



**STATE OF MARYLAND
MARYLAND HEALTH CARE COMMISSION (MHCC)**

**EMERGENCY
REQUEST FOR PROPOSALS (RFP)
TELEHEALTH STUDY
RFP NUMBER MHCC 22-003**

ISSUE DATE: JUNE 25, 2021

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: Telehealth Study
Solicitation No: MHCC 22-003

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 CARE COMMISSION
(MHCC)

KEY INFORMATION SUMMARY SHEET

Request for Proposals	Services – Telehealth Study
Solicitation Number:	MHCC 22-003
RFP Issue Date:	June 25, 2021
RFP Issuing Office:	Maryland Health Care Commission (“MHCC” or the "Commission")
Procurement Officer:	Andrea Allen Maryland Health Care Commission 4160 Patterson Avenue Baltimore, MD 21215
e-mail:	andrea.allen@maryland.gov
Office Phone:	410-764-8970
Proposals are to be sent to:	MHCC Attention: Andrea Allen andrea.allen@maryland.gov
Pre-Proposal Conference:	Wednesday, July 14, 2021, 1:00 pm Local Time Zoom Web Conference
Questions Closing Date and Time	Friday, July 30, 2021, 4:00 pm Local Time
Proposal Due (Closing) Date and Time:	Friday, August 13, 2021, no later than 4:00 pm Local Time Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see page iv).
MBE Subcontracting Goal:	N/A
VSBE Subcontracting Goal:	N/A
Contract Type:	Firm fixed price
Contract Duration:	2-year base period
Primary Place of Performance:	As proposed by Offeror
SBR Designation:	No
Federal Funding:	No

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1 Minimum Qualifications

1.1 Offeror Minimum Qualifications

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

- 1.1.1 The Offeror shall have at least seven (7) years' experience conducting quantitative and qualitative research and developing policy recommendations.
- 1.1.2 The Offeror shall have five (5) years' experience providing consulting services on telehealth implementation, barriers, costs, outcomes, and acceptability.
- 1.1.3 Required Documentation: As proof of meeting these qualifications, the Offeror shall provide with its Proposal at least three (3) references from clients whose contracts cover work described in 1.1.1 and 1.1.2. The references should reflect contracts currently underway or completed within the past seven (7) years.

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2 Contractor Requirements: Scope of Work

2.1 Summary Statement

- 2.1.1** The Maryland Health Care Commission (“MHCC” or “Commission”) is issuing this Request for Proposals (RFP) to obtain a Contractor with subject matter expertise in telehealth and new models of integrated care, and proficiency in conducting quantitative and qualitative research. The Contractor will conduct a telehealth study to examine use of audio-only and audio-visual technologies in somatic and behavioral health interventions.

Chapter 70 (House Bill 123) and Chapter 71 (Senate Bill 3) of the 2021 Laws of Maryland, *Preserve Telehealth Access Act of 2021* (hereinafter “*Act*”) requires the Commission, in consultation with the Health Services Cost Review Commission (“HSCRC”), the Maryland Department of Health, and the Maryland Insurance Administration (“MIA”) (collectively, “State agencies”), to submit a report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2-1257 of the State Government Article, on the impact of providing telehealth services in accordance with the provisions in the *Act*.

The Contractor will be responsible for completing tasks (see section 2.3) for specific areas of study described below (A through E), proposing recommendations on (1) coverage of telehealth services; and (2) reimbursement payment levels for technology-assisted audio-only and audio-visual telehealth services relative to in-person care, and developing a Final Recommendations Report and Technical Report. Findings will inform proposed legislation during the 2023 Maryland legislative session.

- A. Conduct an analysis of:
 - i. The impact of telehealth on disparities in access to health care services, including primary care and behavioral health services;
 - ii. Whether different communities and patient populations have differences in take-up rates of telehealth services; and
 - iii. The comparative effectiveness of telehealth services and in-person visits on the total costs of care and patient outcomes of care.
- B. Study the alignment of telehealth services with new models of care that addresses:
 - i. Opportunities for using telehealth to improve patient-centered care;
 - ii. Health care services for which telehealth can substitute for in-person care while maintaining the standard of care, including the use of remote patient monitoring for somatic and behavioral health care services; and
 - iii. The impact of alternative care delivery models on telehealth utilization, coverage, and reimbursement.
- C. Assess the efficiency and effectiveness of telehealth services and in-person visits that includes:
 - i. A review of peer-reviewed research on the impact of different communication technologies on patient health, including patient retention rates and reduced barriers to care;

- ii. A survey of health care providers, as defined under § 15–141.2 of the Health – General Article of the Annotated Code of Maryland; and
 - iii. A review of the resources required to sustainably provide telehealth services for the continuum of health care providers, including private and small practices.
- D. Conduct an assessment of patient awareness of and satisfaction with telehealth coverage and care that includes:
- i. The availability and appropriate uses of telehealth services;
 - ii. An understanding of privacy risks, benefits of telehealth services, and the approaches for resolving privacy issues; and
 - iii. Barriers to care and levels of patient engagement that have been addressed by audio-only and audio–visual telehealth.
- E. Conduct a review of the appropriateness of:
- i. Telehealth across the continuum of care, ranging from virtual telecommunications services used for patient check-ins to in-person evaluation and management services as defined in the Berenson–Eggers type of service typology for somatic and behavioral health services;
 - ii. Inclusion of clinic hospital facility fees in reimbursement for hospital–provided telehealth; and
 - iii. The use of telehealth to satisfy network access standards required under § 15–112(b) of the Insurance Article, Annotated Code of Maryland.
- 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 Agency 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** The successful 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 shall remain responsible for Contract performance regardless of subcontractor participation in the work.

2.2 Background, Purpose, and Goals

The MHCC is an independent State regulatory agency comprised of 15 Commissioners appointed by the Governor with the advice and consent of the Maryland Senate. The MHCC provides timely and accurate information on availability, cost, and quality of services to policy makers, purchasers, health care providers (providers), and the public. The MHCC consists of four Centers that plan, evaluate, and regulate health care in Maryland. In each of its functional areas, the MHCC focuses on shifting healthcare delivery from a volume of care and fee-for-service orientation to improved health outcomes delivered through greater coordination, accountability, and patient-centeredness. The Centers for Health Care Facilities Planning and Development and Quality Measurement and Reporting are organized around provider organizations to address health care cost, quality, and access. The Center for Information Services and Analysis evaluates use of services using Maryland databases and national surveys. The Center for Health Information Technology and Innovative Care Delivery work with health care providers to diffuse adoption of health information technology (health IT) statewide to promote a strong and

flexible health IT ecosystem. Expanding use and innovation of telehealth to improve access to care and reduce cost is an MHCC strategic priority (see The Maryland Health Care Commission 2019-2022 Strategic Report).

