Offeror and the State.
- 2.1.3 The MHBE intends to make a single award as a result of this RFP. See RFP **Section 4.9 Award Basis** for more Contract award information.
- 2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.5 The purpose of this solicitation is to procure an application to provide premium aggregation and billing services for MHC for Small Business.
- 2.1.6 A Contract award does not ensure a Contractor will receive all or any State business under the Contract.
- 2.1.7 Maryland State and local entities, and not-for-profit entities within the State of Maryland, as defined in State Finance and Procurement 13-110(a)(5) - (7), may purchase from the Contractor goods or services covered by the Contract at the same prices chargeable to the State. All such purchases by non-executive branch entities, non-State governments, government agencies or not-for-profit entities:
  - A. Shall constitute Contracts between the Contractor and that government, agency or not-for-profit entity;
  - B. Shall not constitute purchases by the State or State agencies under the Contract;
  - C. Shall not be binding or enforceable against the State; and
  - D. May be subject to other terms and conditions agreed to by the Contractor and the purchaser.

### 2.2 Background, Purpose and Goals

The goal of the Maryland Health Benefit Exchange (MHBE) is to make health coverage affordable and more accessible for the citizens of Maryland. MHBE is responsible for the Maryland Health Connection (MHC) and Maryland Health Connection for Small Business (MHC-SB), the State's health insurance marketplace under the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended, including the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), and all regulations promulgated pursuant thereto (the "ACA").



### **Our Guiding Principles:**

- ❖ Accessibility
- ❖ Affordability
- ❖ Sustainability
- Flexibility
- Health Equity
- Transparency

The MHBE initially provided Exchange-certified plans to the small group market in Maryland directly through SHOP-authorized carriers from April 2014. From January 2015, employers could purchase health and dental plans through a Small Business Health Options (SHOP) Third Party Administrator contracted by MHBE. Employers had the option of either selecting one carrier and offering one or more plans to employees (Employer choice) or choosing two metal levels with all carriers and their products (Employee choice). The Employer choice option continued to use a direct enrollment process, while the Employee choice was managed exclusively by SHOP Administrators. On August 1, 2018, MHBE returned to a direct enrollment process with individual carriers. MHBE also rebranded SHOP as Maryland Health Connection for Small Business (MHC-SB).

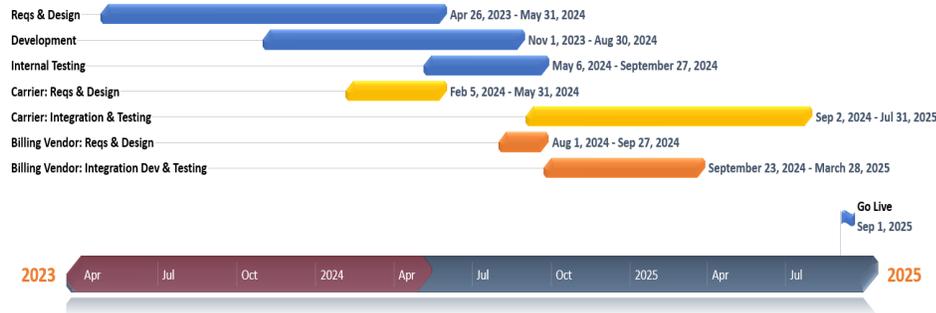
MHC-SB aims to provide Maryland's small businesses with access to resources, education, and a streamlined health insurance enrollment process, leading to a more resilient and competitive business environment, demonstrating Maryland's continued commitment to supporting small businesses and brokers, and ultimately reducing the number of uninsured individuals in Maryland.

MHBE is currently engaged in the in-house development of a small business enrollment portal. This portal will change the way employers interact with health insurance plans by offering a centralized platform for plan comparison, enrollment, premium payments, and other operational functions. Notably, the portal will cater not only to employers but also to other crucial stakeholders such as employees and brokers, for a seamless experience for all involved parties. For employers, the portal will provide a user-friendly interface to compare various MHC-SB certified plans and facilitate the enrollment process effortlessly. Additionally, employers will manage group premium payments through the portal, which will be facilitated by a dedicated vendor.

All MHC-SB certified plans, whether Employer or Employee choice, will be purchased and administered through the MHC-SB platform. Dental and vision carriers currently do not participate on the MHC-SB platform, but may decide to join in the future. Broker compensation will be handled directly by the issuer/carrier partners.

### **2.2.1 Project Goals**

The purpose of this Request for Proposals ("RFP") is to contract with a seasoned contractor that will supply, implement, host, maintain, and provide end-user support to a back-end premium aggregation and billing solution. The system will be used on the front end by employers, employees, and brokers, and on the back end by the contractor and MHBE staff. MHBE expects the contractor's solution to include premium collection,

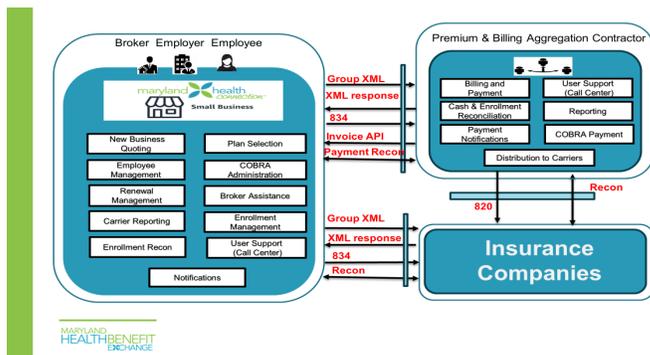


notices/correspondence, customer support, reconciliation, and security/compliance features to support premium aggregation and billing services for the MHC for Small Business platform.

**Current Status and Projected Growth**

As of May 2024, MHC for Small Business serves approximately 130 groups with 630 total covered lives. Based on our existing outreach, education, marketing plan, and advanced technology our growth projections suggest an increase to 2,000 groups and 10,000 members first five years following the launch of the MHC for Small Business portal.

The schematic below shows the activities to be handled by MHC-SB and by the premium aggregation and billing contractor, as well as planned data exchanges between MHC-SB, the contractor, and insurance companies.



The table below shows the planned timeline for the project, including planning, development, testing, deployment, and launch, which is scheduled for September 2025.

Anticipated Project Timeline

**2.2.1 State Staff and Roles**

In addition to the Procurement Officer and Contract Monitor, the State may designate a State Project Manager, who may be the same individual as the Contract Monitor.

The Contract Monitor shall be included on all correspondence between the Offeror and MHBE, and shall be the primary MHBE point of contact for the Offeror. The Contract Monitor shall communicate whether deliverables are accepted. All reports provided to MHBE by the Offeror shall be provided to the Contract Monitor.

The State Project Manager, when assigned, shall ensure access to business and technical documents as necessary for the Offeror to complete the tasks identified in this RFP; ensure appropriate resources are available to perform tasks assigned to MHBE, attend meetings, and answer questions; ensure that decisions are made in a timely manner; and identify and provide access to MHBE Subject Matter Experts to assist in the development of technical requirements.

**2.2.2 Other State Responsibilities**

The State is responsible for providing the required information, data, documentation, and test data to facilitate the Contractor’s performance of the work, and will provide such additional assistance and services as is specifically set forth.

**2.3 Responsibilities and Tasks**

**2.3.1 Agency Requirements**

MHBE is seeking a premium aggregating and billing solution contractor that meets the following functional responsibilities and requirements.

Req #	Category	Requirements
GR- 01	General Billing and Aggregation Requirements	<ul style="list-style-type: none"> <li>A. Contractor must provide a back-end premium aggregation and billing solution.</li> <li>B. The contractor must establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles (GAAP).               <ul style="list-style-type: none"> <li>1. Unless otherwise agreed between MHC-SB and Contractor, Contractor must provide GAAP compliant summary level accounting transactions for all general ledger-related entries, including but not limited to, revenue, cash, cash receipts, billing, accounts receivable, expenses, disbursements, and accounts payable.</li> <li>2. While subject to change based on MHC-SB’s sole discretion, detail reporting of billing, cash receipts, and cash disbursements are not expected to be in a GAAP-compliant format (i.e. GAAP standardized financial statements).</li> </ul> </li> <li>C. Contractor must provide a solution that supports role-based access for MHBE staff using a least privilege approach. Contractor must provide a solution that supports billing, batch processes, reporting, and delinquency processes.</li> <li>D. The solution must ensure the premium aggregation and billing solution is in sync with the enrollment system.</li> </ul>

Req #	Category	Requirements
PBS- 02	Premium Aggregation and Billing Solution	<p>A. Premium Billing and Adjustments</p> <ol style="list-style-type: none"> <li>1. The system must provide a configurable monthly billing process.</li> <li>2. Invoice statements and all notices generated by the contractor must adhere to MHC-SB's branding guidelines for consistent visual identity.</li> <li>3. Invoices must be accessible electronically in the employer's MHC-SB account, providing real-time availability and by mail if the employer opts in to receive paper notices.</li> <li>4. The system will provide a single consolidated bill across medical and ancillary products such as dental (when applicable) policies across all carriers within the group, including new charges, payments, adjustments, etc.</li> <li>5. The system must generate initial statements on a daily basis for new groups to make a binder payment. The invoice statement must contain at minimum the following fields:               <ol style="list-style-type: none"> <li>a. Issuer/s (Carrier/s) name</li> <li>b. Employee plan selection</li> <li>c. Employee name</li> <li>d. Employee HBX assigned ID</li> <li>e. Group Name and HBX assigned ID</li> <li>f. Number of persons covered</li> <li>g. Coverage month/year</li> <li>h. Status (Current, Retroactive Add, Retroactive Term, COBRA beneficiaries)</li> <li>i. Employer contribution amount</li> <li>j. Employee contribution amount</li> <li>k. Total employer premium owed</li> <li>l. Other fields as determined necessary by MHBE.</li> </ol> </li> <li>6. MHC-SB COBRA bills must be accessible electronically in the employee's MHC-SB account, providing real time availability and by mail if the employer opts in to receive paper notices.</li> <li>7. The system must aggregate premiums across multiple carriers onto a single monthly statement for employers to pay.</li> <li>8. The system must aggregate premiums, incorporating the benchmark contribution amount from a reference plan, into a single monthly statement for employers to pay, as required.</li> <li>9. The system must automatically reallocate payments based on enrollment activity such as retro</li> </ol>

Req #	Category	Requirements
		<p>terminations.</p> <ol style="list-style-type: none"> <li>10. The system must provide the ability to track delinquency status by account.</li> <li>11. The system must provide the ability to configure delinquency business rules defined by MHBE.</li> <li>12. The system must offer essential user roles, including MHBE and Employer administrators to search for customers, subscribers, and dependents and view necessary billing/payment details.</li> <li>13. The system must provide readily available financial reports accessible via the premium aggregation and billing system's user interface.</li> <li>14. The system must provide the ability to process retroactive transactions.</li> </ol> <p>B. Premium Aggregation, Collection/Payment, Refunds, and Distribution to Carriers</p> <ol style="list-style-type: none"> <li>1. The system must provide regularly scheduled, automated premium aggregation processes.</li> <li>2. Accept the following forms of payment from employers: ACH/EFT, credit card, paper check, cashier's check, and money order.</li> <li>3. Post all payments at a member level to support member level reconciliation and carrier payments. This includes accounting for:               <ol style="list-style-type: none"> <li>a. Full payments</li> <li>b. Partial payments</li> <li>c. Overpayments</li> <li>d. Suspense account management</li> <li>e. Non-sufficient funds</li> <li>f. Cash postings corrections and adjustments</li> </ol> </li> <li>4. The contractor will be required to establish and manage an account, pledging collateralization that is dedicated to receiving and disbursing premium payments from employers and employees on behalf of MHC for Small Business including a payment lockbox.</li> <li>5. The contractor must demonstrate an established industry-wide process to access bank accounts owned by an exchange as the MHBE may consider using its own bank account at some point in the future.</li> <li>6. The contractor must comply with the privacy and security requirements in accordance with 45 CFR 155.260 and 155.270, whenever the contractor is</li> </ol>

Req #	Category	Requirements
		<p>conducting an electronic transaction involving the payment of premium or electronic funds transfer.</p> <ol style="list-style-type: none"> <li>7. The system must provide the ability to load a payment via lock box.</li> <li>8. The system must provide the ability for MHBE administrators to process a customer's payment (Credit Card, Check (including a live paper check, bank or cashier's check and money orders), ACH).</li> <li>9. The system must automatically apply payments at the coverage month level, oldest open invoice to newest.</li> <li>10. The system must automatically update the group's paid through date when payment has been made.</li> <li>11. The system must suspend employer overpayments until they can be applied to a current bill/billing run.</li> <li>12. The system must track payments which cannot be automatically applied in a separate suspense account for research.</li> <li>13. The system must provide the ability to configure fees for insufficient funds.</li> <li>14. The system must provide the ability to hand off to issuers the write-off and collections process for terminated groups and members for uncollected premiums on a frequency defined by MHBE.</li> <li>15. The system must provide the ability to set up automated refunds using configurable parameters.</li> <li>16. The system must support the life cycle of a refund request from the point of request through the issuance of a check.</li> <li>17. The system must provide refunds to employers with credit balances as requested.</li> <li>18. The system must reverse and refund payments as necessary including offsetting customer overpayments where applicable.</li> <li>19. The system must provide daily cash reconciliation processes between the contractor and the bank.</li> <li>20. The system must remit premiums to carriers on a configurable schedule.</li> <li>21. The system must pay carriers directly via various payment methods (e.g. Electronic Funds Transfer (EFT)/Automated Clearing House (ACH), paper check).</li> <li>22. The solution must support management of customer returned or undeliverable payments.</li> </ol>

Req #	Category	Requirements
		<p>C. MHBE Oversight</p> <ol style="list-style-type: none"> <li>1. The system must allow for the preservation of and the ability to reproduce each month's summary of information at both the summary and employer detailed level.</li> <li>2. The system must support the creation of an MHBE accounting summary and detailed reporting at the carrier, employer group bill, and member levels.</li> <li>3. The listing of all carrier payments must be available to MHC-SB users for potential review and approval.</li> <li>4. The system must produce a listing of all proposed carrier payments subject to the validation listed below:               <ol style="list-style-type: none"> <li>a. Validation for previous over/under payments previously made</li> <li>b. Check for negative amounts payable</li> <li>c. Validate current carrier of record</li> <li>d. Retroactivity and termination adjustments</li> </ol> </li> </ol> <p>D. User Support</p> <ol style="list-style-type: none"> <li>1. The contractor is required to provide a system user guide/manual for employer premium payments that will be available in the employer's account.</li> <li>2. The contractor will provide a system user guide/manual for employees responsible for making payments for COBRA plans.</li> </ol>
T- 03	Testing	<p>A. Contractor is required to provide a system and testing environment (i.e. UAT "sandbox") that will allow MHC-SB to recreate transactions and see how they flow through the system.</p>
RDM-04	Reconciliation and Data Migration	<p>A. The system must provide the ability to reconcile discrepancies with the MHC-SB enrollment system on a daily, weekly, and monthly basis.</p> <p>B. The contractor must provide premium billing and aggregation service support for MHC-SB migrated groups including participation in a data migration plan, adhering to a data migration schedule, data migration dry runs, and a final migration report.</p> <p>C. The contractor must be able to migrate financial data for existing groups such as:</p> <ol style="list-style-type: none"> <li>1. Paid coverage months</li> <li>2. Unpaid coverage months</li> <li>3. Payment history</li> </ol>