The MHCC has been a leader in promoting use of telehealth in multiple settings for more than a decade. The MHCC has launched initiatives that provide technical guidance to ambulatory care practices implementing telehealth, foster peer learning about best practices, and assess the effectiveness of select use cases in various settings through demonstration projects. Since 2014, a total of 17 telehealth grants have been awarded by MHCC to fund innovative projects that successfully served as sparks for wider adoption. In March 2020, MHCC expanded its initiatives to help providers quickly implement and scale telehealth services during the COVID-19 public health emergency (“PHE”). The MHCC developed and launched a Telehealth Virtual Resource Center website that provides information on payer telehealth policy changes, considerations for selecting a telehealth vendor, best practice tips for patient and provider engagement in virtual care, and guidance on telehealth liabilities and risks. In addition, the website includes the Telehealth Readiness Assessment Tool, an online self-assessment questionnaire that helps ambulatory practices assess their readiness to adopt telehealth. The MHCC also implemented public service initiatives to build consumer awareness about the utility of telehealth and how to become better users of the technology.

Payers made unprecedented changes in their telehealth coverage policies in response to the PHE. These changes build on regulatory flexibilities granted under State and federal emergency declarations to ensure consumers have continued access to care during the PHE. The most common changes were service expansions, cost-sharing waivers, coverage for audio-only services, payment parity, and reimbursement for out-of-network providers. As the magnitude of the pandemic began to abate in the fall of 2020, providers began to advocate for making many of the PHE telehealth coverage policies permanent. Stakeholders requested MHCC convene a Telehealth Policy Workgroup (“workgroup”) to discuss changes in telehealth policy implemented in response to the PHE. Workgroup discussions centered on the broadened scope of telehealth and how the broadened scope benefits patients and providers. The workgroup focused on the features of expanded telehealth policies that could be made permanent post-PHE. The consensus of the workgroup was that further study was needed. It was recommended that MHCC examine access, utilization, cost of audio-only and audio-visual visits, and the comparative effectiveness of telehealth and in-person services.

Chapter 70 (House Bill 123) and Chapter 71 (Senate Bill 3) of the 2021 Laws of Maryland, *Preserve Telehealth Access Act of 2021*, requires MHCC, in consultation with select State agencies, to conduct a study on the impact of telehealth services as it relates to both audio-only and audio-visual technologies. Study scope and recommendations are specified in the law. The law requires MHCC to submit a report to the Senate Finance Committee and the House Health and Government Operations Committee by December 1, 2022; the report will include chapters prepared by the MIA and HSCRC on their respective study findings. The final deliverable consists of two reports: 1) a Final Recommendations Report with recommendations on coverage of telehealth services and payment levels for telehealth services relative to in-person care and 2) a Technical Report on findings from the required study activities (2.1.1 A-D). The Final Recommendations Report and a Technical Report must be based on findings from study activities and approved by MHCC; the report must be written in a manner in which recommendations are proposed by MHCC for consideration by the Maryland legislature.

2.2.1 Project Goals

For purposes of this solicitation, the following applies: 1) “somatic care” includes physical care delivered by primary care (general practice, internal medicine, pediatrics, and OB/GYN) and specialty providers engaged in primary care, including nurse practitioners; and 2)

“behavioral health” includes care delivered by psychiatrists, psychologists, licensed certified social workers, and licensed professional counselors. The study goals include:

- A. Conduct quantitative and qualitative research on telehealth that considers both audio-only and audio-visual technologies relative to in-person care for somatic and behavioral health interventions in accordance with specified study components in law; and
- B. Develop a Final Recommendations Report and a Technical Report by September 1, 2022, that is of academic quality and includes findings from research, recommendations, and supporting rationale on coverage of telehealth services and payment levels for audio-only and audio-visual technologies for somatic and behavioral health interventions relative to in-person care.

2.2.2 State Staff and Roles

In addition to the Procurement Officer, the State will make the Division Chief, Health Information Technology (Contract Monitor) available to the Contractor. Other MHCC staff may be made available as determined by the Director of Health Information Technology and Innovative Care Delivery.

2.2.3 State Responsibilities

2.2.3.1 The MHCC shall provide the Contractor with output files from its Maryland Medical Care Data Base, which is Maryland’s All Payer Claims Database (“APCD”) for 2018 through the most recent quarter available for 2022 for the deliverables required under 2.3.6. The APCD supports estimates of cost and utilization, policy analyses, and evaluations of demonstration programs, and is a decision support tool for State partners, such as the MIA and the HSCRC.

- A. The output files shall consist of private payer claims by NAIC (National Association of Insurance Commissioners) number below (i-v) and exclude self-insured ERISA (The Employee Retirement Income Security Act of 1974) health plans. Patient identifiable information will not be included in the output files. At its discretion, MHCC may include data from additional private payers.
 - i. Aetna Health & Life Insurance Company (78700); Aetna Health, Inc. (95109); and Aetna Life Insurance Company (60054)
 - ii. CareFirst BlueChoice, Inc. (96202); CareFirst of Maryland, Inc. (47058); and Group Hospitalization & Medical Services, Inc. (53007)
 - iii. CIGNA Health and Life Insurance Company (67369)
 - iv. Kaiser Foundation Health Plan of The Mid-Atlantic States, Inc. (95639); and Kaiser Permanente Insurance Company (60053)

- v. MAMSI Life and Health Insurance Company (60321); Optimum Choice, Inc. (96940); United Healthcare of The Mid-Atlantic, Inc. (95025); and United Healthcare Insurance Company (79413)

2.2.3.2 The MHCC shall provide the Contractor with output files of telehealth claims from the most recent available Medicare and Medicaid data.

A. Patient identifiable information will not be included in the output files. The output files shall include originating and distant site providers from the following subgroups:

- i. Primary care (defined in section 2.2.1);
- ii. Behavioral health care (defined in section 2.2.1); and
- iii. Other – specialists not uniquely called out in the above subgroups.

2.2.3.3 The MHCC shall provide the Contractor with a list of providers and approximately 15 survey questions for deliverables required under 2.3.7.

A. Survey questions provided by MHCC will consist of the following categories:

- i. Audio-only and audio-visual telehealth technologies in comparison to in-person visits;
- ii. The impact of telehealth on access to care and utilization; and
- iii. The type and volume of services provided through telehealth.

2.3 Responsibilities and Tasks

The Contractor shall describe in their proposal how they will complete the following tasks:

2.3.1 Contract commencement

After receipt of a Notice to Proceed, the Contractor shall perform the necessary tasks to prepare for Contract requirements (2.1.1 A-E) and associated deliverables of this solicitation.

2.3.2 Kick-off meeting

By the 15th business day after Contract commencement, the Contractor shall schedule and facilitate a kick-off meeting to present the Work Plan required under 2.3.3, Communication Plan required under 2.3.4, and the Progress Report template under 2.3.8.1, as proposed in the Contractor's Technical Proposal. The Contractor will make appropriate changes to the work plan and communication plan based on the advice and input of the Contract Monitor and submit the revised plans to the Contract Monitor within five business days after the kick-off meeting.

2.3.3 Work Plan

The work plan shall be detailed with a project management flow chart (created in Microsoft Project or other software mutually acceptable to the Contractor and MHCC). The work plan shall contain at a minimum the following information:

- A. Each major step of the project with specific tasks, task milestones, and completion dates;
- B. Name(s) and position title(s) of staff members responsible for each task, and the number of hours assigned to each staff member to complete each task; and
- C. Resources needed for the project.

2.3.4 Communication Plan

The Contractor's communication plan will be used to update MHCC on the status and completion of all responsibilities and tasks required under this solicitation and include strategies to inform providers and consumer advocates on survey activities and opportunities to aid in the work. The Contractor's communication plan shall be derived from the submitted proposal (addressing all items under 2.3), accordingly with all required revisions from the Contract Monitor, and shall include a methodology for communicating with MHCC, other State agencies, providers, and consumers. All written communications prepared by the Contractor shall be approved by MHCC prior to distribution.

2.3.5 Research

- 2.3.5.1** The Contractor shall develop six (6) briefing papers (see 2.3.5.5) that document study progress, findings, and limitations to inform the development of the recommendations. These briefing papers shall be informed by peer-reviewed literature, data used in the study, or other acceptable research methods. Each briefing paper will serve as the precursor to sections in the Technical Report and the basis for the recommendations in the Final Recommendations Report. The MHCC is taking this approach because MHCC believes that the questions posed in the study language are sufficiently broad that many policymakers and stakeholders may be interested in select issues, findings, and recommendations. The briefing papers will provide a means for keeping MHCC informed of progress and enable stakeholders to track progress and direction. The MHCC will make the final determination whether a briefing paper moves from an internal working paper to a public product.
- 2.3.5.2** The Contractor shall designate at least one (1) staff person with appropriate content knowledge to screen literature for relevance to the study focus and identify key elements of the literature.
- 2.3.5.3** Literature reviews must be conducted in accordance with the Preferred Reporting Items for Systematic Reviews and Meta-Analysis (or "PRISMA") reporting guidelines.
- 2.3.5.4** The Contractor must propose to MHCC for approval a conceptual research framework based on any combination of the following:
 - A. Relevant literature – up to five (5) articles for each briefing paper;
 - B. Data used in the study – must include specifics; or

C. Other acceptable research methods.

2.3.5.5 Each briefing paper shall not exceed seven (7) pages and include:

- A. Briefing paper audience;
- B. Subject/issue;
- C. Background;
- D. Current status;
- E. Key information;
- F. Options/recommendations; and
- G. Conclusion(s).

2.3.5.6 The Contractor shall analyze the impact of telehealth on disparities in access to health care services, with a focus on primary care and behavioral health (defined in section 2.2.1). This includes considering social, behavioral, and economic factors that impact health and have been exacerbated during the PHE.

- A. The Contractor shall examine the extent to which telehealth can increase access to somatic and behavioral health care for underserved populations, including rural communities.
- B. The Contractor shall analyze the impact of telehealth use based on the number of visits since pre-PHE to present on disparities in access to health care services, with a focus on primary care and behavioral health (defined in section 2.2.1).
- C. The Contractor shall examine the use of audio-only and audio-visual technologies where uneven access to care exists.
- D. The Contractor shall develop a briefing paper that takes into consideration the items that follow:
 - i. Social, economic, and environmental factors across various demographics (age, sex, race, ethnicity, income, and education) that lead to health outcome inequalities for some populations and advantages for others;
 - ii. Leading ways disparities persist and have been exacerbated by the PHE, namely differential access of connectivity to the internet and access to somatic and behavioral health services; and
 - iii. New and emerging trends, including federal and State policies and innovative private sector interventions, that leverage audio-only and audio-visual technologies to monitor and close gaps in health disparities.

2.3.5.7 The Contractor shall analyze take-up rates of telehealth services across communities and diverse patient populations and determine which factors such as

patient age, socioeconomic status, racial/ethnic identity, and rurality of where they live and work, most strongly influence telehealth adoption.

- A. The Contractor shall identify how telehealth take-up rates pre-PHE to the present vary among different communities and patient populations.
- B. The Contractor shall specifically examine differences in the use of audio-only and audio-visual technologies for somatic and behavioral health interventions.
- C. The Contractor shall develop a briefing paper that takes into consideration the items that follow:
 - i. Factors driving demand or hesitancy in using audio-only and audio-visual technologies across different communities and patient populations, including social determinants of health (socioeconomic status, education, physical environment, employment, and social support network); and
 - ii. Leading somatic and behavioral health services driving take-up rates before and during the PHE.

2.3.5.8 The Contractor shall assess how the use of audio-only and audio-visual technologies in somatic and behavioral health interventions creates and/or mitigates challenges to patient-centered care. This includes considering how patient-centered approaches to care can replace the current provider-centered model with one that revolves around the patient.

- A. The Contractor shall develop a briefing paper that takes into consideration the items that follow:
 - i. Health outcomes;
 - ii. Communications with patients and families/caregivers; and
 - iii. Patient expectations and engagement.

2.3.5.9 The Contractor shall examine and identify opportunities to leverage audio-only and audio-visual technologies as core components of new models of care. This includes considering how new models of care integrate telehealth to promote flexible patient-centered approaches to care.