Req #	Category	Requirements
		<p>4. Paid through date</p> <p>D. Provide tools that easily support the reconciliation of bills to daily and month-to-date totals including full account transparency within the system to be able to see any changes that were applied to the account, when they were applied and how they were applied.</p> <p>E. Ability to track and manage customer non-payment exceptions and allow the user to notate why the exception was made.</p> <p>F. Summarize and maintain detail at an adjustment month level all daily cash activity, such as the sum of the parts equal to the whole deposit.</p>
DCM- 05	Delinquency/Collections Management	<p>A. The solution must support all invoice statements including Intent to Cancel Notifications.</p> <p>B. For any delinquent or continuously delinquent groups, the system must send an intent to cancel notification following MHC-SB's policy on grace periods and payment thresholds.</p> <p>C. Send delinquency notifications to Brokers and General Agents associated with the employer group.</p> <p>D. Automatically provide copies of delinquency communications to MHC-SB.</p>
CC- 06	Call Center	<p>A. The contractor shall provide a call center to handle inquiries related to billing and payment. Contractor should indicate if call center offers a live chat feature, which is preferred but not required.</p> <p>B. The contractor's Customer Service Center is expected to synchronize its operating hours with those of MHBE's.</p> <p>C. The call center will accept and provide warm hand-offs to the MHC for Small Business.</p>
SCI - 07	Security, Compliance, and Infrastructure	<p>A. The system must operate within the Continental United States.</p> <p>B. The system must comply with MARS-E or similar security framework such as NIST CSF, FedRamp, and HIPAA.</p> <p>C. The system must maintain all records and transactions, both soft (or electronic) and hard (PDFs are acceptable) copies, pertaining to the Services.</p> <p>D. The system must comply with the requirements of the Patient Protection and Affordable Care Act (ACA) and Health Insurance Portability and Accountability Act of 1996 (HIPAA), Electronic Funds Transfer Act (EFTA),</p>

Req #	Category	Requirements
		<p>and Maryland Identity Theft Protection Act.</p> <ul style="list-style-type: none"> <li>E. The system must provide audit tables to ensure all actions taken in the system can be reviewed.</li> <li>F. The contractor must provide a disaster recovery plan within 90 days of the project start date.</li> <li>G. The solution shall provide the capability to generate alerts for conditions that violate security rules, including at a minimum:               <ul style="list-style-type: none"> <li>1. Unauthorized access attempts on data and system function</li> <li>2. Login attempts that exceed the maximum allowed</li> <li>3. Termination of authorized sessions after a specified period of inactivity</li> </ul> </li> </ul>
RP-08	Reporting	<ul style="list-style-type: none"> <li>A. The solution must support automated report production and delivery to MHBE at mutually agreed to intervals, including but not limited to the reports described in this section.</li> <li>B. The solution must support report production on an ad hoc basis based on MHBE request.</li> <li>C. The solution must calculate amounts due to carriers monthly and provide payment detail reporting to MHBE and the carriers.</li> <li>D. Provide monthly reconciliation report to MHBE and carriers with credits, debits, and balances for the following:               <ul style="list-style-type: none"> <li>1. Bank statements</li> <li>2. Enrollment to disbursements</li> <li>3. Cash applied</li> <li>4. Suspense accounting</li> <li>5. Terminated groups</li> </ul> </li> <li>E. Provide summary and detail-level reporting on all outbound communications provided to groups. These communications include but are not limited to:               <ul style="list-style-type: none"> <li>1. Invoices</li> <li>2. Delinquency notices</li> <li>3. Non-sufficient funds notices</li> </ul> </li> <li>F. The system must send a file to MHC-SB containing an aging report, segmented into 30-day date ranges, and broken out by group/member. This report should include:               <ul style="list-style-type: none"> <li>1. Currently due payments.</li> <li>2. Payments past due by 30, 60, 90, and 120+ days.</li> </ul> </li> </ul>

### 2.3.2 Contractor-Supplied Hardware, Software, and Materials

- A. SaaS applications shall be accessible from a web browser.
- B. The Contractor is responsible for the acquisition and operation of all hardware, software and network support related to the services being provided and shall keep all software current.
- C. All upgrades and regulatory updates to the application provided to MHBE shall be provided at no additional cost.
- D. The State also requires that the Offeror provide fully functional, generally available software and multiple-user licenses for purchase as needed throughout the life of the Contract.
- E. The Offeror shall maintain and provide documentation for the software furnished under the Contract.
- F. Material costs shall be passed through with no mark-up by the Contractor.

### 2.3.3 Required Project Policies, Guidelines and Methodologies

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting Information Technology projects, which may be created or changed periodically. Offeror is required to review all applicable links provided below and state compliance in its response.

It is the responsibility of the 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:

- A. The State of Maryland System Development Life Cycle (SDLC) methodology at: <http://doit.maryland.gov/SDLC/Pages/agile-sdlc.aspx> ;
- B. The State of Maryland Information Technology Non-Visual Standards at: <http://doit.maryland.gov/policies/Pages/ContractPolicies.aspx>;

### 2.3.4 Product Requirements

- A. Offerors may propose open-source software; however, the Offeror must provide operational support for the proposed software as part of its Proposal.
- B. Offeror shall be authorized to furnish the proposed goods and services. Offerors proposing to resell services of another entity must be authorized by such other entity.
- C. The storage and processing of MHBE's Data shall occur within the continental U.S. Offerors are advised that any processing or storage of data outside of the continental U.S is prohibited.
- D. Offeror consistent expiration dates: A PO for a service already being delivered to the MHBE under the Contract shall terminate on the same calendar day as the prior product/service. As appropriate, charges shall be pro-rated.
- E. Any Contract award is contingent on the State's agreement, during the Proposal evaluation process, to any applicable terms of use and any other agreement. Such

agreed upon terms of use shall apply consistently across services ordered under the Contract.

- F. The Contractor shall not establish any auto-renewal of services beyond the period identified in Contract documents.
- G. In addition to any notices of renewal sent to the MHBE, Contractors shall email notices of renewal to the e-mail address designated by the Contract Monitor.

### 2.3.5 Maintenance and Support

Maintenance and support, and Contractor's ongoing maintenance and support obligations, are defined as follows:

- A. Maintenance commences immediately upon its launch or shortly thereafter.
- B. Software maintenance includes all future software updates and system enhancements applicable to system modules licensed without further charge to all licensed users maintaining a renewable software support contract.
- C. Support shall be provided for superseded releases and back releases still in use by the State.
- D. For the first year and all subsequent Contract years, the following services shall be provided for the current version and one previous version of any Software provided with the Deliverables;
  - 1) Error Correction. Upon notice by State of a problem with the Software (which problem can be verified), reasonable efforts to correct or provide a working solution for the problem.
  - 2) Material Defects. Contractor shall notify the State of any material errors or defects in the Deliverables known or made known to Contractor from any source during the life of the Contract that could cause the production of inaccurate or otherwise materially incorrect results. The Contractor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
  - 3) Updates. The contractor will provide to the State at no additional charge all new releases and bug fixes (collectively referred to as "Updates") for any software Deliverable developed or published by the Contractor and made available to its other customers.
- E. Operations tasks to include virus scans
- F. Activity reporting
- G. Call Center "User support"
  - 1) The Contractor Call Center shall furnish support for employers, employees, and brokers for the purpose of troubleshooting guidance, resolving problems, and providing information.
  - 2) Support services are available during the hours defined in 3.16 Work Hours.

- 3) The Contractor shall utilize a ticketing system to record and track all calls. The ticket system shall record with a date and timestamp when the ticket was opened and when the ticket was closed.

#### 2.3.5.1 Technical Support

- A. “Technical Support” means Contractor-provided assistance for the services or Solution furnished under the Contract, after initial end-user support confirms a technical issue that requires additional troubleshooting capabilities.
- B. The State shall be able to contact a Technical Support team member 24 hours per day, 7 days per week, 365 days per year for critical issues such as a Sev1 and Sev2.
- C. Contractor Personnel providing technical support shall be familiar with the State’s account (i.e., calls shall not be sent to a general queue).
- D. Contractor shall return calls or emails for service of Sev 1 and Sev 2 systems issues (see Section 2.6 Service Level Agreement) within one (1) hour.
- E. Calls or emails for non-emergency IT or business service requests will be returned within three (3) hours or immediately the following day if after Business Support Hours.
- F. The State shall be provided with information on software problems encountered at other locations, along with the solution to those problems, when relevant to State software.

#### 2.3.5.2 Backup

The Contractor shall:

- A. Perform backups of the web, application, and database servers on a regular basis. This shall include daily incremental backups and full weekly backups of all volumes of servers;
- B. Retain daily backups for one (1) month and weekly backups shall be retained for two (2) years;
- C. Store daily backups off-site or document other recovery options such as multi-data center cloud services.
- D. Have established Recovery Time Objective (RTO) and Recovery Point Objective (RPO) metrics in order to restore the system in the event of a disaster.

## 2.4 Deliverables

### 2.4.1 Deliverable Submission

- A. For every deliverable, the Contractor shall request the Contract Monitor confirm receipt of that deliverable by sending an e-mail identifying the deliverable name and date of receipt.
- B. Contract Monitor may request one hard copy of a written deliverable.

- C. A standard deliverable review cycle will be elaborated and agreed-upon between the State and the Contractor. This review process is entered into when the Contractor completes a deliverable.
- D. For any written deliverable, the Contract Monitor may request a draft version of the deliverable, to comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**. Drafts of each final deliverable, except status reports, are required at least two weeks in advance of when the final deliverables are due (with the exception of deliverables due at the beginning of the project where this lead time is not possible, or where draft delivery date is explicitly specified). Draft versions of a deliverable shall comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**.

#### 2.4.2 Deliverable Acceptance

- A. A final deliverable shall satisfy the scope and requirements of this RFP for that deliverable, including the quality and acceptance criteria for a final deliverable as defined in **Section 2.4.4 Deliverable Descriptions/Acceptance Criteria**.
- B. The Contract Monitor shall review a final deliverable to determine compliance with the acceptance criteria as defined for that deliverable. The Contract Monitor is responsible for coordinating comments and input from various team members and stakeholders. The Contract Monitor is responsible for providing clear guidance and direction to the Contractor in the event of divergent feedback from various team members.
- C. The Contract Monitor will issue to the Contractor a notice of acceptance or rejection of the deliverable. Following the Contract Monitor's response indicating "Accepted", the Contractor shall submit a proper invoice in accordance with the procedures in **Section 3.3**.
- D. In the event of rejection, the Contract Monitor will formally communicate in writing any deliverable deficiencies or non-conformities to the Contractor, describing in those deficiencies what shall be corrected prior to acceptance of the deliverable in sufficient detail for the Contractor to address the deficiencies. The Contractor shall correct deficiencies and resubmit the corrected deliverable for acceptance within the agreed-upon time period for correction.

#### 2.4.3 Minimum Deliverable Quality

The Contractor shall subject each deliverable to its internal quality-control process prior to submitting the deliverable to the State.

Each deliverable shall meet the following minimum acceptance criteria:

- A. Be presented in a format appropriate for the subject matter and depth of discussion.
- B. Be organized in a manner that presents a logical flow of the deliverable's content.
- C. Represent factual information reasonably expected to have been known at the time of submittal.

- D. In each section of the deliverable, include only information relevant to that section of the deliverable.
- E. Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.
- F. Meets the acceptance criteria applicable to that deliverable, including any State policies, functional or non-functional requirements, or industry standards.
- G. Contains no structural errors such as poor grammar, misspellings or incorrect punctuation.
- H. Must contain the date, author, and page numbers. When applicable for a deliverable, a revision table must be included.
- I. A draft written deliverable may contain limited structural errors such as incorrect punctuation and shall represent a significant level of completeness toward the associated final written deliverable. The draft written deliverable shall otherwise comply with the minimum deliverable quality criteria above.

#### 2.4.4 Deliverable Descriptions/Acceptance Criteria

In addition to the items identified in the table below, the Contractor may suggest other subtasks, artifacts, or deliverables to improve the quality and success of the assigned tasks.

#### Deliverables Summary Table\*

Upon contract award, the Offeror should be prepared to participate and/ or provide the following pre-launch and go-live deliverables according to the due date/frequency shown in the table:

Pre-Launch Deliverables			
ID #	Deliverable Description	Acceptance Criteria	Due Date / Frequency
1.	Kick-Off Meeting to include establishing MHBE and contractor staff leader vision and expectations.	Establish an initial project implementation plan with a timeline.	Initial Delivery: Notice to Proceed (NTP) + 5 Business Days Updates: N/A
2.	Provide weekly project status reports.	Progress reports should include a summary of progress made during the previous week providing sufficient detail on the project's status.	Initial Delivery: NTP + 10 Business Days Updates: Weekly
3.	Finalized technology, billing & aggregation solution requirements.	Provide clearly defined requirements for the billing and aggregation technological solutions including necessary information.	Initial Delivery: NTP + 30 Calendar Days Updates: N/A
4.	Provide system design and interface control documentation (ICD).	Provide comprehensive documentation of all interfaces complying with relevant standards and must be traceable to corresponding system requirements.	Initial Delivery: NTP + 35 Calendar Days Updates: N/A

5.	Provide a Development plan, Test plan and test strategy for the solution.	Outline the objectives, scope, methodologies, and resources for testing, ensuring alignment with project requirements and industry best practices. Define measurable metrics for assessing test coverage, quality assurance procedures.	Initial Delivery: NTP + 45 Calendar Days Updates: N/A
6.	Provide a test summary report.	Provide clear documentation of test results, including pass/fail status, identified defects, test coverage metrics, and adherence to predefined quality standards	Initial Delivery: 10 Business days before go-live date Updates: N/A
7.	Data Migration of existing customer DB and actions from existing Carriers	Provide financial data migration for existing groups at their scheduled renewal dates for GoLive readiness.	Initial Delivery: 60 Calendar days before go-live date Updates: N/A
8.	Contractor, MHBE, and Broker training materials and sessions.	Provide training materials in formats including paper and electronic and that accurately reflect the roles, responsibilities, and processes relevant to users of the solution. Provide training that accurately reflect the roles, responsibilities, and processes relevant to users of the solution.	Initial Delivery: 60 Calendar days before go-live date. Updates: N/A
9.	Launch integrated billing and aggregation solution.	Sign off from all stakeholders before go live	Initial Delivery: September 1, 2025 Updates: N/A
<b>Go-Live &amp; Post Go-Live Deliverables</b>			
1	Real-time system monitoring.	Provide real-time monitoring capabilities for the billing & aggregation solution.	Initial Delivery: September 1, 2025 Updates: Ongoing
2	Daily, Weekly, Monthly performance reporting as defined in SOW.	Accurate and timely reports	Initial Delivery: September 1, 2025 Updates: Ongoing

\*The deliverables summary table may not list every contractually required deliverable. Offerors and Contractors should read the RFP thoroughly for all Contract requirements and deliverables.

## 2.5 Optional Features or Services, Future Work

### 2.5.1 Potential Future Work

The immediate objective outline in the RFP are focused on enhancing the billing component of MHC for Small Business medical plans. MHBE anticipates further enhancements of the MHC for Small Business Enrollment Portal, which include two additional components: (1) incorporating a composite rating methodology on employer invoices when an employer chooses a single plan model and (2) integrating the billing component for ancillary products such as dental and vision benefits. The latter future work enhancement is contingent upon the interest and participation of ancillary providers with MHC-SB. Any future work on these enhancements will be pursued through a contract amendment process.

## 2.6 Service Level Agreement (SLA)

### 2.6.1 Definitions

- A. A “Problem” is defined as any situation or issue reported via a help desk ticket that is related to the system operation that is not an enhancement request.
- B. “Problem resolution time” is defined as the period of time from when the help desk ticket is opened to when it is resolved.
- C. Monthly Charges: for purposes of SLA credit calculation, Monthly Charges are defined as the charges set forth in **Attachment B, Financial Proposal Form**, invoiced during the month of the breach for the monthly fixed services, or, in the event of annual billing, 1/12 of the annual invoice amount **Financial Proposal Form**.

### 2.6.2 SLA Requirements

#### The Contractor shall:

- A. Be responsible for complying with all performance measurements and shall also ensure compliance by all subcontractors.
- B. Meet the Problem response time and resolution requirements as defined in **Section 2.6.9**.
- C. Provide a monthly report to monitor and detail response times and resolution times.
- D. Log Problems into the Contractor-supplied help desk software and assign an initial severity (Sev 1, Sev 2 and Sev 3 as defined in **Section 2.6.9**).
- E. Respond to and update all Problems, including recording when a Problem is resolved and its resolution. Appropriate MHBE personnel shall be notified when a Problem is resolved.
- F. The MHBE shall make the final determination regarding Problem severity.
- G. Contractor shall review any systematic problem and establish the remediation plan and relevant target dates. MHBE will review and approve the remediation plan.