- A. The Contractor shall develop a briefing paper that takes into consideration the items that follow:
 - i. The impact of telehealth on access to care, patient outcomes, and cost;
 - ii. Key care delivery and financial policy considerations required to advance audio-only and audio-visual technologies for somatic and behavioral health interventions in new models of care; and

- iii. Policy considerations to promote and incentivize high-quality care using a framework that supports novel payment arrangements in both capitated and risk-based models.

2.3.5.10 The Contractor shall study health care services for which telehealth can substitute in-person care while maintaining a standard of care. This includes considering the extent that the use of audio-only and audio-visual technologies in somatic and behavioral health interventions can lead to early diagnosis and prompt treatment of a disease, illness, or injury and minimize the potential occurrence of an adverse health event.

- A. The Contractor shall develop a briefing paper that takes into consideration the items that follow:
 - i. Reduced travel for certain patients, such as the elderly, chronically ill, or those with mobility impairment;
 - ii. Remote monitoring of certain conditions;
 - iii. Triageing patient symptoms to decide if in-person treatment is necessary; and
 - iv. Expanded access to behavioral health services for mental health and substance use disorders.

2.3.5.11 The Contractor shall study whether services delivered using audio-only and audio-visual technologies are equivalent to in-person services for the treatment of somatic and behavioral health conditions.

- A. The Contractor shall develop a briefing paper addressing the following questions:
 - i. What can be gleaned from data on the use of audio-only and audio-visual technologies in the treatment of somatic and behavioral health conditions to provide reasonable insight as to how these interventions are equivalent in care delivery?
 - ii. What is the systematic rationale for the disjuncture between audio-only and audio-visual technologies in the treatment of somatic and behavioral health conditions?

2.3.6 Analysis

2.3.6.1 The Contractor shall complete a comparative analysis on the effectiveness of somatic and behavioral health interventions using audio-only and audio-visual technologies as compared to in-person visits.

- A. The analysis must consider the potential increase in costs through duplication of service between audio-only and audio-visual technologies and in-person care.

2.3.6.2 The Contractor shall assess the use of audio-only and audio-visual technologies for the treatment of somatic and behavioral health conditions across the continuum of care ranging from virtual telecommunications services used for patient check-ins to in-person evaluation and management services as defined in the Berenson-Eggers type of service typology using data provided by MHCC under 2.2.3.1 and 2.2.3.2 to:

- A. Evaluate the relative expansion and diminution of audio-only and audio-visual technologies for somatic and behavioral health interventions since the declaration of the PHE;
- B. Describe patterns in the use of audio-only and audio-visual technologies for somatic and behavioral health interventions noting peaks in use since the declaration of the PHE;
- C. Describe the relative distribution of audio-only and audio-visual technologies across primary care and behavioral health since the declaration of the PHE; and
- D. Include a statistical analysis to uncover patterns and trends from pre-PHE to present that shed light on the use of audio-only and audio-visual technologies in the treatment of somatic and behavioral health.

2.3.6.3 The Contractor will complete an assessment and statistical analysis using data from the APCD for 2018 through the most recent quarter available for 2022 to measure the take-up of telehealth.

- A. Select providers (defined in section 2.2.1) that include the originating and distant site for the following subgroups:
 - i. Primary care;
 - ii. Behavior health care; and
 - iii. Other – specialists not uniquely called out in the above subgroups.
- B. Telehealth services using Medicare and Medicaid data and APCD data (or data provided by the payers), with a focus on payers and covered telehealth services, as indicated in the table below.

Telehealth Billing CPT Codes and Modifiers <i>As of April 2021</i>	
Note: <i>Italicized items represent changes implemented in response to the PHE waiving certain use requirements for telehealth.</i>	
Aetna	<p>Audio-visual</p> <ul style="list-style-type: none"> • <i>Somatic and Behavioral Health: Same as face-to-face encounters using POS 02 and GT or 95 modifier</i> • <i>Partial Hospitalization Program: H0035, H2036</i> <p>Audio-visual or Telephone</p> <ul style="list-style-type: none"> • <i>Using POS 02 and GT or 95 modifier</i> <ul style="list-style-type: none"> ○ <i>Somatic: G2010; G2012; 98966 – 98968; 99441- 99443</i> ○ <i>Behavioral Health: 99441- 99443</i>
CareFirst	<p>Audio-visual</p> <ul style="list-style-type: none"> • Appropriate CPT Code with the HCPCS modifier-GT or CPT modifier-95 • Non-facility payment rate POS 02 • With GT or 95 modifier and POS 02: <ul style="list-style-type: none"> ○ Somatic: 93228-93229; 93268; 93270; 93271-93272; 96040; <i>96110</i>; 98960-98962; 99201-99205; 99211-99215; 99241-99245; 99251-99255; 99401-99409; 99495-99496 ○ Hospital: 99221-99223; 99231-99233 ○ Behavioral Health: 90785; 90791-90792; 90832-90834; 90836-90838; 90845-90847; 90849; 90853; 90863; <i>96116; 96121; 96130-96132; 96136-96137; 99354-99355</i> ○ ESRD: 90951-90952; 90954-90955; 90957-90958; 90960-90961; <i>90964; 90966; 90968; 90970</i> ○ Skilled Nursing Facility: 99307-99310 • With GT modifier and POS 02: <ul style="list-style-type: none"> ○ Somatic: <i>99497-99498</i> ○ Behavioral Health: <i>97151; 97155-97157</i> ○ Health Risk Assessment: <i>96160-96161</i> ○ ESRD: <i>90965; 90967; 90969</i> • No modifier and POS 02: <ul style="list-style-type: none"> ○ Somatic: 96105; 96125; 99381-99387; 99391-99397 ○ Speech Therapy/Hearing: 92508; 92521-92524; 92626-92627; 92630; 92633; 97533 ○ Physical Therapy: 97110; 97112; 97161-97162; 97164; 97535 ○ Occupational Therapy: 97164-97166; 97168; 97535 ○ Behavioral Health: 97129-97130; 97153 ○ COVID-19: Z20.828; U07.1 • No modifier or POS: <ul style="list-style-type: none"> ○ Somatic: G2025 • Telephone-Only <ul style="list-style-type: none"> ○ Somatic: 99441 • Behavioral Health: 99441; 98966
Cigna	<p>Audio-visual or Telephone</p> <ul style="list-style-type: none"> • Somatic: 96040; 99202-99205; 99211-99215; 99406-99409; G0108; G0396-G0397; G0438-G0439; G0442-G0447; G0459; G0513-G0514 • Behavioral Health: 96116; 96156; 96158-96161; 96164-96165; 96167-96168 • ESRD: 90951-90970 • <i>COVID-19: Z03.818, Z20.822, or Z20.828, U07.1, J12.82, M35.81, or M35.89 with GQ, GT or 95 modifier</i> <p>Telephone Only</p> <ul style="list-style-type: none"> • <i>G2012; 99441-99443</i>
Kaiser	<p>Audio-visual or Telephone</p> <ul style="list-style-type: none"> • With GT, GQ, 95 modifiers and POS 02 <ul style="list-style-type: none"> ○ 77427; 90791-90792; 90832-90834; 90836-90840; 90845-90847; 90853; 90863; 90951-90955; 90957-90970; 9252692228; 93228-93229; 93268; 92507; 92521-92524; 9327093272; 93298; 96040; 96116; 96121; 96130-96133; 96136-96139; 96156; 96159-96161; 96164-96165; 96167-96168; 97110; 97112; 97116; 97151; 97155-97157; 97161-97168; 97530; 97535; 97750; 97755; 97760; 97761; 97802-97804; 98960-98962; 98966-98968; 99091; 99201-99205; 99211-99215; 99217-99226; 9923199236; 99238-99239; 99241-99245; 99251-99255; 9928199285; 99291-99282; 99304-99310; 99315-99316; 99327-99328; 99334-99337; 99341-99345; 99347-99350; 99354-99357; 9938199387; 9939199397; 99401-99404; 99406-99409; 99441-99443; 99446-99449; 99451-99454; 99457-99458; 99468-99469; 99471-99473; 99457-99480; 99483; 99495-99498; G0108-G0109; G0270; G0296; G0396-G0397; G0406-G0408; G04200-G0421; G0425-G0427; G0438-G0439; G0442-G0447; G0459; G0506; G0508-G0509; G513-G0514; G2010; G2012; G2061-G2063; G2086-G2088; Q3014
United Healthcare	<p>Audio-visual</p> <ul style="list-style-type: none"> • Services recognized by CMS and appended with GT or GQ modifiers • Services recognized by the AMA included in Appendix P of CPT and appended with 95 modifier. • Somatic: 93228-93229; 93268; 98960-98962; 99202-99205; 99211-99215; 99395-99397; 99406-99409; 99478-99480; 99483; 99495-99498; G0108-G0109; G0296; G0406-G0408; G0425-G0427; G0438-G0439; G0506; G0513-G0514; G2211-G2212 • Hospital: 99217; 99224-99226; 99231-99233; 99238-99239; 99281-99285; 99291-99292; 99469; 99472; 99476; G0459; G0508-G0509 • Behavioral Health: 90863; G0396-G0397; G0442-G0446; G2086-G2088; G9978-G9986 • ESRD: 90951; 90952--90970; G0420-G0421 • Skilled Nursing Facility: 99307-99310; 99315-99316 <p>Audio-visual or Audio-only</p> <ul style="list-style-type: none"> • Somatic: G2010; G2012 <p>Virtual Check-In</p> <ul style="list-style-type: none"> • G2010; G2012 • Not related to a medical visit within the previous 7 days • Does not lead to a medical visit within the next 24 hours

2.3.7 Provider Survey and Consumer Focus Groups

2.3.7.1 The Contractor shall conduct a provider survey and convene consumer focus groups to inform the development of the recommendations. Both provider survey questions and consumer focus group discussions will center on the use of audio-only and audio-visual technologies in the treatment of somatic and behavioral health.

A. The Contractor shall identify and describe in their response to this solicitation the following:

- i. Statistical methods and presentation approaches to be used in the data analysis that will allow for meaningful interpretations of the data and reporting on the research findings.
- ii. Software that will be used for the data analysis and obtain MHCC sign-off before beginning the work.

2.3.7.2 The Contractor shall be available to meet with MHCC up to twice weekly during the first 90-days of the contract to ready facilitation of the survey and focus groups, including administration, data collection, and analysis. The frequency of meetings shall be weekly thereafter until data collection is complete. Updates noting progress to date on provider survey response rates and consumer focus group activities, project issues, and next steps must be submitted to MHCC weekly.

2.3.7.3 Provider Survey Administration

A. The Contractor must conduct pretesting of the survey questions provided by MHCC under 2.2.3.3 on a sample of providers not part of the data collection framework. Pretesting categories include:

- i. Audio-only and audio-visual telehealth technologies in comparison to in-person visits;
- ii. The impact of telehealth on access to care and utilization; and
- iii. The type and volume of services provided through telehealth.

B. The Contractor shall propose survey design changes within five (5) business days of pretesting. Edits to the survey questions must be proposed using Microsoft Track Changes and aim to ensure that the greatest number of responses and the objectives of the survey are met.

C. The Contractor shall propose to MHCC for approval a presentation mockup of how questions and response choices will be sequenced and formatted that is suitable for each method used to administer the survey. The format shall be ADA compliant and allow for survey participants to respond accurately and in an efficient manner.

D. The Contractor shall complete a point in time survey. The Contractor shall propose an approach to survey at least 1,000 providers.

- E. The sample selection and survey methodology shall be designed to achieve a minimum 50 percent response rate in the most cost-effective and efficient manner possible. The survey methodology shall address the manner in which a 50 percent response rate will be achieved.
- F. The Contractor shall ready response data for tabulation of results and provide a copy to MHCC.
- G. The Contractor's data collection responsibilities shall include:
 - i. Survey dissemination;
 - ii. Answering inquiries from potential survey respondents during the survey collection period; and
 - iii. Compiling survey responses in an MHCC approved electronic format for analysis.
- H. The Contractor shall review all data analyzed for calculation errors and all written reports for spelling and grammatical errors. The Contractor shall review any report in both paper and electronic form for formatting errors.
- I. The Contractor shall provide a written summary of the types of inquiries received by the Contractor at the completion of the data collection period. A complete categorization and analysis of all inquiries and comments shall be provided to MHCC as part of the appendix in the Technical Report.
- J. The Contractor shall provide MHCC with all survey data upon request and at the completion of the study. The Contractor shall include a data dictionary and file layout when transferring the data set to MHCC. The Contractor shall not retain any data after the completion of the contract period. The Contractor shall securely dispose of and permanently delete all State data provided to the Contractor (including analysis files developed for work under the Contract) in accordance with the required methods of data destruction described in Section 3.2.1 (Return and Maintenance of State Data).