### 2.6.3 SLA Effective Date (SLA Activation Date)

SLAs set forth herein shall be in effect beginning with the commencement of monthly services as of the notice to proceed date. SLA credits shall not be assessed for the first 120 days of the contract. The

Contractor shall be responsible for complying with all performance measurements and shall also ensure compliance by all subcontractors.

Beginning on the SLA Activation Date, for any performance measurement not met during the monthly reporting period, the SLA credit for that individual measurement shall be applied to the Monthly Charges.

#### **2.6.4 Service Level Reporting**

- A. Contractor performance will be monitored by MHBE.
- B. The Contractor shall provide detailed monthly reports evidencing the attained level for each SLA.
- C. Monthly reports shall be delivered via e-mail to the Contract Monitor on a schedule established by MHBE. If any of the performance measurements are not met during the monthly reporting period, the Contractor will be notified of the standard that is not in compliance.

#### **2.6.5 SLA Service Credits**

Time is an essential element of the Contract. For work that is not completed within the time(s) specified in the service level metrics below, the Contractor shall be liable for service credits in the amount(s) provided for in the Contract.

Service credits will be cumulative for each missed service requirement. The State, at its option for amount due the State as service credits, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item. In the event of a catastrophic failure affecting all services, all affected SLAs shall be credited to the State.

In no event shall the aggregate of all SLA credits paid to the State in any calendar month exceed 25% of the Monthly Charges.

Example: If the Monthly Charges were \$100,000 and one SLA were missed, with an applicable 4% credit, the credit to the monthly invoice would be \$4,000, and the State would pay a net Monthly Charge of \$96,000.

The parties agree that any assessment of service credits shall be construed and treated by the parties not as imposing a penalty upon the Contractor, but as compensation to the State for the Contractor's failure to satisfy its service level obligations. The MHBE may waive service credits in full or in part, at its sole discretion, after an assessment of factors contributing to the Contractor's failure to meet an SLA.

#### **2.6.6 Root Cause Analysis**

If the same SLA measurement yields an SLA credit more than once, the Contractor shall conduct a root cause analysis. Such root cause analysis shall be provided within 30 days of the second breach, and every breach thereafter.

In addition, for each 'Emergency' or 'High' priority Problem, the affected parties will perform a root cause analysis and institute a process of problem management to prevent recurrence of the issue.

### 2.6.7 Service Level Agreement (SLA)

The Contractor will adhere to the service level agreements (SLAs) set forth below, which shall be reviewed and revised annually. No more than three (3) SLAs may be added or removed in each contract year. Contractor will be required to report on a basis determined by MHBE after contract signing.

Category	ID	Requirement	SLA Credit
Premium Billing and Aggregation	PB-01	Customer billing and invoicing must occur on schedule as defined by MBHE.	\$250 per day beyond scheduled date
Premium Billing and Aggregation	PB-02	Invoice statements must accurately reflect the amount owed per month based on enrollment.	\$50 per inaccurate statement
Premium Billing and Aggregation	PB-03	Terminated groups with an outstanding balance must be transitioned to issuer/s within 5 days.	\$250 per day beyond scheduled date
Premium Billing and Aggregation	PB-04	Premium Remittance (EDI 820) must occur on schedule as defined by MHBE and Contractor.	\$250 per day beyond scheduled date
Premium Billing and Aggregation	PB-05	Refunds for eligible accounts must be identified and processed on a weekly basis as defined by MBHE.	\$250 per day beyond scheduled date
Premium Billing and Aggregation	PB-06	Resolve bank discrepancies as reported within 2 business days	5% of Monthly Service Fee for each discrepancy not resolved within 2 business days
Notices/ Correspondences	NC-01	Generate Delinquency Notices no later than 2 days post transaction.	\$250 per day beyond scheduled date
Notices/ Correspondences	NC-02	(a) Generate 95% of the non-payment cancellation/termination notices within 3 business days of successful processing of termination. (b) Generate 98% of the non-payment cancellation/termination notices within 7 business days of successful processing of termination	\$250 per day beyond scheduled date
Notices/ Correspondences	NC-03	(a) Send 95% of customer billing-related electronic and mail notifications on regularly scheduled dates as established by MHBE. (b) Send 99% of customer billing-related electronic and mail notifications within 2 business days of regularly scheduled dates as established by MHBE	\$750 per month in which SLA is not met
Call Center	CC-08	Customer Service Center (including Live-Chat feature) will be available in synch with MHBE's except at Exchange approved times for system maintenance or Exchange approved closures such as government acknowledged holidays and emergencies. Additional hours at the discretion of the Exchange	\$1,000 per day for each unauthorized Call Center closure

Category	ID	Requirement	SLA Credit
		due to increased volumes at peak times of the year.	
Call Center	CC-09	Average Speed to Answer: Customer Service Center shall answer calls with an average delay of no more than 90 seconds on a monthly basis. Live Chat Speed of Answer: Within 90 seconds	1% of costs attributable to call center services will be deducted from monthly invoice when average monthly delay exceeds 90 seconds.
Call Center	CC-10	CRM resolution timeliness – Priority High, Medium, and Reopened Ticket: Resolve or escalate these tickets within 2 business days	\$50 per ticket instance not resolved or escalated exceeding 2 business days.
Call Center	CC-11	CRM resolution timeliness – LOW PRIORITY. Resolve or escalate ALL aging CRM tickets older than 5 business days (maximum 15 tickets)	\$25 per ticket for CRM tickets not reviewed or escalated that are older than 15 days (exclude reopened tickets)
Call Center	CC-12	The Customer Service Center shall ensure that no more than 5% of callers abandon from the ACD queue before speaking with a SHOP Customer Service representative excluding callers who hang up before being on hold at least 60 seconds.	10% of the Performance Period Call Center service fees if the monthly abandon rate rises above 5%
Reconciliation	RE-01	98% of 820 payment files must be delivered to carriers on the date determined by MHBE.	\$1,000 per month in which SLA is not met
Reconciliation	RE-02	100% of identified discrepancies must be answered within 15 business days	\$50 per incident not met per month, up to \$1000
Reconciliation	RE-03	Average % of discrepant accounts must be under 3%	\$1,000 per month in which SLA is not met
Privacy and Security	PS-01	Failure to notify MBHE in a timely manner (within five (5) days) of privacy or security incident.	\$500 per day beyond notification requirements, capped at \$5,000 per month
Privacy and Security	PS-02	Failure to notify MBHE in a timely manner (within one (1) hour) of privacy or security incident if incident amounts to breach of PII.	\$1,000 per day beyond notification requirements, capped at \$5,000 per month
Privacy and Security	PS-03	Failure to deliver the final investigative report of the privacy or security incident report (within 15 calendar days) after the incident constituting the breach is first known, identifying any successful unauthorized access to data and similar scenarios using the breach definition as a reference, with resolution	\$1,000 per day beyond notification requirements, capped at \$5,000 per month
Reporting	RP-01	Daily reports are due to MBHE by 12 pm the following Business Day.	\$200 for each Business Day beyond the due dates for each listed report. Monthly maximum of \$2,000.

Category	ID	Requirement	SLA Credit
Reporting	RP-02	Monthly reports are due to the MHBE by the second (2nd) Business Day following the end of the reporting period.	\$200 for each Business Day beyond the due dates for each listed report.  Monthly maximum of \$2,000.
Reporting	RP-03	Quarterly reports are due to the MHBE by the second (2nd) Business Day following the end of the reporting period.	\$200 for each Business Day beyond the due dates for each listed report.  Monthly maximum of \$2,000.
Reporting	RP-04	Annual reports are due to the MHBE by the second (2nd) Business Day following the end of the reporting period.	\$200 for each Business Day beyond the due dates for each listed report.  Monthly maximum of \$2,000.
Reporting	RP-05	Reporting Accuracy: All reports that are generated by the contractor or the Contractor-provided system will include accurate information. If the Exchange or Issuers identifies a problem with the content of a report and notifies, the contractor will be provided 2 days to research and respond. If the report is inaccurate, the contractor will produce a corrected report within 1 business day.	\$200 for each additional Business Day the corrected report is not delivered starting 3 business days after notification.
Reporting	RP- 06	Provide monthly SLA dashboard: The contractor shall provide a monthly dashboard that demonstrates the contractors compliance with all of the SLAs listed in section 2.6.7 and 2.6.8. SLAs may be excluded from the dashboard or reported less often than monthly upon mutual agreement of MHBE and the contractor. Upon request from MHBE, the contractor shall provide the underlying data substantiating the SLA results reported in the dashboard. <ul style="list-style-type: none"> <li>● SP-02</li> <li>● SP-05</li> <li>● PB-01- PB-06</li> <li>● NC-01- N3</li> <li>● CC-08 - CC-12</li> <li>● RE-01- RE-03</li> <li>● PS-01-PS-03</li> <li>● RP-01- RP-06</li> </ul>	\$200 for each Business Day beyond the due dates for each listed report.
Training	T-01	Provide training materials and personnel training according to the timeline set in deliverables section.	\$200 for each Business Day beyond the due date

2.6.8 **Service Level Measurements Table (System performance)**

The Contractor shall meet the Problem response time and resolution requirements. The Contractor shall provide a monthly report to monitor and detail response and resolution times.

No.	Service Requirement	Measurement	Service Level Agreement	SLA Credit
1	Problem Response Time – Severity 1	Average Response Time for Sev 1 Priority Problems.	98% <15 minutes	5%
2	Problem Response Time – Severity 2	Average Response Time for Sev 2 Priority Problems.	98% <30 minutes	1%
3	Problem Response Time – Severity 3	Average Response Time for Sev 3 Priority Problems	98% <2 hours or next business day (if after hours)	1%
4	Problem Resolution Time Severity 1	Resolution Time for each High Priority Problem	98% <2 hours	5%
5	Problem Resolution Time – Severity 2	Resolution Time for each Sev 2 Priority Problems	98% < 4 hours	1%
6	Problem Resolution Time -Severity 3	Resolution Time for Sev 3 Priority Problems	98% <24 hours	1%
7	Scheduled Downtime/ Maintenance	Scheduled Maintenance. Scheduled maintenance for all Exchange components is to be within the defined maintenance window(s), as approved by MBHE. The Contractor shall provide 14 calendar days’ notice prior to any scheduled downtime.	<2 hours per month of maintenance outside approved windows.	5%
8	Service Availability	All application functionality and accessibility shall be maintained at 99.5% uptime performance levels. Contractor shall minimize or eliminate unscheduled network downtime to .5% or less.	<99.5%	5%
9	Disaster Recovery	Contractor shall provide recovery and continuity of operations within 24 hours of a System/network failover.	24 hours	10%

No.	Service Requirement	Measurement	Service Level Agreement	SLA Credit
10	Notification of Security Incident	Notification of a Security and or Privacy Incident within 1 hour of occurrence	100%	5%
11	Security Incident Reporting	Finalize and provide Security incident reporting requirement in 15 days	15 days	10%
12	System Configurations	Complete system configurations based on the MHBE provided timeline.	Per occurrence	5%
13	Page Response Time	Monthly average page response time will not exceed 3.5 seconds.	Per occurrence	5%

The State shall have the unilateral right to reallocate percentages among the various SLAs annually on the anniversary of the Contract, provided that such reallocation will not exceed the cap identified in **Section 2.6.5**.

#### 2.6.9 Problem Response Definitions and Times

Service Priority	Response Time	Resolution Time	Response Availability	Description	Users Affected
Severity 1	Less than 15 minutes	Within 2 hours of first report	24 hours per day, seven days per week	Major portions of the System are inaccessible or not functioning.	Users or internal System functionalities are severely impaired or down.
Severity 2	Less than 30 minutes	Within 4 hours after first report	24 hours per day, seven days per week	Some portions of the system are not functioning consistently. However, users are able to function with moderate impact.	Some users are affected but not all and the scope of the service impairment is limited.
Severity 3	Within 2 hours or next business day (if report is after hours)	Within 1 day (24 hours) after first report. If the outage is not resolved a resolution plan must be in place.	Mon-Fri, 7AM-7PM	Specific non-critical features are not operating as specified or users are unable to perform a small portion of their job, but are able to complete most tasks.	Affects a small number of users or none at all but is not operating efficiently.

## 3 Contractor Requirements: General

### Contract Initiation Requirements

- A. Contractor shall schedule and hold a kickoff meeting within 5 Business Days of NTP Date. At the kickoff, the Contractor shall furnish time frame for transition period, an updated Project Schedule describing the activities for the Contractor, the State, and any third parties for fully transitioning to the Contractor's Solution. The Transition IN period shall be for a period of four (4) months starting on or after September 1, 2024.
- B. Projected Fully Implemented Start date will be May 1, 2025.

### 3.1 Requirements

- 3.1.1 Provide a summary of the Offeror's products, services, and industries/markets served. In the description, include the locations of the Offeror's headquarters and other offices, the year the Offeror's company was formally established, its number of employees, and ownership structure.
- 3.1.2 Describe the Offeror's financial condition and (if applicable) its parent and affiliates. Within the past three years, have there been any changes in ownership or restructuring? If anticipated, describe any future, significant changes to the Offeror's size, product and service offerings, and industries/markets served. Additionally, attach to the proposal the Offeror's two most recent audited financial statements.
- 3.1.3 Please provide an organizational chart for the Offeror that includes the reporting structure of individuals who will work on the implementation and post-implementation services of the proposed premium aggregation and billing solution.
- 3.1.4 Provide details of the Offeror's experience working with state-based marketplaces and carriers operating within those marketplaces. Provide the following in an attachment: the name of every client that has contracted with the Bidder for marketplace-related information technology solutions and/or business process supports, the contract dates, and a short description of the scope of services for each contract.

### 3.2 State Staff and Roles

In addition to the Procurement Officer and Contract Monitor, the State may designate a State Project Manager, who may be the same individual as the Contract Monitor.

- 3.2.1 The Contract Monitor shall be included on all correspondence between the Offeror and MHBE, and shall be the primary MHBE point of contact for the Offeror. The Contract Monitor shall communicate whether deliverables are accepted. All reports provided to MHBE by the Offeror shall be provided to the Contract Monitor.
- 3.2.2 The State Project Manager, when assigned, shall ensure access to business and technical documents as necessary for the Offeror to complete the tasks identified in this RFP; ensure appropriate resources are available to perform tasks assigned to MHBE, attend meetings, and answer questions; ensure that decisions are made in a timely manner; and identify and provide access to MHBE Subject Matter Experts to assist in the development of technical requirements.

### Other State Responsibilities

- 3.3.1 The State is responsible for providing the required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth.

### 3.1 Other Contractor Responsibilities and Tasks

In addition to supplying the MHC for Small Business premium aggregation and billing solution and functional requirements described above, the awarded Offeror will be required to work with MHBE on the following Contractor tasks:

- MHC for Small Business program management platform implementation project initiation
- Requirements elaboration and specification definition
- Platform build: configuration, customization, and integration. For purposes of this RFP, the associated contract and project:
  - Configuration is defined as a software application's features or behavior that can be changed through the use of functionality, tools and/or utilities native to/built into the software application, i.e. without the need for custom programming/coding
  - Customization is defined as a feature, extension or modification of a software application's feature that requires custom programming/coding
  - Integration is defined as the creation of the ability for an information system to consume and/or exchange data with another system, whether in real-time or asynchronously, to achieve an intended purpose
- Platform testing
- Knowledge transfer and training
- Data conversion and migration
- Deployment: cutover and acceptance
- Implementation closeout
- Platform hosting
- Platform maintenance
- Platform end user support. The State shall have the unilateral right to reallocate percentages among the various SLAs annually on the anniversary of the Contract, provided that such reallocation will not exceed the cap identified in **Section 2.6.5**.

### 3.2 End of Contract Transition

- 3.2.1 The Contractor shall provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to 90 days prior to Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:
- A. Provide additional services and support as requested to successfully complete the transition;
  - B. Maintain the services called for by the Contract at the required level of proficiency;
  - C. Provide updated System Documentation (see Appendix 1), as appropriate; and
  - D. Provide current operating procedures (as appropriate).

- 3.2.2 The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.
- 3.2.3 The Contractor shall ensure that all necessary knowledge and materials for the tasks completed are transferred to the custody of State personnel or a third party, as directed by the Contract Monitor.
- 3.2.4 The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to:
- A. The Contractor shall provide a draft Transition-Out Plan 120 Business Days in advance of Contract end date.
  - B. The Transition-Out Plan shall address at a minimum the following areas:
    - 1) Any staffing concerns/issues related to the closeout of the Contract;
    - 2) Communications and reporting process between the Contractor, the MHBE and the Contract Monitor;
    - 3) Security and system access review and closeout;
    - 4) Any hardware/software inventory or licensing including transfer of any point of contact for required software licenses to the MHBE or a designee;
    - 5) Any final training/orientation of MHBE staff;
    - 6) Connectivity services provided, activities and approximate timelines required for Transition-Out;
    - 7) Knowledge transfer, to include:
      - a) A working knowledge of the current system environments as well as the general business practices of the MHBE ;
      - b) Review with the MHBE the procedures and practices that support the business process and current system environments;
      - c) Working knowledge of all technical and functional matters associated with the Solution, its architecture, data file structure, interfaces, any batch programs, and any hardware or software tools utilized in the performance of the Contract;
      - d) Documentation that lists and describes all hardware and software tools utilized in the performance of the Contract;
      - e) A working knowledge of various utilities and corollary software products used in support and operation of the Solution;
    - 8) Plans to complete tasks and any unfinished work items (including open change requests, and known bug/issues); and
    - 9) Any risk factors with the timing and the Transition-Out schedule and transition process. The Contractor shall document any risk factors and suggested solutions.

- C. The Contractor shall ensure all documentation and data including, but not limited to, System Documentation and current operating procedures, is current and complete with a hard and soft copy in a format prescribed by the Contract Monitor.
- D. The Contractor shall provide copies of any current daily and weekly back-ups to the MHBE or a third party as directed by the Contract Monitor as of the final date of transition, but no later than the final date of the Contract.
- E. Access to any data or configurations of the furnished product and services shall be available after the expiration of the Contract.

### 3.2.5 Return and Maintenance of State Data

- A. Upon termination or the expiration of the Contract Term, the Contractor shall: (a) return to the State all State data in either the form it was provided to the Contractor or in a mutually agreed format along with the schema necessary to read such data; (b) preserve, maintain, and protect all State data until the earlier of a direction by the State to delete such data or the expiration of 90 days (“the retention period”) from the date of termination or expiration of the Contract term; (c) after the retention period, the Contractor shall securely dispose of and permanently delete all State data in all of its forms, such as disk, CD/DVD, backup tape and paper such that it is not recoverable, according to National Institute of Standards and Technology (NIST)-approved methods with certificates of destruction to be provided to the State; and (d) prepare an accurate accounting from which the State may reconcile all outstanding accounts. The final monthly invoice for the services provided hereunder shall include all charges for the 90-day data retention period.
- B. During any period of service suspension, the Contractor shall maintain all State data in its then existing form, unless otherwise directed in writing by the Contract Monitor.
- C. In addition to the foregoing, the State shall be entitled to any post-termination/expiration assistance generally made available by Contractor with respect to the services.

## 3.3 Invoicing

### 3.3.1 General

- A. The Contractor shall e-mail the original of each invoice and signed authorization to invoice to the Contract Monitor and the MHBE Finance department at e-mail address: [hbe.finance@maryland.gov](mailto:hbe.finance@maryland.gov).
- B. All invoices for services shall be verified by the Contractor as accurate at the time of submission.
- C. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
  - 1) Contractor name and address;
  - 2) Remittance address;

- 3) Federal taxpayer identification (FEIN) number, social security number, as appropriate;
  - 4) Invoice period (i.e. time period during which services covered by invoice were performed);
  - 5) Invoice date;
  - 6) Invoice number;
  - 7) State assigned Contract number;
  - 8) State assigned (Blanket) Purchase Order number(s);
  - 9) Goods or services provided;
  - 10) Amount due; and
  - 11) Any additional documentation required by regulation or the Contract.
- D. Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.
- E. 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 otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
- F. Any action on the part of the MHBE, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- G. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- H. Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

### 3.3.2 Invoice Submission Schedule

The Contractor shall submit invoices in accordance with the following schedule:

- A. For items of work for which there is one-time pricing (see **Attachment B** – Financial Proposal Form) those items shall be billed in the month following the acceptance of the work by the MHBE.
- B. For items of work for which there is annual pricing, see **Attachment B**– Financial Proposal Form, those items shall be billed in equal monthly installments for the applicable Contract year in the month following the performance of the services.

**For the purposes of the Contract an amount will not be deemed due and payable if:**

- A. The amount invoiced is inconsistent with the Contract;

- B. The proper invoice has not been received by the party or office specified in the Contract;
- C. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- D. The item or services have not been accepted;
- E. The quantity of items delivered is less than the quantity ordered;
- F. The items or services do not meet the quality requirements of the Contract;
- G. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
- H. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or
- I. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

#### **3.3.3 Travel Reimbursement**

Travel will not be reimbursed under this RFP.

#### **3.3.4 Retainage**

### **3.4 Liquidated Damages**

#### **3.4.1 Liquidated Damages other than MBE**

MBE Liquidated damages are identified in Attachment D.

### **3.5 Disaster Recovery and Data**

The following requirements apply to the Contract:

#### **3.5.1 Redundancy, Data Backup and Disaster Recovery**

- A. Unless specified otherwise in the RFP, Contractor shall maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Contractor's processing capability and the availability of hosted services, in each case throughout the Contract term. Any force majeure provisions of the Contract do not limit the Contractor's obligations under this provision.
- B. The Contractor shall have robust contingency and disaster recovery (DR) plans in place to ensure that the services provided under the Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
  - 1) The Contractor shall furnish a DR site.
  - 2) The DR site shall be at least 100 miles from the primary operations site and have the capacity to take over complete production volume in case the primary site becomes unresponsive.

- C. The contingency and DR plans must be designed to ensure that services under the Contract are restored after a disruption within twenty-four (24) hours from notification and a recovery point objective of one (1) hour or less prior to the outage in order to avoid unacceptable consequences due to the unavailability of services.
- D. The Contractor shall test the contingency/DR plans at least once annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one (1) annual test shall include backup media restoration and failover/fallback operations at the DR location. The Contractor shall send the Contract Monitor a notice of completion following completion of DR testing.
- E. Such contingency and DR plans shall be available for the MHBE to inspect throughout the term of the Contract.

### 3.5.2 Data Ownership and Access

- A. Data, databases and derived data products created, collected, manipulated, or directly purchased as part of a RFP are the property of the State. The purchasing State agency is considered the custodian of the data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.
- B. Public jurisdiction user accounts and public jurisdiction data shall not be accessed, except (1) in the course of data center operations, (2) in response to services or technical issues, (3) as required by the express terms of the Contract, including as necessary to perform the services hereunder or (4) at the State's written request.
- C. The Contractor shall limit access to and possession of State data to only Contractor Personnel whose responsibilities reasonably require such access or possession and shall train such Contractor Personnel on the confidentiality obligations set forth herein.
- D. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- E. The Contractor shall not use any information collected in connection with the services furnished under the Contract for any purpose other than fulfilling such services.

3.5.3 Provisions in Sections 3.5.1 – 3.5.3 shall survive expiration or termination of the Contract. The Contractor shall flow down the provisions of Sections 3.5.1-3.5.3 (or the substance thereof) in all subcontracts.

### 3.6 Insurance Requirements

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:

- 3.6.1 The following type(s) of insurance and minimum amount(s) of coverage are required:
- A. Commercial General Liability - of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$1,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
  - B. Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.
  - C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the MHBE should be added as a "loss payee."
  - D. Cyber Security / Data Breach Insurance – The Contractor shall possess and maintain throughout the term of the Contract and for three (3) years thereafter, cyber risk/ data breach insurance (either separately or as part of a broad Professional Liability or Errors and Omissions Insurance) with limits of at least one million dollars (\$1,000,000) per claim. Any "insured vs. insured" exclusions will be modified accordingly to allow the State additional insured status without prejudicing the State's rights under the policy(ies). Coverage shall be sufficiently broad to respond to the Contractor's duties and obligations under the Contract and shall include, but not be limited to, claims involving privacy violations, information theft, damage to or destruction of electronic information, the release of Sensitive Data, and alteration of electronic information, extortion, and network security. The policy shall provide coverage for, not by way of limitation, breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
  - E. Worker's Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
  - F. Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) 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.
- 3.6.2 The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.

- 3.6.3 All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.
- 3.6.4 Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.
- 3.6.5 The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.
- 3.6.6 Subcontractor Insurance
- The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

### **3.7 Security Requirements**

The following requirements are applicable to the Contract:

#### **3.7.1 Employee Identification**

- A. Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- B. Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
- C. Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion, that Contractor Personnel has not adhered to the Security requirements specified herein.
- D. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

#### **3.7.2 Criminal Background Check**

- A. The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check.
- B. The Contractor shall secure at its own expense a Maryland State Police and /or FBI background check and shall provide the Contract Monitor with a completed checks on all new employees who have access to MHBE data or its derivative prior to assignment.

- C. The Contractor may not assign an employee with a criminal record to work under this Contract unless prior written approval is obtained from the Contract Monitor.

### 3.7.3 Information Technology

- (a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov/cybersecurity/Pages/policies-and-guidance.aspx](http://www.doit.maryland.gov/cybersecurity/Pages/policies-and-guidance.aspx).
- (b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The 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 a State LAN/WAN.

The Contractor shall:

- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security.
- 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and
- 3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at:

<https://doit.maryland.gov/policies/Pages/default.aspx>

### 3.7.4 Data Protection and Controls

- A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.
- B. To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):
  - 1) Establish separate production, test, and training environments for systems supporting the services provided under the Contract and ensure that production

data is not replicated in test or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements.

- 2) Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides <https://www.cisecurity.org/>, Security Technical Implementation Guides (STIG) <https://public.cyber.mil/stigs/>, or similar industry best practices to reduce the systems' surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor's system configuration files.
- 3) Ensure that State data is not comingled with non-State data through the proper application of compartmentalization Security Measures.
- 4) Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.
- 5) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
- 6) Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2:  
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>  
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- 7) Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology's Information Security Policy.
- 8) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The MHBE shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under the Contract.
- 9) Ensure system and network environments are separated by properly configured and updated firewalls.

- 10) Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.
- 11) By default “deny all” and only allow access by exception.
- 12) Review, at least annually, the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- 13) Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 days following the earlier of vulnerability’s identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The MHBE shall have the right to inspect the Contractor’s policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.
- 14) Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current Maryland Department of Information Technology’s Information Security Policy (<https://doit.maryland.gov/policies/Pages/default.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- 15) Ensure State data is not processed, transferred, or stored outside of the United States (“U.S.”). The Contractor shall provide its services to the State and the State’s end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.
- 16) Ensure Contractor’s Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. The 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 a State LAN/WAN.
- 17) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under the Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation. The

Contractor shall perform routine vulnerability scans and take corrective actions for any findings.

- 18) Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The MHBE shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

### 3.7.5 Security Logs and Reports Access

- A. For a SaaS or non-State hosted solution, the Contractor shall provide reports to the State in a mutually agreeable format.
- B. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to the Contract.

### 3.7.6 Security Plan

- A. The Contractor shall protect State data according to a written security policy ("Security Plan") no less rigorous than that of the State and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.
- B. The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the Contract.
- C. The Security Plan shall address compliance with the PCI DSS for payment card processing).

### 3.7.7 PCI Compliance

- A. Contractor shall at all times comply, and ensure compliance with, all applicable Payment Card Industry ("PCI") Data Security Standards ("DSS"), including any and all changes thereto. Contractor shall provide the MHBE with documented evidence of current compliance to PCI DSS within 30 days of an MHBE request.
- B. The Contractor shall annually furnish to the State evidence of the PCI Security Standards Council's (SSC) acceptance or attestation of the Contractor's conformance to the relevant PCI DSS requirements by a third party certified to perform compliance assessments.
- C. The Contractor shall ensure that the scope of the annual SOC 2 Type II Report specified under **Section 3.9** includes testing to confirm the PCI assessment results.

### 3.7.8 Security and Privacy Incident Response

- A. The Contractor shall notify the MHBE in accordance when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:

- 1) notify the MHBE within 5 (five) calendar days of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, MHBE Chief Information officer and MHBE Chief information Security Officer.
  - 2) notify the MHBE within two (2) hours if there is a threat to Contractor's Solution as it pertains to the use, disclosure, and security of State data; and
  - 3) provide written notice to the MHBE within one hour after Contractor's discovery of unauthorized use or disclosure of State data and thereafter all information the State (or MHBE) requests concerning such unauthorized use or disclosure. See Attachment P, the None-Exchange Entity Agreement (NEEA) for further details.
- B. Contractor's notice shall identify:
- 1) the nature of the unauthorized use or disclosure;
  - 2) the State data used or disclosed,
  - 3) who made the unauthorized use or received the unauthorized disclosure;
  - 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
  - 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
  - 6) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.
- D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the State (or MHBE ) and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

### 3.7.9 Data Breach Responsibilities

- 1) Notify the appropriate State-identified contact within one (1) hours by telephone and or at [mhbeincident.report@maryland.gov](mailto:mhbeincident.report@maryland.gov) by securely emailing the completed "Notification of Privacy-IT Security Incident Report" an Exhibit to the NEEA, in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
- 2) Cooperate with the State to investigate and resolve the data breach;

- 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
  - 4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.
- B. If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the Contract's limitation of liability.
- 3.7.10 The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards defined in the Contract.

### **3.8 Problem Escalation Procedure**

- 3.8.1 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.
- 3.8.2 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.
- 3.8.3 The Contractor must provide the PEP no later than ten (10) Business Days after notice of recommended award. 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 expediting 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) and on an emergency basis; and
  - G. A process for updating and notifying the Contract Monitor of any changes to the PEP.
- 3.8.4 Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

### 3.9 SOC 2 Type 2 Audit Report

- 3.9.1 A SOC 2 Type 2 Audit applies to the Contract. The applicable trust services criteria are: Security, Availability, Processing Integrity, Confidentiality, and Privacy
- 3.9.2 In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit performed by an independent audit firm of the Contractor's handling of Sensitive Data or the MHBE's critical functions. Critical functions are identified as all aspects and functionality of the Solution including any add-on modules and shall address all areas relating to Information Technology security and operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the "Information Functions and Processes." Such audits shall be performed in accordance with audit guidance: Reporting on an Examination of Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the MHBE, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:
- A. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the "SOC 2 Audit" or "SOC 2 Report"). All SOC2 Audit Reports shall be submitted to the Contract Monitor as specified in Section F below. The initial SOC 2 Audit shall be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Monitor. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract, and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.
  - B. The SOC 2 Audit shall report on the suitability of the design and operating effectiveness of controls over the Information Functions and Processes to meet the requirements of the Contract, including the Security Requirements identified in **Section 3.7**, relevant to the trust services criteria identified in 3.9.1: as defined in the aforementioned Guidance.
  - C. The audit scope of each year's SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services criteria of Security, Availability, Processing Integrity, Confidentiality, and Privacy) to accommodate any changes to the environment since the last SOC 2 Report. Such changes may

include but are not limited to the addition of Information Functions and Processes through modifications to the Contract or due to changes in Information Technology or the operational infrastructure. The Contractor shall ensure that the audit scope of each year's SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.

- D. The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the TO Contractor or essential support to the Information Functions and Processes provided to the MHBE under the Contract. The Contractor shall ensure the audit includes all such subcontractors operating in performance of the Contract.
- E. All SOC 2 Audits, including those of the Contractor, shall be performed at no additional expense to the MHBE.
- F. The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a complete copy of the final SOC 2 Report(s) and a documented corrective action plan addressing each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.
- G. If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information Functions and Processes being provided to the MHBE under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the MHBE will determine in consultation with appropriate the Agency Chief Information Security Officer whether the Contractor's current information security assessments are acceptable in lieu of the SCO 2 Report (s) ology and audit authorities whether the Contractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- H. Provisions in **Section 3.9.1-2** shall survive expiration or termination of the Contract. Additionally, the Contractor and shall flow down the provisions of **Section 3.9.1-2** (or the substance thereof) in all subcontracts.