2.3.7.4 Consumer Focus Groups Administration

- A. The Contractor shall convene consumer focus groups of telehealth users and non-users virtually, in-person, or a combination thereof to evaluate:
 - i. Attitudes, opinions, and beliefs pertaining to audio-only and audio-visual technologies;
 - ii. Experiences with telehealth pre-PHE and during the PHE; and
 - iii. Future demand and expectations.
- B. The Contractor shall propose a meeting approach that includes virtual, in-person, or a combination thereof.

- C. The Contractor shall convene focus groups representative of consumers from each of the following geographic locations:
 - i. Eastern Shore;
 - ii. Baltimore City;
 - iii. Prince Georges/Montgomery County; and
 - iv. Western Maryland.
- D. The Contractor shall convene two (2) focus groups in each of the four geographic locations. One (1) group shall consist of telehealth users, and one shall consist of non-telehealth users.
- E. Each focus group shall consist of 10-12 individuals. The individuals should be residents of the geographic locations they represent. To the extent possible, each focus group should be representative of a range of ages, incomes, and educational levels. Individuals should have private insurance, Medicare, or Medicaid coverage. The composition of each focus group should reflect the racial and ethnic makeup of that region. Native Spanish speakers that are bilingual are desired. The MHCC reserves the right to review and approve the composition of all focus groups.
- F. The Contractor shall complete the following focus group activities:
 - i. Develop Moderator Guides that include a detailed agenda and format for the focus group sessions, including carefully worded and sequenced questions and the time allocation per question. Areas of focus shall include the availability and appropriate uses of telehealth services delivered using audio-only and audio-visual technologies, perceived telehealth benefits and risks to privacy, and approaches needed to navigate privacy concerns.
 - ii. At least 10 working days before convening a focus group, the Contractor shall provide Moderator Guides to MHCC that address individual experience with audio-only and audio-video telehealth or in the case of non-users reasons for not using audio and audio-video telehealth.
 - iii. Moderate focus groups and provide a note taker.
 - iv. Provide to MHCC within five (5) business days after conclusion of a focus group:
 - a. High quality audiotapes of the focus group meeting with transcription;
 - b. Any written responses made by focus group members prior to or during the focus group meeting;

- c. A log of verbal participant responses as recorded by the note taker; and
 - d. A written summary of participants' responses, indicating the main point(s) and theme(s).
- G. The Contractor shall identify and describe in their response to this solicitation the following:
- i. Focus group design approach;
 - ii. Strategy to ensure participation diversity;
 - iii. Recruitment strategy including compensation;
 - iv. Focus group meeting logistics, including when and how to convene meetings (virtually, in-person, or a combination thereof);
 - v. Qualification of the focus group moderator; and
 - vi. Specific discussion topics and questions that align with 2.3.7.4 Ai-iii.

2.3.8 Reports

2.3.8.1 Progress Reports

- A. The Contractor shall use a progress report template, as required under 2.3.2, to communicate information to MHCC, including reporting period, schedule status, budget status, milestones achieved, issues/delays, change requests, and risks; all elements in the progress report template must be approved by MHCC.
- B. The Contractor shall submit via email an initial progress report 15 business days after the kick-off meeting; subsequent progress reports are due at monthly intervals 10 days after the end of the month within 90-days of award.

2.3.8.2 Final Recommendations Report and Technical Report

- A. The Contractor shall propose draft outlines for the Final Recommendations Report and Technical Report no later than 90-days after contract commencement.
 - i. The Final Recommendations Report outline shall detail the Contractor's approach to presenting recommendations that are proposed by MHCC for consideration by the Maryland legislature and supporting rationale, and chapters from the HSCRC and MIA that are independently generated.
 - ii. The Technical Report outline shall detail the Contractor's approach for presenting study findings by key category (briefing papers,

provider survey, consumer focus groups) and developing supporting appendices.

- B. To maximize understanding of content in the Final Recommendations Report by a non-technical audience, the report shall:
 - i. Minimize the use of technical language and only include technical explanations essential to understand the report (using footnotes or visuals when appropriate);
 - ii. Limit the use of acronyms that are not frequently repeated and provide explanation (“drill down” details for readers who wish to learn more) for acronyms essential to understand the report; and
 - iii. Make effective use of graphics to enhance user understanding.
- C. The Technical Report shall be written in a clear and concise style that is understandable by health care policymakers with varying degrees of technical backgrounds. The Contractor must note any limitations and how study findings were formulated and analyzed.
- D. The Final Recommendations Report and Technical Report must be formatted and provided to MHCC in Microsoft Word, Office 360. The Contractor shall ensure that reports can be appropriately converted to Adobe Acrobat PDF format.
- E. The Contractor shall propose a timeline to MHCC for approval for producing up to three (3) iterations of the Final Recommendations Report and the Technical Report. Each of the three (3) iterations must be produced in accordance with the MHCC-approved timeline and deemed acceptable by MHCC.
- F. The MHCC will provide the Contractor with chapters from the MIA and HSCRC to incorporate in the Final Recommendations Report. The Contractor shall consider these findings when developing the Final Recommendations Report.
- G. The Contractor shall provide MHCC with flash drive(s) containing data and source code developed by the Contractor under this contract.

2.3.8.3 The Final Recommendations Report recommendations shall be based in evidence from study findings and shall be cross-referenced to the appropriate section(s) of the Technical Report. The Final Recommendations Report shall include recommendations on:

- A. Coverage of telehealth services;
- B. Payment levels for telehealth services relative to in-person care; and

- C. Other recommendations that MHCC deems appropriate based on findings and the evidence gathered during the study.

2.3.8.4 The Technical Report shall include evidence and supporting rationale for all findings and conclusions and address the following questions:

A. Access to care

- i. What policy or statutory reforms, if any, are needed to continue or further expand the use of telehealth?
- ii. As greater shares of the population are vaccinated against COVID-19 and infection rates decline, how much will primary care providers return to a pre-PHE mindset that generally favors in-person care?
- iii. How have changes to telehealth coverage and reimbursement reduced or exacerbated health disparities?
- iv. What is the potential impact on disparities if telehealth expansion laws abrogate on June 30, 2023?