#### 3.9.2.1 Minimum Acceptable Risk Safeguard for State-based Exchanges (MARSE),v2.2 Self-Assessments and Audit Report

Pursuant to the Non-Exchange Entity Agreement executed between MHBE and the Contractor, the implementing standards of MARSE v2.2 require that the Contractor shall perform an independent security assessment. Section 1.1.14 Security Assessment and Authorization (CA) CA-2 of MARSE-requires that "an independent assessment of all security and privacy controls must be conducted before the organization's Authorizing Official issues the authority to operate for all newly implemented, or significantly changed, systems." Therefore, a complete assessment of the applicable systems must be conducted prior to Go Live. The applicable systems are defined, but not limited to, systems that transmit or store PII

such as: Remote Access/VPN Work Stations, Active Directory, ACD (automatic call distributor), Contractor Network, Call and Video Recordings, and Privacy.

- 3.9.2.2 CMS requires an independent assessment of all MARSE security and privacy controls to be conducted every three (3) years or with each major system change. The Contractor shall either perform an internal self-assessment or contract a third-party security vendor to assess compliance with one-third (1/3) of the MARSE IT Security and Privacy Controls prior to the beginning of the second contract year; and assess a different one-third (1/3) of the MARSE IT Security and Privacy Controls prior to the beginning of the third contract year on all applicable systems as described in section 3.9.2.1. Should the contract exceed three years because MHBE has exercised the option to do so, then a complete assessment of all applicable controls, the scope of which may be similar to the security requirements conducted in 3.9.2.1, shall be completed prior to the start of the fourth contract year. The results shall be delivered 30 days prior to the begin date of the fourth year of the contract. All phases of the security control selection and testing shall be consistent with MARSE annual control selection schedule. Should the contract exceed 4 years because MHBE has exercised the option to do so, then another 1/3 of the security controls assessment will be due 30 days prior to the beginning of the fifth contract year.
- 3.9.2.3 A MARSE privacy and security assessment, as defined above, shall be performed every three hundred sixty-five (365) days. Each of the audits, self-assessments, and plan of action and milestones (POAMs) shall be completed and provided to the Contract Monitor and the MHBE CISO or designee within 30 days of the completion of the assessment or audit.
- 3.9.2.4 MHBE's IT Security Officer and Privacy Officer shall provide feedback to the Contractor within 30 days of receipt of the completed assessment and POAMs and may require the Contractor to provide POAM status reports at their discretion.
- 3.9.2.5 The Contractor's Information Security staff shall participate in weekly meetings held by the MHBE CISO or designee, to provide updates on Contractor's POAMs and continuous monitoring efforts throughout the life of the contract. POAM's will be tracked and added to the MHBE POAM and the contractor will be responsible for resolving findings and security flaws.
- 3.9.2.6 The Contractor may be subject to additional audits, conducted by the State of Maryland and/or the United States Department of Health and Human Services, and shall make available information security, privacy and/or operational personnel to fully participate in and provide artifacts and information responsive to the audit within a reasonable timeframe upon request.
- 3.9.3.** If the Contractor and any relevant subcontractor fails during the Contract term to obtain an annual SOC 2 Report or perform an independent self-assessment and independent external MARSE audit by the date specified in RFP Section 3.9.1 and 3.9.2, respectively, the MHBE shall have the right to retain an independent audit firm to perform an audit engagement of the requisite audit of the Information Functions and/or Processes utilized or provided by the Contractor and any relevant subcontractor under the Contract. The Contractor and any relevant subcontractor agree to allow the independent audit firm to access its facility/ies for

purposes of conducting this audit engagement(s) and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement. The MHBE will invoice the Contractor for the expense of the audit or deduct the cost from future payments to the Contractor.

### 3.10 Experience and Personnel

#### 3.10.1 Preferred Offeror Experience

The following experience is preferred and will be considered as part of the Technical Proposal (see the Offeror experience, capability and references evaluation factor from **Section 6.2**):

- A. Demonstrated knowledge of premium aggregation and billing practices in state-based marketplaces.
- B. Prior senior level experience implementing premium billing and aggregation and billing solutions for state-based marketplaces.
- C. Breadth of knowledge in small business health insurance industry business and billing practices.

#### 3.10.2 Personnel Experience

The following experience is expected and will be evaluated as part of the Technical Proposal (see the capability of proposed resources evaluation factor from **Section 6.2**):

#### 3.10.3 Key Personnel Experience

Demonstrated knowledge of implementing and maintaining back-end premium aggregation and billing including managing the project as it pertains to resources, costs, timeline, and project success. Prior senior level experience.

The minimum required qualifications for Offerors include: Contract Project Leadership is to have the following experience:

- 5+ years' experience working with the health insurance industry.
- 5+ years working in financial management services.
- 5+ years working on SaaS product solutions for the activities listed in this RFP.
- Experience using Jira or an alternative Agile project management tool.

Project Team Desirable Qualifications MHC-SB seeks Offerors with the following desirable skills: Key project staff (below leadership level) is to have the following experience:

- 5+ years' experience working with the health insurance industry.
- 3+ years working in financial management services.
- 3+ years working on SaaS product solution for the activities listed in this RFP.

#### 3.10.4 Number of Personnel to Propose

As part of the Proposal evaluation, Offerors shall propose a staffing plan or organizational structure who are expected to be available as of the start date specified in the Notice to Proceed (NTP Date). Offerors shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the MHBE, as necessary. **Offerors may generally describe planned positions in a Staffing Plan. Such planned positions may not be used as evidence of fulfilling personnel minimum qualifications.**

### 3.10.5 Key Personnel Identified

For the Contract, the following positions to be identified in the Technical Proposal will be considered Key Personnel, and shall be required to meet the qualifications stated in Section 3.10.3.

A. Project Manager – The project manager is responsible for managing all aspects of the project as it pertains to resources, costs, timeline, and project success. Involvement varies from project to project based upon the customer requirements and complexities. The analysis process and project plan will define the level of effort for this resource on the project. Responsible for overall ownership and strategic vision of the client relationship, providing clear direction for overall strategy and securing internal vendor resources.

B. Technology Consultant – The core consultant is the primary representative assigned to the project. Involvement varies from project to project based upon the customer requirements and complexities. The analysis process and project plan will define the level of effort for this resource on the project.

C. Subject Matter Experts/Consultants – Involvement varies from project to project based upon the customer requirements and complexities. The analysis process and project plan will define the level of effort for this resource on the project.

### 3.10.6 Work Hours

Unless otherwise specified, the following work hours requirements are applicable:

- A. Business Hours Support: Contractor shall assign Contractor Personnel to support MHBE Business Hours (8:30 AM to 5:00 PM), Monday through Friday except for State holidays. The Contractor Shall provide appropriate management oversight during all open business hours.
- B. The Contractor's Customer Service Center is expected to synchronize its operating hours with those of MHBE's Customer Center, which are Monday-Friday, 8:00 am to 6:00 pm. MHC for Individuals open enrollment periods it should be open on Saturday's form 8:00 am. to 4:00 pm. Any additional hours required will be determined by MHC for Small Business.
- C. Contractor Personnel may also be required to provide occasional support outside of normal State Business Hours, including evenings, overnight, and weekends, to support specific efforts and emergencies, such as to resolve system repair or restoration. Hours performing activities must be billed on an actual time worked basis at the rates proposed.
- D. State-Mandated Closings: Contractor Personnel shall be required to participate in any State-mandated closings. In this event, the Contractor will be notified in writing by the Contract Monitor of these details.
- E. Minimum and Maximum Hours: Full-time Contractor Personnel shall work 40 hours per week with starting and ending times as approved by the Contract

Monitor. A flexible work schedule may be used with Contract Monitor approval, including time to support any efforts outside core business hours. Contractor personnel may also be requested to restrict the number of hours Contractor personnel can work within a given period of time that may result in less than an eight-hour day or less than a 40-hour work week.

- F. Vacation Hours: Requests for leave shall be submitted to the Contract Monitor at least two weeks in advance. The Contract Monitor reserves the right to request a temporary replacement if leave extends longer than one consecutive week. In cases where there is insufficient coverage, a leave request may be denied.

### 3.11 Substitution of Personnel

#### 3.11.1 Continuous Performance of Key Personnel

When Key Personnel are identified for the Contract, the following apply:

- A. Key Personnel shall be available to perform Contract requirements as of the NTP Date. Unless explicitly authorized by the Contract Monitor or specified in the Contract, Key Personnel shall be assigned to the State of Maryland as a dedicated resource.
- B. Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under the Contract without the prior written approval of the Contract Monitor.
- C. The provisions of this section apply to Key Personnel identified in any Task Order proposal and agreement, if issued, and any Work Order Request and Work Order, if issued.

#### 3.11.2 Definitions

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

- A. **Extraordinary Personal Event** – means any of: leave under the Family Medical Leave Act; an Incapacitating injury or Incapacitating illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.
- B. **Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Contractor's Technical Proposal.

#### 3.11.3 Contractor Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of Contractor Personnel substitution.

- A. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
- B. The Contractor shall provide the Contract Monitor with a substitution request that shall include:

- 1) A detailed explanation of the reason(s) for the substitution request;
  - 2) The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;
  - 3) The official resume of the current personnel for comparison purposes; and
  - 4) Evidence of any required credentials.
- C. The Contract Monitor may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
- D. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

#### 3.11.4 Replacement Circumstances

##### A. Directed Personnel Replacement

- 1) The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, MHBE policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph **3.11.4.A.2**.
- 2) If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor may give written notice of any Contractor Personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.
- 3) Should performance issues persist despite an approved Remediation Plan, the Contract Monitor may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.
- 4) Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
- 5) If the Contract Monitor determines to direct substitution under **3.11.4.A.1**, if at all possible, at least fifteen (15) days advance notice shall be given to the Contractor. However, if the Contract Monitor deems it necessary and in the State's best

interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Contract Monitor may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

- 6) In circumstances of directed removal, the Contractor shall, in accordance with paragraph **3.11.4.A.1** of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

**B. Key Personnel Replacement**

- 1) To replace any Key Personnel in a circumstance other than as described in **3.11.4.B**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 3.11.3** to the Contract Monitor at least fifteen (15) days prior to the intended date of change. A substitution may not occur unless and until the Contract Monitor approves the substitution in writing.
- 2) Key Personnel Replacement Due to Sudden Vacancy
  - a) The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 3.11.4.B.1**.
  - b) Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 3.11.3** within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.
- 3) Key Personnel Replacement Due to an Indeterminate Absence
  - a) If any Key Personnel has been absent from his/her job for a period of ten (10) days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information and items to the Contract Monitor as required under **Section 3.11.3**.
  - b) However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

**3.11.5 Substitution Prior to and Within 30 Days After Contract Execution**

Prior to Contract execution or within thirty (30) days after Contract execution, the Offeror may not substitute proposed Key Personnel except under the following circumstances (a) for actual full-time personnel employed directly by the Offeror: the vacancy occurs due to the sudden termination, resignation, or approved leave of absence due to an Extraordinary Personal Event, or the death of such personnel; and (b) for any temporary staff, subcontractors or 1099 contractors: the vacancy occurs due to

an Incapacitating event or the death of such personnel. To qualify for such substitution, the Offeror must demonstrate to the State's satisfaction the event necessitating substitution. Proposed substitutions shall be of equal caliber or higher, in the State's sole discretion. Proposed substitutes deemed by the State to be less qualified than the originally proposed individual may be grounds for pre-award disqualification or post-award termination.

### 3.12 Minority Business Enterprise (MBE) Reports

If this solicitation includes an MBE Goal (see **Section 4.26**), the Contractor shall:

- A. Submit the following reports by the 10th of each month to the Contract Monitor and the MHBE 's MBE Liaison Officer:
  - 1) A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - 2) (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.
- B. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) by the 10th of each month to the Contract Monitor and the MHBE 's MBE Liaison Officer that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- C. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. Upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### 3.13 Veteran Small Business Enterprise (VSBE) Reports

THIS SECTION IS INAPPLICABLE TO THIS RFP.

### **3.14 Additional Clauses**

The Contractor shall be subject to the requirements in this section and shall flow down the provisions of **Sections 3.15.1 – 3.15.5** (or the substance thereof) in all subcontracts.

#### **3.14.1 Purchasing and Recycling Electronic Products**

**This section does not apply to this solicitation.**

#### **3.14.2 Change Control and Advance Notice**

- A. Unless otherwise specified in an applicable Service Level Agreement, the Contractor shall give seven (7) days advance notice to the State of any upgrades or modifications that may impact service availability and performance.
- B. Contractor may not modify the functionality or features of any SaaS provided hereunder if such modification materially degrades the functionality of the SaaS.

#### **3.14.3 The State of Maryland's Commitment to Purchasing Environmentally Preferred Products and Services (EPPs)**

[Maryland's State Finance & Procurement Article §14-410](#) defines environmentally preferable purchasing as “the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose.” Accordingly, Bidders are strongly encouraged to offer EPPs to fulfill this contract, to the greatest extent practicable.

#### **3.14.4 No-Cost Extensions**

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

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## 4 Procurement Instructions

### 4.1 Pre-Proposal Conference

- 4.1.1 A pre-Proposal conference (Conference) will be held at the date and as indicated on the Key Information Summary Sheet.
- 4.1.2 Attendance at the Conference **is not mandatory**, but all interested parties are **encouraged** to attend in order to facilitate better preparation of their Proposals. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of an offeror's good faith efforts if there is a waiver request.
- 4.1.3 It is highly recommended that ALL Prime Contractors bring their intended subcontractors to the Conference to ensure that all parties understand the requirements of the contract and the MBE Goal.
- 4.1.4 MBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.
- 4.1.5 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1 eMMA**).
- 4.1.6 Those wishing to attend the web conference may request a meeting invitation by **emailing Shirelle Green, Procurement Officer** at [Shirelle.green1@maryland.gov](mailto:Shirelle.green1@maryland.gov) contact email no later than 9am date of pre-proposal conference.
- 4.1.7 **NOTE:** Depending on your procurement's requirements, a site visit may be beneficial to prospective Offerors. If so, the language below may be inserted when appropriate, and this section title changed to "Pre-Proposal Conference and Site Visit(s)." If there are limitations as to how many vendor representatives may attend, the MHBE should state so below. If visits to multiple sites are recommended, it is suggested that separate, advance registrations be made available for each, and the schedule for the site visits be distributed prior to the Pre-Proposal Conference if possible. The MHBE should also address whether prospective Offerors can request a follow-up site visit, or if no additional, follow-up visits will be allowed. Finally, if any site visit is offered, the Pre-Proposal Conference Response Form should include a section where vendors can indicate whether they intend to attend the site visit, and should include spaces for the vendor to name its representative(s) that will attend the site visit.

### 4.2 eMaryland Marketplace Advantage (eMMA)

- 4.2.1 eMMA is the electronic commerce system for the State of Maryland. The RFP, Conference summary and attendance sheet, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.
- 4.2.2 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to [emma.maryland.gov](http://emma.maryland.gov), click on "New Vendor? Register Now" to begin the process, and then follow the prompts.

### 4.3 Questions

- 4.3.1 All questions, including concerns regarding any applicable MBE participation goals, shall identify in the subject line the Solicitation Number and Title BPM043384 Small Business, and shall be submitted in writing via e-mail to the Procurement Officer at no later than the date and time specified the Key Information Summary Sheet. 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.
- 4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments, and posted on eMMA.
- 4.3.3 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the MHBE unless it issues an amendment in writing.

### 4.4 Procurement Method

A Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

### 4.5 Proposal Due (Closing) Date and Time

- 4.5.1 Proposals, in the number and form set forth in **Section 5 Proposal Format**, must be received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.
- 4.5.2 Requests for extension of this date or time shall not be granted.
- 4.5.3 Offerors submitting Proposals should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. 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 Key Information Summary Sheet will not be considered.
- 4.5.4 The date and time of an submission is determined by the date and time of arrival in the eMMA as addressed s indicated on the Key Information Summary Sheet.
- 4.5.5 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Proposals.
- 4.5.6 **Proposals may not be submitted by e-mail or facsimile.** Proposals will not be opened publicly.
- 4.5.7 Potential Offerors 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).

### 4.6 Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted.

#### **4.7 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.

#### **4.8 Public Information Act Notice**

- 4.8.1 The 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 (See also RFP **Section 5.3.2.B** "Claim of Confidentiality"). This 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.
- 4.8.2 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.

#### **4.9 Award Basis**

A Contract shall be awarded to the responsible Offeror(s) submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP **Section 6** for further award information.

#### **4.10 Oral Presentation**

Offerors may be required to make oral presentations to State representatives. Oral presentations are considered part of the Technical Proposal. 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. The Procurement Officer will notify Offerors of the time and place of oral presentations.

#### **4.11 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 120 days following the Proposal due date and time, best and final offers if requested (see **Section 6.5.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

#### **4.12 Revisions to the RFP**

- 4.12.1 If the RFP is revised before the due date for Proposals, the MHBE shall post any addenda to the RFP on eMMA and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.

- 4.12.2 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.
- 4.12.3 Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.
- 4.12.4 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.
- 4.12.5 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, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

#### **4.13 Cancellations**

- 4.13.1 The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.
- 4.13.2 The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.13.3 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled, and the award processed in accordance with COMAR 21.01.03.01.A(4).
- 4.13.4 If the services that are the subject of the RFP are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the RFP may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

#### **4.14 Incurred Expenses**

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

#### **4.15 Protest/Disputes**

Any protest or dispute related to this solicitation, or the Contract award shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

#### **4.16 Offeror Responsibilities**

- 4.16.1 Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.

- 4.16.2 All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see **Section 4.26** "Minority Participation Goal" and **Section 4.27** "VSBE Goal").
- 4.16.3 If the Offeror 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's Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- 4.16.4 A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Offeror, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

#### **4.17 Acceptance of Terms and Conditions**

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **All exceptions will be taken into consideration when evaluating the Offeror's Proposal. The MHBE reserves the right to accept or reject any exceptions.**

#### **4.18 Proposal Affidavit**

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

#### **4.19 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 of this Affidavit is included for informational purposes as **Attachment N** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award. 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.

#### **4.20 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.

#### **4.21 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 Proposal due date and time. The Offeror's failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

#### **4.22 False Statements**

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

- 4.22.1 In connection with a procurement contract a person may not willfully:
  - A. Falsify, conceal, or suppress a material fact by any scheme or device.
  - B. Make a false or fraudulent statement or representation of a material fact.
  - C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- 4.22.2 A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.
- 4.22.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

#### **4.23 Payments by Electronic Funds Transfer**

By submitting a Proposal in response to this solicitation, the Offeror, if selected for award:

- 4.23.1 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 successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.
- 4.23.2 Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

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

#### 4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Pay Requirements" (see **Attachment M**). Additional information is available on GOSBA's website at:

<http://www.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

#### 4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, 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.
- 4.25.2 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. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 4.25.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://procurement.maryland.gov>), and electronic data interchange.
- 4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:
  - A. The Procurement Officer may conduct the procurement using eMMA or e-mail to issue:
    - 1) The RFP;
    - 2) Any amendments and requests for best and final offers;
    - 3) Pre-Proposal conference documents;
    - 4) Questions and responses;
    - 5) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
    - 6) Notices of award selection or non-selection; and

- 7) The Procurement Officer's decision on any Proposal protest or Contract claim.
- B. The Offeror or potential Offeror may use eMMA and or email only to:
- 1) Submit Proposals;
  - 2) Ask questions regarding the solicitation; **(via email)**
  - 3) 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 through eMMA, but only on the terms specifically approved and directed by the Procurement Officer and;
  - 4) Submit a "No Proposal Response" to the RFP. **(via email)**
- C. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.5** of this subsection, utilizing e-mail or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- 4.25.5 The following transactions related to this procurement and any Contract awarded pursuant to it are **not authorized** to be conducted by electronic means:
- A. Submission of initial Proposals, except through eMMA ;
  - B. Filing of protests;
  - C. Filing of Contract claims;
  - D. Submission of documents determined by the MHBE to require original signatures (e.g., Contract execution, Contract modifications); or
  - E. 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.
- 4.25.6 Any e-mail transmission is only authorized to the e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

## 4.26 MBE Participation Goal

### 4.26.1 Establishment of Goal and Subgoals

An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any, has been established for this procurement.

Notwithstanding any subgoals established for this RFP, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing

certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.

**An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 implies that it is requesting a full or partial waiver for the remainder of the MBE goal or subgoals as applicable and, if recommended for award, shall submit documentation supporting its good faith efforts to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP may result in the State’s rejection of the Offeror’s Proposal.**

#### 4.26.2 Attachments.

- A. D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:
  1. Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
  2. Attachment D-1B Waiver Guidance
  3. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
  4. Attachment D-2 Outreach Efforts Compliance Statement
  5. Attachment D-3A MBE Subcontractor Project Participation Certification
  6. Attachment D-3B MBE Prime Project Participation Certification
  7. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
  8. Attachment D-4B MBE Prime Contractor Report
  9. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report
- B. The Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
  1. The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
  2. The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

3. The Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

***If the Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award, unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.***

- 4.26.3 Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.
- 4.26.4 Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer.
  - A. Outreach Efforts Compliance Statement (**Attachment D-2**);
  - B. MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
  - C. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.
  - D. Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

***If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.***

- 4.26.5 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 4.26.6 The Offeror that requested or implied to request a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation

within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

4.26.7 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M, Section 2.1**).

4.26.8 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract.

In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule (**Attachment D-1A**) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the subgoals, the MBE prime must also identify other certified MBE subcontractors [see Section 4B of the MBE Participation Schedule (**Attachment D-1A**)] used to meet those goals. If dually-certified, the MBE prime can be designated as only one of the MBE subgoal classifications but can self-perform up to 100% of the stated subgoal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Refer to MBE forms (**Attachment D**) for additional information.

## 4.27 VSBE Goal

There is no VSBE participation goal for this procurement.

### 4.27.1 Solicitation and Contract Formation

**A.** In accordance with COMAR 21.11.13.05 C (1), this solicitation requires Offerors *If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not reasonably susceptible of being selected for award.*

## 4.28 Living Wage Requirements

There is no Living Wage requirement for this procurement.

#### **4.29 Federal Funding Acknowledgement**

This Contract does not contain federal funds.

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

- 4.30.1 The Offeror shall complete and sign the Conflict-of-Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Proposal.
- 4.30.2 By submitting a Conflict-of-Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.
- 4.30.3 Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services << under OR individual Task Orders issued under >> the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.30.4 Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Offeror submitting a Proposal in violation of this provision shall be classified as “not responsible.” See COMAR 21.05.03.03.

#### **4.31 Non-Disclosure Agreement**

##### **4.31.1 Non-Disclosure Agreement (Offeror)**

A Non-Disclosure Agreement (Offeror) is not required for this procurement.

#### **4.32 HIPAA - Business Associate Agreement**

A HIPAA Business Associate Agreement is not required for this procurement.

Based on the determination by the MHBE that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.500 *et seq.* and set forth in **Attachment J**. 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 Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Offeror with the next highest overall-ranked Proposal.

### 4.33 Nonvisual Access

4.33.1 The bidder or offeror warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and non-visual means consistent with the standards of § 508 of the federal Rehabilitation Act of 1973 and Code of Maryland Regulations 14.33.02; (2) provides an individual with disabilities with non-visual access in a way that is fully and equally accessible to and independently usable by the individual with disabilities so that the individual is able to acquire the same information, engage in the same interactions, and enjoy the same services as users without disabilities, with substantially equivalent ease of use; (3) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (4) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (5) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The bidder or offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 15 percent.

4.33.2 If the information technology procured under this solicitation does not meet the non-visual access standards set forth in the Code of Maryland Regulations 14.33.02, the State will notify the bidder or offeror in writing that the bidder or offeror, at its own expense, has 12 months after the date of the notification to modify the information technology in order to meet the non-visual access standards. If the bidder or offeror fails to modify the information technology to meet the nonvisual access standards within 12 months after the date of the notification, the bidder or offeror may be subject to a civil penalty of a fine not exceeding \$5,000 for a first offense, and a fine not exceeding \$10,000 for a subsequent offense.

4.33.3 The bidder or offeror shall indemnify, defend and hold harmless the State for liability resulting from the use of information technology that does not meet the applicable non-visual access standards.

4.33.4 For purposes of this provision, the phrase 'equivalent access' means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

4.33.5 Prior to any IT solution being pushed to production or going live, the Contractor shall provide DoIT with a comprehensive accessibility audit report demonstrating conformance with WCAG 2.1 that includes the results from automated and manual testing tools (including the use of JAWS, Voice Over and NVDA). The Contractor shall leverage a variety of commonly used accessibility testing procedures, including accessing the site through mainstream web browsers and evaluating accessibility, and performing comprehensive mobile accessibility testing using physical iOS and Android devices (not mobile emulators) to ensure the native accessibility features work with the respective IT solution. The report shall include a detailed timeline for the remediation of all identified accessibility issues. The Contractor may use an independent third-party accessibility testing company to conduct this work.

4.33.6 A testing and remediation plan must be provided for accessibility issues discovered with respect to information technology provided under the Contract. A testing and remediation plan must include items identified in paragraphs 4.33.3 and 4.33.3.1. If the Contractor will use any subcontractors as part of its plan, the Contractor must name the subcontractors in this plan. The Contractor shall remediate any accessibility issues identified in the accessibility audit, by DoIT, or any other state agency. The



Contractor must conduct validation testing on all remediated accessibility issues and provide a copy of the validation testing results in an Excel or other document.

4.33.7 The Contractor agrees that the use of out-of-the-box or third-party source code does not waive a Contractor’s obligation to ensure that a product complies with the requirements of this Section. Furthermore, the Contractor agrees that it bears sole responsibility to determine if any out-of-the-box source code or third-party code is accessible and to remediate any noncompliance with the State’s nonvisual access requirements or cause any noncompliance to be remediated to ensure compliance with such requirements.

4.33. Ten percent (10% ) of all invoiced amounts shall be held back from each payment (the “Retention Amount”), as retention money to guarantee Contractor’s performance of the obligations set forth in this clause. Contractor may invoice the State for release of the Retention Amount upon DoIT’s written approval to place the IT solution into production. DoIT reserves the right to use the Retention Amount to pay for third-party solutions to remediate WCAG 2.1 Level A and AA accessibility issues if the Contractor is unable to remediate after 90 days following launch of the website or application.

#### **4.34 Mercury and Products That Contain Mercury**

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

#### **4.35 Location of the Performance of Services Disclosure**

This solicitation does not require a Location of the Performance of Services Disclosure.

#### **4.36 Department of Human Services (DHS) Hiring Agreement**

This solicitation does not require a DHS Hiring Agreement.

#### **4.37 Small Business Reserve (SBR) Procurement**

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

##### **4.37.1 Acceptable security**

Acceptable security shall be as described below, identified within and excerpted from COMAR 21.06.07:

- A. Acceptable security for Proposal, performance, and payment bonds is limited to:
  - 1) A bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State;
  - 2) A bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;
  - 3) Pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State;
  - 4) An irrevocable letter of credit in a form satisfactory to the Attorney General and issued by a financial institution approved by the State Treasurer.

#### 4.37.2 Surety Bond Assistance Program

Assistance in obtaining bid, performance and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDFDA). MSBDFDA can directly issue bid, performance or payment bonds up to \$750,000. MSBDFDA may also guarantee up to 90% of a surety's losses as a result of a Contractor's breach of Contract; MSBDFDA exposure on any bond guaranteed may not, however, exceed \$900,000. Bonds issued directly by the program will remain in effect for the duration of the Contract, and those surety bonds that are guaranteed by the program will remain in effect for the duration of the surety's exposure under the Contract. To be eligible for bonding assistance, a business must first be denied bonding by at least one surety on both the standard and specialty markets within 90 days of submitting a bonding application to MSBDFDA. The applicant must employ fewer than 500 full-time employees or have gross sales of less than \$50 million annually, have its principal place of business in Maryland or be a Maryland resident, must not subcontract more than 75 percent of the work, and the business or its principals must have a reputation of good moral character and financial responsibility. Finally, it must be demonstrated that the bonding or guarantee will have a measurable economic impact, through job creation and expansion of the state's tax base. Applicants are required to work through their respective bonding agents in applying for assistance under the program. Questions regarding the bonding assistance program should be referred to:

Maryland Department of Commerce  
Maryland Small Business Development Financing Authority  
MMG Ventures  
826 E. Baltimore Street  
Baltimore, Maryland 21202  
Phone: (410) 333-4270  
Fax: (410) 333-2552

#### 4.38 Maryland Healthy Working Families Act Requirements

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations web site for Maryland Healthy Working Families Act Information: <http://dllr.maryland.gov/paidleave/>.

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## 5 Proposal Format

### 5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes (or envelopes):

- Volume I – Technical Proposal
- Volume II – Financial Proposal

### 5.2 Proposal Delivery and Packaging

- 5.2.1 Proposals delivered by facsimile and e-mail **shall not be considered**.
- 5.2.2 Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.
- 5.2.3 Offerors may submit Proposals through the State’s internet based electronic procurement system, eMMA.
- 5.2.4 The Procurement Officer must receive all electronic Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.
- 5.2.5 Offerors shall provide their Proposals in two separate envelopes through eMMA following the [Quick Reference Guides](#) (QRG) labelled “**5 - eMMA QRG Responding to Solicitations (RFP)**” for double envelope submissions.
- 5.2.6 Two Part (Double Envelope) Submission:
- A. Technical Proposal consisting of:
    - 1) Technical Proposal and all supporting material in Microsoft Word format, version 2007 or greater,
    - 2) Technical Proposal in searchable Adobe PDF format,
    - 3) a second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see **Section 4.8**), and
  - B. Financial Proposal consisting of:
    - 1) Financial Proposal entered into the price form spreadsheet within eMMA and all supporting material in PDF format,
    - 2) Financial Proposal in searchable Adobe PDF format,
    - 3) a second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.8**).

### 5.3 Volume I - Technical Proposal

NOTE: Omit all **pricing information** from the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

- 5.3.1 In addition to the instructions below, responses in the Offeror’s Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., “Section 2.2.1 Response . . . ; “Section 2.2.2 Response . . .”). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page “x”).
- 5.3.2 The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

**A. Title Page and Table of Contents (Submit under TAB A)**

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

**B. Claim of Confidentiality (If applicable, submit under TAB A-1)**

Any information which is claimed to be 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. An explanation for each claim of confidentiality shall be included (see **Section 4.8 “Public Information Act Notice”**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.

**C. Offeror Information Sheet and Transmittal Letter (Submit under TAB B)**

The Offeror Information Sheet (see **Appendix 2**) and a Transmittal Letter shall accompany the Technical Proposal. The purpose of the Transmittal Letter is to transmit the Proposal and acknowledge the receipt of any addenda to this RFP issued before the Proposal due date and time. Transmittal Letter should be brief, be signed by an individual who is authorized to commit the Offeror to its Proposal and the requirements as stated in this RFP.

**D. Executive Summary (Submit under TAB C)**

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.”

In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 “Offeror Responsibilities”**).

The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment M**), or any other exhibits or attachments. Acceptance or rejection of exceptions is within the sole discretion of the State. **Exceptions to terms and conditions, including requirements, may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.**

**E. Minimum Qualifications Documentation (If applicable, Submit under TAB D)**

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP **Section 1**. If references are required in **RFP Section 1**, those references shall

be submitted in this section and shall contain the information described in both **Section 1** and **Section 5.3.2.I**.

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

- 1) The Offeror shall address each RFP requirement (RFP **Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order, and shall contain a cross reference to the requirement.
- 2) Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.
- 3) The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in RFP **Section 2**, Contractor Requirements: Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- 4) Implementation Schedule - Offeror shall provide the proposed implementation schedule with its Proposal.
- 5) The Offeror shall identify the location(s) from which it proposes to provide services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.
- 6) The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in **Section 3.8**.
- 7) The Offeror shall provide a Voluntary Product Accessibility Template (VPAT) or an Accessibility Conformance Report (ACR) for any pre-existing digital technology, software, or source code proposed to be provided under the Contract containing a comprehensive analysis of the Offeror's conformance to accessibility standards in Code of Maryland Regulations 14.33.02 (See RFP §4.33). The completed VPAT must adhere to the current published standards (currently - version 2.5 REV WCAG or 2.5 REV 508 or their latest rendition). Failure to supply a VPAT or ACR for an pre-existing coded solution may result in the Offeror's Proposal being deemed not reasonably susceptible for award.