B. Utilization

- i. What insights can be derived from utilization and challenges and opportunities for audio-only and audio-visual technologies in behavioral health care as compared to somatic care?
- ii. What types of somatic and behavioral health services can reasonably be provided using audio-only technologies long-term?
- iii. Is telehealth evolving faster than the evidence to support its cost-effective use?
- iv. How has consumer demand for audio-only and audio-visual visits evolved since the onset of the PHE and since the spring of 2021 with the increasing availability of COVID-19 vaccinations and declining infection rates? What are key reasons that can be attributed to the current state of telehealth utilization?
- v. Are privacy and security risks related to provider-to-provider, provider-to-consumer, and remote patient monitoring communications deterring use of telehealth among providers and/or consumers?

C. Cost

- i. Should audio-only visits be reimbursed at a lesser rate than audio-visual visits in somatic and behavioral health care? Are there cost differences between somatic and behavioral health care that warrant paying equivalent rates to in-person visits for either of the two categories of care?

- ii. Should reimbursement for audio-only become a permanent feature of the health care system or phased out over time? If audio-only is to continue, what are the main differences in telehealth and in-person care that justify continuation of audio-only services?
- iii. What features of alternative care delivery models further the cost-effective use of telehealth and what features deter use of telehealth?
- iv. To what extent are audio-only and audio-video visits delivered during a specific episode of care triggering subsequent follow-up in-person care within a 30-day period?

2.3.8.5 Produce an Appendix section in the Technical Report that includes the following:

- A. Bibliography of research articles consulted for the study.
- B. Data sources
 - i. Catalog of data files used or developed by the Contractor; and
 - ii. Description of data analyses completed for the Technical Report.
- C. Provider survey:
 - i. A complete description of sampling and survey administration procedures;
 - ii. A description of the data processing procedures;
 - iii. A complete description of the sampling framework;
 - iv. A table detailing response rates for each provider type included in the sample;
 - v. A tabulation of each response and cross-tabs of two or more responses that the Contractor reported or referenced in the Technical Report; and
 - vi. A description of problems encountered in the survey administration process and the Contractor's response to each problem.
- D. Consumer focus groups:
 - i. A complete description of the selection approach and the steps taken to ensure diversity of the focus groups;
 - ii. The data tabulations generated for individual focus groups or one or more focus groups combined that are reported or referenced in the Technical Report;
 - iii. Meeting agendas;
 - iv. Meeting locations and a count of participants in attendance;

- v. A summary of meeting highlights; and
- vi. A description of problems, if any, encountered with any aspect of the focus groups and the solution to address each problem.

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. Unless specified otherwise, written deliverables shall be compatible with Office 360, Microsoft Word, Version 2105 (Build 14026.20308). The Contractor shall deliver an electronic and one hard copy of any written deliverable to the Contract Monitor.
- 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. 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 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*

ID #	Deliverable Description	Acceptance Criteria	Due Date / Frequency
1	Kick-off meeting (2.3.2)	Meeting attendance to present the work plan and communication plan	By the 15 th business day after receipt of formal notice to proceed
2	Work plan (2.3.3)	A project management flow chart with the minimum information required in 2.3.3 for item ID #s 4-11 in this table.	Date of kick-off meeting
3	Communication plan (2.3.4)	A template approved by MHCC that meets the aims outlined in 2.3.4.	Date of kick-off meeting
4	Research (2.3.5)	A series of briefing papers developed using Microsoft Word, Office 360 that are no more than seven (7) pages each focused on the topics articulated in 2.3.5.6 through	In accordance with the final Work Plan approved by the MHCC Contract Monitor

ID #	Deliverable Description	Acceptance Criteria	Due Date / Frequency
		2.3.5.11 and that meet all of the requirements specifications noted. Briefing papers must be developed using the approach required under 2.3.5.1 through 2.3.5.5.	
5	Analysis (2.3.6)	An in-depth evaluation and statistical analysis using, at a minimum, data provided by MHCC and/or payers (see 2.3.6.3 through 2.3.6.6) that meets all of the requirements specifications noted under 2.3.6 and in accordance with the DUA.	In accordance with the final Work Plan approved by the MHCC Contract Monitor
6	Provider Survey (2.3.7)	Pretesting and administration of a survey using a provider listing and survey questions provided by MHCC that uses an approach and meets all of the requirements specifications noted under 2.3.7.	In accordance with the final Work Plan approved by the MHCC Contract Monitor
7	Consumer Focus Groups (2.3.7)	Convene a total of eight (8) focus groups, representative of individuals that live in four (4) geographic locations using an approach and meets all of the requirements specifications noted under 2.3.7.	In accordance with the final Work Plan approved by the MHCC Contract Monitor
8	Progress reports (2.3.8.1)	A template approved by MHCC that includes the minimum information required under 2.3.8.1.	Initial report due 15 business days after entering into a formal agreement with MHCC; subsequent reports due at monthly intervals 10 days after the end of the month
9	Recommendations Report (2.3.8.2 and 2.3.8.3)	An outline, at least three (3) draft iterations of a Final Recommendations Report, and a Final Recommendations Report that uses an approach and meets all of the requirements noted under 2.3.8.2 and 2.3.8.3.	In accordance with the final Work Plan approved by the MHCC Contract Monitor; a Final Recommendations Report due by September 1, 2022
10	Technical Report (2.3.8.2 and 2.3.8.4)	An outline, at least three (3) draft iterations of a Technical Report, and a Final Technical Report that uses an approach and meets all of the requirements specifications noted under 2.3.8.2 and 2.3.8.4.	In accordance with the final Work Plan approved by the MHCC Contract Monitor; a Final Technical Report due by September 1, 2022

ID #	Deliverable Description	Acceptance Criteria	Due Date / Frequency
11	Appendix (2.3.8.5)	Appendices for inclusion in the Final Technical Report that meets the requirements specifications noted under 2.3.8.5.	In accordance with the final Work Plan approved by the MHCC Contract Monitor; the appendix is due by September 1, 2022

*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 Service Level Agreement (SLA)

Time is of the essence in the performance of the Contract, and it is important that the work be vigorously pursued until complete. For work that is not completed within the time(s) specified in the performance measurements below, the Contractor shall be liable for liquidated damages in the amount(s) provided for in this Contract. The parties agree that any assessment of liquidated damages shall be construed and treated by the parties not as imposing a penalty upon the Contractor, but as liquidated damages to compensate the State for the Contractor's failure to timely complete work. In the event of a catastrophic failure affecting the Contractor's performance of all services in 2.5.5, all affected SLAs shall be credited to the State.