- 8) The Offeror shall provide a Backup solution/ strategy recommendation as part of its Proposal.
- 9) Disaster Recovery and Security Model description - For hosted services, the Offeror shall include its DR strategy, and for on premise, a description of a recommended DR strategy.
- 10) The Offeror shall include a deliverable description and schedule describing the proposed Deliverables as mapped to the State SDLC and the Deliverables table in **Section 2.4.4**. The schedule shall also detail proposed submission due date/frequency of each recommended Deliverable.
- 11) The Offeror shall include an SLA as identified in **Section 2.6**, including service level metrics offered and a description how the metrics are measured, any SLA credits should the service level metrics not be met, and how the State can verify the service level. The Offeror shall describe how service level performance is reported to the State.
- 12) Description of technical risk of migrating from the existing system.
- 13) Non-Compete Clause Prohibition:  

The MHBE seeks to maximize the retention of personnel working under the Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's employees and agents filling the positions set forth in the staffing requirements of Section G working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State business.
- 14) The Offeror shall include a completed copy of **Appendix 3**, Solution Requirements Inventory.

**G. Experience and Qualifications of Proposed Staff (Submit under TAB F)**

As part of the evaluation of the Proposal for this RFP, Offerors shall propose exactly three (3) key resources and shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the MHBE . All other planned positions shall be described generally in the Staffing Plan, and may not be used as evidence of fulfilling company or personnel minimum qualifications.

The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract including information in support of the Personnel Experience criteria in **Section 3.10.2**. Specifically, the Offeror shall:

- 1) Describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
- 2) Include individual resumes for Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.
- 3) Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). Offerors should be aware of restrictions on substitution of Key Personnel prior to RFP award (see Substitution Prior to and Within 30 Days After Contract Execution in Section 3.11.5).
- 4) Provide an Organizational Chart outlining Personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.
- 5) If proposing differing personnel work hours than identified in the RFP, describe how and why it proposes differing personnel work hours.

**H. Offeror Qualifications and Capabilities (Submit under TAB G)**

The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in **Section 3.10.1**. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

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

**I. References (Submit under TAB H)**

*Please review the minimum qualification for References Requirements.* references are requested from customers who are capable of documenting the Offeror's ability to provide the goods and services specified in this RFP. References used to meet any Minimum Qualifications (see RFP **Section 1**) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided goods and services within the past five (5) years and shall include the following information:

- 1) Name of client organization;
- 2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and

- 3) Value, type, duration, and description of goods and services provided.

The MHBE reserves the right to request additional references or utilize references not provided by the Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance.

**J. List of Current or Prior State Contracts (Submit under TAB I)**

Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing goods and services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

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

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

**K. Financial Capability (Submit under TAB J)**

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

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

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

**L. Certificate of Insurance (Submit under TAB K)**

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in **Section 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.

**M. Subcontractors (Submit under TAB L)**

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this RFP.

**N. Legal Action Summary (Submit under TAB M)**

This summary shall include:

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

**O. Economic Benefit Factors (Submit under TAB N)**

- 1) The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price from **Attachment B**, the Financial Proposal Form. See COMAR 21.05.03.03A (3).
- 2) Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.
- 3) Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.
- 4) As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.
- 5) In responding to this section, the following do not generally constitute economic benefits to be derived from the Contract:
  - a) generic statements that the State will benefit from the Offeror's superior performance under the Contract;

- b) descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under the Contract; or
  - c) tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.
- 6) Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded the Contract.
- 7) Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:
- a) The Contract dollars to be recycled into Maryland’s economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. **Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;**
  - b) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of the Contract, so state explicitly;
  - c) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
  - d) Subcontract dollars committed to Maryland small businesses and MBEs; and
  - e) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

**P. Technical Proposal - Required Forms and Certifications (Submit under TAB O)**

- 1) All forms required for the Technical Proposal are identified in Table 1 of **Section 7 – RFP Attachments and Appendices**. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.
- 2) Offerors shall furnish any and all agreements and terms and conditions the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror’s services under this Contract. This includes physical copies of all agreements

referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided in an Offeror's Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.

- 3) For each service, hardware or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.
- 4) A Letter of Authorization shall be on letterhead or through the provider's e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:
  - i) Third-party POC name and alternate for verification
  - ii) Third-party POC mailing address
  - iii) Third-party POC telephone number
  - iv) Third-party POC email address
  - v) If available, a Re-Seller Identifier

#### **5.4 Volume II – Financial Proposal**

The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the MHBE.

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## 6 Evaluation and Selection Process

### 6.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The MHBE reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

During the evaluation process, the Procurement Officer may determine at any time that a particular Offeror is not susceptible for award.

### 6.2 Technical Proposal Evaluation Criteria

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

#### 6.2.1 Offeror's Technical Response to Requirements and Work Plan (See RFP § 5.3.2.F)

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

#### 6.2.2 Experience and Qualifications of Proposed Staff (See RFP § 5.3.2.G)

#### 6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 5.3.2.H)

#### 6.2.4 Satisfaction of the Nonvisual Access requirements (See RFP § 4.33)

#### 6.2.5 Economic Benefit to State of Maryland (See RFP § 5.3.2.O)

### 6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see **Section 6.5.2.D**) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form.

### 6.4 Reciprocal Preference

- 6.4.1 Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. COMAR 21.05.01.04 permits procuring agencies to apply a reciprocal preference under the following conditions:
- A. The Maryland resident business is a responsible Offeror;
  - B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;

- C. The other state gives a preference to its resident businesses through law, policy, or practice; and
  - D. The preference does not conflict with a federal law or grant affecting the procurement Contract.
- 6.4.2 The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

## 6.5 Selection Procedures

### 6.5.1 General

- A. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The CSP method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.
- B. With or without discussions, the State may determine the Offeror to be not responsible or the Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award.

### 6.5.2 Selection Process Sequence

- A. A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal.
- B. Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
- C. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.
- D. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

- E. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO. **Offerors may only perform limited substitutions of proposed personnel as allowed in Section 3.11 (Substitution of Personnel).**

### 6.5.3 Award Determination

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

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

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7 – RFP Attachments and Appendices**.

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## 7 RFP ATTACHMENTS AND APPENDICES

### Instructions Page

A Proposal submitted by the Offeror must be accompanied by the completed forms and/or affidavits identified as “with Proposal” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this RFP, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

For documents required as part of the Proposal:

4. For e-mail submissions, submit one (1) copy of each with signatures.
5. For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table 1 below in the “When to Submit” column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the “When to Submit” column.

**Table 1: RFP ATTACHMENTS AND APPENDICES**

Applies?	When to Submit	Label	Attachment Name
Y	Before Proposal	A	Pre-Proposal Conference Response Form
Y	With Proposal	B	Financial Proposal Instructions and Form
Y	With Proposal	C	Bid/Proposal Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf</a> )
Y	With Proposal	D	MBE Forms D-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> ) <b>IMPORTANT:</b> If this RFP contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is a MBE goal.
Y	10 Business Days after recommended award	D	MBE Forms D-1B, D-1C, D-2, D-3A, D-3B (see link at <a href="http://procurement.maryland.gov/wp-">http://procurement.maryland.gov/wp-</a> )

Applies?	When to Submit	Label	Attachment Name
			<a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> <b>Important:</b> Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.
	As directed in forms	D	MBE Forms D-4A, D-4B, D-5 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> )
N	Not Applicable	E	Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a> ) <b>IMPORTANT:</b> If this RFP contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal.
N	Not Applicable	E	VSBE Forms E-1B, E-2, E-3 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a> ) <b>Important:</b> Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award.
N	Not Applicable With Proposal	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf</a> )
N	Not Applicable With Proposal	G	Federal Funds Attachments (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf</a> )
Y	With Proposal	H	Conflict of Interest Affidavit and Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf</a> )

Y	5 Business Days after recommended award – However, suggested with Proposal	I	Non-Disclosure Agreement (Contractor) (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf</a> )
Y	Before Proposal, as directed in the RFP.	IA	Non-Disclosure Agreement (Offeror)
Y	5 Business Days after recommended award – However, suggested with Proposal	J	HIPAA Business Associate Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf</a> )
N	With Proposal	K	Mercury Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf</a> )
N	With Proposal	L	Location of the Performance of Services Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf</a> )
Y	5 Business Days after recommended award	M	Sample Contract (included in this RFP)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at <a href="https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf">https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf</a> )
N	5 Business Days after recommended award	O	DHS Hiring Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf</a> )
Y	5 Business Days after recommended award	P	Non Entity Agreement
<b>Appendices</b>			
Applies?	When to Submit	Label	Attachment Name
Y	n/a	1	Abbreviations and Definitions (included in this RFP)
Y	With Proposal	2	Offeror Information Sheet (see link at <a href="http://procurement.maryland.gov/wp-">http://procurement.maryland.gov/wp-</a>

			<a href="content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf">content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf</a>
Y	With Proposal	3	Solution Requirements Inventory ( <b>APPENDIX 3</b> ) attached
<b>Additional Submissions</b>			
<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Document Name</b>
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see <b>Section 3.6</b> ); 1 copy
Y	10 Business Days after recommended award		PEP; 1 copy
Y	With deliverables	--	Deliverable Product Acceptance Form (DPAF) (see online at <a href="http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf">http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf</a> )



**Attachment A. Pre-Proposal Conference Response Form**

**Solicitation Number BPM043384**

Small Business Premium Aggregation and Billing Solutions

A Pre-Proposal conference will be held on the date and time stated on the Key Information Sheet.

Please return this form by the date and time stated on the Key Information Sheet, advising whether or not your firm plans to attend. The completed form should be returned via e-mail or fax to the Procurement Officer at the contact information below:

Shirelle Green, Procurement Officer II, CMPO+GPS  
Maryland Health Benefit Exchange (MHBE)  
E-mail: Shirelle.green1@maryland.gov

Please indicate:

- \_\_\_\_\_ Yes, the following representatives will be in attendance.  
Attendees (Check the RFP for limits to the number of attendees allowed):  
1.  
2.  
3.
- \_\_\_\_\_ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.1 “Pre-Proposal conference”):

Offeror: \_\_\_\_\_  
*Offeror Name (please print or type)*

By: \_\_\_\_\_  
*Signature/Seal*

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

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

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

## Attachment B. Financial Proposal Instructions & Form

### B-1 Financial Proposal Instructions

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

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

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



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

**B-1 Financial Proposal Form**

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

See separate Excel Financial Proposal Form labeled xxxxx.xls.

Submitted by:

Offeror:

---

Offeror Name (please print or type)

By:

---

Signature of Authorized Representative

Printed Name:

---

Printed Name

Title:

---

Title

Date:

---

Date

Address:

---

Company Address

**Attachment C. Proposal Affidavit**

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid\\_Proposal-Affidavit.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf).

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

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>.

This solicitation includes a Minority Business Enterprise (MBE) participation goal of 10 percent and all of the following subgoals:

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

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



**Attachment E. Veteran-Owned Small Business Enterprise (VSBE) Forms**

**This solicitation does not include a Veteran-Owned Small Business Enterprise goal.**

**Attachment F. Maryland Living Wage Affidavit of Agreement for  
Service Contracts**

**This solicitation does not require a Living Wage Affidavit of Agreement.**

**Attachment G. Federal Funds Attachments**

**This solicitation does not include a Federal Funds Attachment.**

**Attachment H. Conflict of Interest Affidavit and Disclosure**

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>

**Attachment I. Non-Disclosure Agreement (Contractor)**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.



<b>Attachment J.      HIPAA Business Associate Agreement</b>
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This solicitation does require a HIPAA Business Associate Agreement.

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf>.

**Attachment K. Mercury Affidavit**

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

**Attachment L. Location of the Performance of Services Disclosure**

**This solicitation does not require a Location of the Performance of Services Disclosure.**

<b>Attachment M.</b>	<b>Contract</b>	<b>SAMPLE</b>
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<<ISSUINGAGENCYNAME>> (<<ISSUINGAGENCYACRONYM>>)

“<<solicitationTitle>>”

<<solicitationNumber>>

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND <<ISSUINGAGENCYNAME>> (“<<ISSUINGAGENCYACRONYM>>” or the “MHBE”).

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

**1. Definitions**

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).
- 1.3 “Financial Proposal” means the Contractor’s [pick one: Financial Proposal or Best and Final Offer (BAFO)] dated \_\_\_\_\_ (Financial Proposal date or BAFO date).
- 1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “RFP” means the Request for Proposals for <<solicitationTitle>>, Solicitation # <<solicitationNumber>>, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated. \_\_\_\_\_ (Technical Proposal date), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

**2. Scope of Contract**

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. 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 under 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 approvals by the required agencies as described in COMAR Title 21, are obtained.

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

- 3.1 The term of this Contract begins on the date the Contract is signed by the MHBE following any required prior approvals, including approval by the MHBE Board of Trustees, if such approval is required (the "Effective Date") and shall continue until \_\_\_\_\_ ("Initial Term").
- 3.2 In its sole discretion, the MHBE shall have the unilateral right to extend the Contract for <<enter the number of periods >>, successive <<enter the length of the period>> - <<select either year(s), month(s), or day(s)>> renewal options (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).
- 3.3. The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

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

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the MHBE shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor

pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Financial Proposal.

- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the MHBE 's receipt of a proper invoice from the Contractor as required by RFP section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the MHBE is not evidence that services were rendered as required under this Contract.

## **5. Rights to Records**

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The

State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **6. Exclusive Use**

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

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

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the MHBE or licensed by the MHBE from third parties, including all information provided by the MHBE to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property

embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the MHBE will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 7.4 Without limiting Contractor's obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as

intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.

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

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

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and 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 or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those set forth in this Contract.
- 8.2 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 rightfully 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. Loss of Data**

- 9.1 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 applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **RFP Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **RFP Section 3.7**.

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

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

## **11. Non-Hiring of Employees**

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

## **12. Disputes**

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **13. Maryland Law Prevails**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

#### **14. Nondiscrimination in Employment**

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

#### **15. Contingent Fee Prohibition**

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

#### **16. Non-Availability of Funding**

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

#### **17. Termination for Default**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount

of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

#### **18. Termination for Convenience**

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

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

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

#### **20. Suspension of Work**

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

#### **21. Pre-Existing Regulations**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

#### **22. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business 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 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### **23. Political Contribution Disclosure**

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract 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).

#### **24. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

#### **25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's 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 services performed pursuant to the Contract.
- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. 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 any record related to the services performed pursuant to the 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.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the MHBE has the right to audit such subcontractor(s).

## 26. Compliance with Laws

The Contractor hereby represents and warrants that:

- a. 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;
- b. 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;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## 27. Cost and Price Certification

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

## 28. Subcontracting; Assignment

The Contractor may not subcontract any of its obligations 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, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## 29. Limitations of Liability

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 "Patents, Copyrights, Intellectual Property"** of this Contract;
  - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
  - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall not exceed <<two (2) >>times the total value of the Contract or \$1,000,000, whichever is greater. The above limitation of liability is per incident.

- (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
  - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor's indemnification obligations for Third party claims arising under Section 10 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

### **30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, 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 otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 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 Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, 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.

30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the MHBE , in all subcontracts.

### 31. Prompt Pay Requirements

31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the MHBE , at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
- (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the MHBE concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
- (b) Be used as evidence on the merits of a dispute between the MHBE and the Contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of the MHBE .

31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.

31.5 To ensure compliance with certified MBE subcontract participation goals, the MHBE may, consistent with COMAR 21.11.03.13, take the following measures:

- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
  - i. Inspecting any relevant records of the Contractor;
  - ii. Inspecting the jobsite; and
  - iii. Interviewing subcontractors and workers.

Verification shall include a review of:

- i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
  - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- (b) If the MHBE determines that the Contractor is not in compliance with certified MBE participation goals, then the MHBE will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- (c) If the MHBE determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the MHBE requires, then the MHBE may:
  - i. Terminate the Contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

### **32. Living Wage**

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the MHBE may withhold payment of any invoice or retainage. The MHBE may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

### **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. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

### **35. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to “intellectual property,” and the subject matter of this Contract, including services, is and shall be deemed to be “embodiments of intellectual property” for purposes of and as

such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code (“Code”) (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State’s rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State’s possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

### **36. Miscellaneous**

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.
- 36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

### **37. Contract Monitor and Procurement Officer**

- 37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The MHBE may change the Contract Monitor at any time by written notice to the Contractor.
- 37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The MHBE may change the Procurement Officer at any time by written notice to the Contractor.

### **38. 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, to the Contract Monitor:

Makeda Hailegeberel



750 E. Pratt Street, 6<sup>th</sup> Floor  
Phone Number: 410-547-8154  
E-Mail: [Makeda.Hailegeberel@maryland.gov](mailto:Makeda.Hailegeberel@maryland.gov)

With a copy to:

Shirelle Green, CMPO+GPS  
Maryland Health Benefit Exchange (MHBE)  
750. E. Pratt Street, 6<sup>th</sup> Floor  
Phone Number: 410-547-8151  
E-Mail: [Shirelle.green1@maryland.gov](mailto:Shirelle.green1@maryland.gov)

If to the Contractor:

(Contractor’s Name)  
(Contractor’s primary address)  
Attn: \_\_\_\_\_

[[Delete the following if a parent company guarantee is inapplicable:]]

Parent Company Guarantor

Contact: \_\_\_\_\_  
Attn: \_\_\_\_\_

**<<39.>> Liquidated Damages for MBE**

<<39.>>1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

<<39.>>2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$<<insert value>> per day until the monthly report is submitted as required.

- (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$<<insert value>> per MBE subcontractor.
- (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$<<insert appropriate rate following calculation instructions from GOSBA>> per day until the undisputed amount due to the MBE subcontractor is paid.

39.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

**40. Parent Company Guarantee (If applicable)**

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

**41. Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law**

The Contractor agrees to keep information obtained in the course of this Contract confidential in compliance with \_\_\_\_\_ . 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 includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations at 45 C.F.R. Parts 160 and 164, and the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes providing training and information to employees regarding confidentiality obligations as to health, personally identifiable, and financial information and securing acknowledgement of these obligations from employees to be

involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the 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.

**[[OR –Option 2 of 3 – Use this confidentiality clause when the MHBE unit is a covered entity and the Contractor is not a business associate.]]**

<<42.>>1 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.

<<42.>>2 If in connection with the procurement or at any time during the Term, 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. 164.501 and in the form required by the MHBE .

<<42.>>3 “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; created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and related to the past, present, or future physical or mental health or condition of an individual, the provision of healthcare to an individual, or 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.

**[[OR –Option 3 of 3 – Use this confidentiality clause when the MHBE unit is a covered entity and the Contractor is a business associate.]]**

<<42.>>1 The Contractor acknowledges its duty to become familiar with 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.
- 42.2 Based on the determination by the MHBE that the 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 selected Offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.504 and in the form as required by the MHBE .
- 42.3 “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.

#### **43. Hiring Agreement**

**This section is not applicable to this RFP.**

#### **44. Limited English Proficiency**

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.

SIGNATURES ON NEXT PAGE



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

Contractor

State of Maryland

<<ISSUINGAGENCYNAME>>

(<<ISSUINGAGENCYACRONYM>>)

By:

By: <<agencyContractSigner>>,

<<agencyContractSignerTitle>>

Date

PARENT COMPANY (GUARANTOR) (if applicable)

By:

\_\_\_\_\_

\_\_\_\_\_

By:

Date

\_\_\_\_\_

Date

Approved for form and legal sufficiency

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Assistant Attorney General

**Attachment N.      Contract Affidavit**

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf>

**Attachment O. DHS Hiring Agreement**

This solicitation does not require a DHS Hiring Agreement.

## Appendix 1. – Abbreviations and Definitions

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

Acceptable Use Policy (AUP) - A written policy documenting constraints and practices that a user must agree to in order to access a private network or the Internet.

- A. Access – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource.
- B. Application Program Interface (API) – Code that allows two software programs to communicate with each other.
- C. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
- D. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- E. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
- F. Contract Monitor – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The MHBE may change the Contract Monitor at any time by written notice to the Contractor.
- G. Contractor – The selected Offeror that is awarded a Contract by the State.
- H. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.
- I. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
- J. Maryland Benefit Health Exchange ( the “MHBE ”).
- K. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
- L. Enterprise License Agreement (ELA) – An agreement to license the entire population of an entity (employees, on-site contractors, off-site contractors) accessing a software or service for a specified period of time for a specified value.
- M. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
- N. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.

- O. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See RFP **Sections 3.10**.
- P. Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- Q. Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- R. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
- S. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- T. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
- U. Offeror – An entity that submits a Proposal in response to this RFP.
- V. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- W. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The MHBE may change the Procurement Officer at any time by written notice to the Contractor.
- X. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
- Y. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- Z. Request for Proposals (RFP) – This Request for Proposals issued by the Maryland Health Benefit Exchange (MHBE), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- AA. Security Incident – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of

violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.

- BB. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
- CC. Sensitive Data - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- DD. Service Level Agreement (SLA) - Commitment by the Contractor to the MHBE that defines the performance standards the Contractor is obligated to meet.
- EE. SLA Activation Date - The date on which SLA charges commence under this Contract, which may include, but to, the date of (a) completion of Transition in, (b) a delivery, or (c) releases of work.
- FF. Software - The object code version of computer programs licensed pursuant to this Contract. 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.
- GG. Software as a Service (SaaS) - A software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. For the purposes of this RFP, the terms SaaS and PaaS are considered synonymous and the term SaaS will be used throughout this document.
- HH. Solution - All Software, deliverables, services and activities necessary to fully provide and support the RFP scope of work. This definition of Solution includes all System Documentation developed as a result of this Contract. Also included are all Upgrades, patches, break/fix activities, enhancements and general maintenance and support of the Solution and its infrastructure.
- II. State – The State of Maryland.
- JJ. Source Code – Executable instructions for Software in its high level, human readable form which are in turn interpreted, parsed and/or compiled to be executed as part of a computing system.
- KK. System Availability – The period of time the Solution works as required excluding non-operational periods associated with planned maintenance.
- LL. System Documentation – Those materials necessary to wholly reproduce and fully operate the most current deployed version of the Solution in a manner equivalent to the original Solution including, but not limited to:

- 1) Source Code: This includes source code created by the Contractor or subcontractor(s) and source code that is leveraged or extended by the Contractor for use in the Contract;
  - 2) All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality;
  - 3) All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system;
  - 4) All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer's notes and other documentation;
  - 5) A complete list of Third Party, open source, or commercial software components and detailed configuration notes for each component necessary to reproduce the system (e.g., operating system, relational database, and rules engine software);
  - 6) All associated user instructions and/or training materials for business users and technical staff, including maintenance manuals, administrative guides and user how-to guides; and
  - 7) Operating procedures.
- MM. Task Order– A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Task Order.
- NN. Technical Safeguards – The technology and the policy and procedures for its use that protect State Data and control access to it.
- OO. Third Party Software – Software and supporting documentation that:
- 1) are owned by a third party, not by the State, the Contractor, or a subcontractor;
  - 2) are included in, or necessary or helpful to the operation, maintenance, support or modification of the Solution; and
  - 3) are specifically identified and listed as Third Party Software in the Proposal.
- PP. Total Proposal Price - The Offeror's total price for goods and services in response to this solicitation, included in Financial Proposal **Attachment B** – Financial Proposal Form.
- QQ. Upgrade - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.
- RR. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- SS. Work Order– A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Work Order.

**Appendix 2. Offeror Information Sheet**

**Appendix 2. Offeror Information Sheet**

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder\\_OfferorInformationSheet.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf).

**ATTACHEMENT P                      NON-EXCHANGE ENTITY AGREEMENT**

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

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

**RECITALS**

WHEREAS, MHBE is a state-based exchange established pursuant to the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152) (together with regulations promulgated pursuant thereto, the "ACA"), and particularly pursuant to 45 C.F.R. § 155.100, as well as pursuant to Title 31 of the Insurance Article of the Maryland Code Annotated, and

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

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

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

WHEREAS, MHBE and the Non-Exchange Entity enter into this Agreement effective as of the effective date of the Underlying Agreement (the "Effective Date"),



pursuant to which the Non-Exchange Entity shall provide services to perform the functions set forth in the Underlying Agreement, as well as in any subsequent Task Orders issued pursuant to the Underlying Agreement; and

WHEREAS, the relationship between MHBE and the Non-Exchange Entity shall involve access to Personally Identifiable Information (“PII”), as that term is defined herein, for purposes authorized under the ACA and, more particularly, under 45 C.F.R. §155.200; and

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

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

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

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

## **AGREEMENT**

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

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

capitalized herein:

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

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

3. “Personally Identifiable Information” or “PII” shall mean personally identifiable information as defined by OMB Memorandum M-17-12 (January 3, 2017) (“PII refers to information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual”).

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

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

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

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

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

4. Except as otherwise limited in this Agreement, Non-Exchange Entity agrees to disclose PII for the proper management and administration, or legal responsibilities of the Non-Exchange Entity only when (i) such disclosures are required

by law, or (ii) Non-Exchange Entity obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Non-Exchange Entity of any instances of which it is aware in which the confidentiality of the information has been breached.

5. Non-Exchange Entity shall not directly or indirectly receive remuneration in exchange for any PII of an individual. For the avoidance of doubt, this provision shall not preclude Non-Exchange Entity from receiving payment for the provision of services set forth in the Underlying Agreement or that are required by law.

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

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

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

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

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

- a. **comply with the latest version of Minimum Acceptable Risk Safeguards for Exchanges (MARS-E) – currently MARS-E V2.2.**
- b. Implement administrative, physical and technical safeguards to protect PII accessed pursuant to this Agreement and the Underlying Agreement from loss, theft or inadvertent disclosure.
- c. Safeguard PII at all times, regardless of whether or not the Non-

Exchange Entity's employee, contractor, or agent is at his or her regular duty station.

- d. Ensure that laptops and other electronic devices/media containing PII are encrypted, session locked and password protected.
- e. Send emails containing PII only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
- f. Apply data encryption to protect MHBE data, especially PII, from improper disclosure or alteration.
- g. Apply FIPS 140-2/3 cryptographic mechanisms to protect information during transmissions for data at rest and in transit. Allow for the creation of a secure connection before sharing private data.
- h. Limit disclosure of the information and details relating to a PII loss only to those with a need to know.
- i. Restrict access to PII only to those authorized employees, contractors, and agents who need such data to perform their official duties in connection with purposes identified in this Agreement and the Underlying Agreement; such restrictions shall include, at a minimum, role-based access that limits access to those individuals who need it to perform their official duties in connection with the uses of data authorized in this Agreement and the Underlying Agreement ("authorized users"). Further, the Non-Exchange Entity shall advise all users who will have access to the data provided under this Agreement and the Underlying Agreement of the confidential nature of the data, the safeguards required to protect the data, and the civil and criminal sanctions for noncompliance contained in the applicable State and federal laws.

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

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

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

7. Non-Exchange Entity shall report to MHBE any use or disclosure of PII not permitted by this Agreement or required by law, including any Breaches of PII of which it becomes aware. Non-Exchange Entity further agrees to report to MHBE any Incident

of which it becomes aware without unreasonable delay, and in no case later than five (5) calendar days after the Incident. Further, Non-Exchange Entity shall report all suspected or confirmed Incidents involving loss or suspected loss of PII to MHBE within *one* (1) hour of discovery.

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

a. Is made to MHBE without unreasonable delay and in no case later than fifteen (15) calendar days after the Incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For the avoidance of doubt, Non-Exchange Entity must notify MHBE of an incident involving the acquisition, access, use or disclosure of PII in a manner not permitted under 45 C.F.R. § 155.260 or this Agreement within five (5) calendar days after an Incident even if Non-Exchange Entity has not conclusively determined within that time that the Incident constitutes a Breach as defined by this Agreement;

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

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

d. Includes a draft letter for MHBE to review and approve prior to Non-Exchange Entity's notification of the affected individuals that their unsecured PII has been, or is reasonably believed to have been, the subject of a Breach. The notification must include, to the extent possible:

- i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
- ii) The types of Unsecured PII that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, or other types of information that were involved);
- iii) Any steps the affected individuals should take to protect themselves from potential harm resulting

from the Breach;

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

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

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

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

12. Non-Exchange Entity agrees to make its internal practices, books, and records, including PII, available to MHBE and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance with the ACA's privacy and security regulations as well as with the standards MHBE has established

pursuant to 45 C.F.R. § 155.260, as set forth in 45 C.F.R. § 155.280(a).

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

E. **Term and Termination.**

1. Term. The Term of this Agreement shall be effective as of the Effective Date defined above and shall terminate when all of the PII provided by MHBE to the Non-Exchange Entity, or the PII created or received by Non-Exchange Entity on behalf of MHBE, is destroyed or returned to MHBE, in accordance with the termination provisions in this Section E, or on the date MHBE terminates for cause as authorized in paragraph (2) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PII provided by MHBE to Non-Exchange Entity, or the PII created or received by Non-Exchange Entity on behalf of MHBE, Non-Exchange Entity's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with MHBE.

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

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

3. Effect of Termination.

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

- b. Should Non-Exchange Entity make an intentional or grossly

negligent Breach of PII in violation of this Agreement or applicable law, MHBE shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, as well as the Underlying Agreement.

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

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

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

H. **Modification; Amendment.** This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for MHBE to comply with the requirements of the ACA and, were it to become or imminently be applicable, the Health Insurance Portability and Accountability Act of 1996, as amended, together with all regulations promulgated thereto, and any other applicable law.

I. **Interpretation of this Agreement in Relation to Other Agreements Between the Parties.** Should there be any conflict between the language of this

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

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

K. **Miscellaneous.**

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

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

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

Scott R. Brennan  
Director of Compliance and Privacy  
Maryland Health Benefit Exchange  
750 E. Pratt Street, 6<sup>th</sup> Floor  
Baltimore, MD 21202  
Phone: (410) 547-1838  
Email: [scott.brennan@maryland.gov](mailto:scott.brennan@maryland.gov)



With a copy to:

Sharon S. Merriweather, Principal Counsel

Office of the Attorney General

Maryland Health Benefit Exchange

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

Baltimore, MD 21202

Phone: (410) 547-7378

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

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

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

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

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

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

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

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

7. Survival. Any provision of this Agreement which contemplates

performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.

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

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

10. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

[Signatures on 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 \_\_\_\_\_, 2024.

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

Assistant Attorney General

Maryland Health Benefit

Exchange



Form: 02.03.22

**ATTACHMENT P - EXHIBIT 2**

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

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

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

1) Description of the breach:

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

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

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

\_\_\_\_\_

\_\_\_\_\_

(First)

(Middle)

(Last)

\_\_\_\_\_



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

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

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

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

(Please Complete Other Side)

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

.1 \_\_\_\_\_ Application  
ID \_\_\_\_\_

.2 \_\_\_\_\_ Application  
ID \_\_\_\_\_

.3 \_\_\_\_\_ Application  
ID \_\_\_\_\_

.4 \_\_\_\_\_ Application  
ID \_\_\_\_\_

.5 \_\_\_\_\_ Application  
ID \_\_\_\_\_

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

Name(s) of "Affected" Party	Document ID #	Types of PII
.1 _____	_____	_____
.2 _____	_____	_____



.3 \_\_\_\_\_

.4 \_\_\_\_\_

.5 \_\_\_\_\_

9) Was breach caused by reporting entity?  Yes  No

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Please Complete Other Side)

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

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

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

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

\_\_\_\_\_

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

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

Please securely email completed form to [mhbeincident.report@maryland.gov](mailto:mhbeincident.report@maryland.gov). Please call Scott Brennan, MHBE’s Director of Compliance and Privacy, at 410-547-1838, if you have any questions. Thank You!

(FORM) MHBE Notification of Privacy-IT Security Incident Report 2023-04-26