2.5.1 SLA Requirements

The Contractor shall be responsible for complying with all performance measurement standards set out in Section 2.5.5 and ensure compliance by all subcontractors, if applicable.

The MHCC Contract Monitor shall make the final determination regarding whether performance measurements are met.

2.5.2 SLA Effective Date (SLA Activation Date)

SLAs set forth herein shall be in effect beginning with the commencement of monthly services as of the completion of the Transition-In Period.

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.

2.5.3 Service Level Monitoring

Contractor performance will be monitored by MHCC's Contract Monitor, Nicole Majewski, Chief, Health Information Technology.

If any of the performance measurements in Section 2.5.5 are not met during the monthly reporting period, MHCC's Contract Monitor will notify the Contractor of the standard that is not in compliance.

2.5.4 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 the 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 no event shall the aggregate of all SLA credits paid to the State in any calendar month exceed 15% of the Monthly Charges.

Example #1: If the Monthly Charges were \$20,000 and one SLA were missed, with an applicable 10% credit, the credit to the monthly invoice would be \$2,000, and the State would pay a net Monthly Charge of \$18,000.

Example #2: If the Monthly Charges were \$50,000 and more than one SLA was missed, which added up to an applicable credit of 20%, or \$10,000, the credit to the monthly invoice could only be 15% of the applicable credit, or \$7,500 and the State would pay a net Monthly Charge of \$42,500.

NOTE: The State will not allow the Contractor to “earn back” credits that were assessed in previous months due to failure to meet an SLA.

2.5.5 Service Level Measurements Table (System performance)

The Contractor shall comply with the service level measurements in the following table:

ID (Delivery Summary Table)	Description of Service Requirement	Service Level Agreement	SLA Credit
4	Research that results in a series of briefing papers to serve as the precursor to sections in the Technical Report and the basis for the recommendations in the Final Recommendations Report	Meets 100% of the requirements in 2.3.5.1 through 2.3.5.11 and is produced in accordance with the due dates in the final MHCC-approved Work Plan	5% per briefing paper
9	Final Recommendations Report that MHCC deems acceptable (2.3.8.2 & 2.3.8.3)	Meets 100% of the requirements in 2.3.8.2 & 2.3.8.3 and is produced in accordance with the due dates in the final MHCC-approved Work Plan, with the Final Recommendations Report produced no later than September 1, 2022	Up to 10%
10	Final Technical Report that MHCC deems acceptable (2.3.8.2 & 2.3.8.4)	Meets 100% of the requirements in 2.3.8.2 & 2.3.8.4 and is produced in accordance with the timeline in the final MHCC-approved Work Plan, with the Final Technical Report that MHCC deems acceptable produced no later than September 1, 2022	Up to 10%

ID (Delivery Summary Table)	Description of Service Requirement	Service Level Agreement	SLA Credit
11	Appendix to Final Technical Report that MHCC deems acceptable (2.3.8.5)	Meets 100% of the requirements in 2.3.8.5 and is produced in accordance with the timeline in the final MHCC-approved Work Plan, with the final Appendix due no later than September 1, 2022	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 of 15% specified in Section 2.5.4.

3 Contractor Requirements: General

3.1 Contract Initiation Requirements

- A. The Contractor shall schedule and hold a kickoff meeting within 15 Business Days of NTP Date. At the kick-off, the Contractor shall present the Work Plan required under 2.3.3, Communication Plan required under 2.3.4, and the Progress Report template under 2.3.8.1, as proposed in the Contractor's Technical Proposal

3.2 End of Contract Transition

3.2.1 Return and Maintenance of State Data

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.

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 Nicole Majewski, Chief, Health Information Technology, at e-mail address: nicole.majewski@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:
 - i. Contractor name and address;
 - ii. Remittance address;
 - iii. Federal taxpayer identification (FEIN) number, social security number, as appropriate;
 - iv. Invoice period (i.e. time period during which services covered by invoice were performed);
 - v. Invoice date;
 - vi. Invoice number;
 - vii. State assigned Contract number;
 - viii. State assigned (Blanket) Purchase Order number(s);
 - ix. Goods or services provided;

- x. Amount due; and
- xi. 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 MHCC reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the MHCC 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 MHCC, 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 total contract price shall be billed in equal monthly installments in the month following the performance of the services.

3.3.3 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.

3.3.4 Travel Reimbursement

Travel will not be reimbursed under this RFP.

3.4 Liquidated Damages

3.4.1 MBE Liquidated Damages

Inapplicable because there is no MBE goal for this RFP.

3.4.2 Liquidated Damages other than MBE

This section is inapplicable to this RFP.

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.
- 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 twice 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 Agency to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

3.5.2 Data Export/Import

- A. The Contractor shall, at no additional cost or charge to the State, in an industry standard/non-proprietary format:
 - 1) perform a full or partial import/export of State data within 24 hours of a request; or

2) provide to the State the ability to import/export data at will and provide the State with any access and instructions which are needed for the State to import or export data.

B. Any import or export shall be in a secure format per the Security Requirements.

3.5.3 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 service 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.

3.5.4 Provisions in Sections 3.5.1 – 3.5.3 shall survive expiration or termination of the Contract. Additionally, 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 \$500,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$1,500,000 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 - \$500,000 per combined single limit per claim and \$1,500,000 annual aggregate.
- C. 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.

- 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.

3.7 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 Security Clearance / Criminal Background Check

A security clearance is not required for Contractor Personnel assigned to the Contract.

3.7.3 On-Site Security Requirement(s)

This section is inapplicable to this RFP.

3.7.4 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 – keyword: Security Policy.

- (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 such as those listed below (see **Section 3.7.5**);
- 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: www.doit.maryland.gov – keyword: Security Policy.

3.7.5 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 listed in **Section 3.7.5**.
 - 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 Agency 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 Agency 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 Agency 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.

3.7.6 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.

3.7.7 Security Incident Response

- A. The Contractor shall notify the Agency in accordance with **Section 3.7.7A-D** 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 Agency within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, Agency chief information officer and Agency chief information security officer;
 - 2) notify the Agency 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 Agency within one (1) Business Day after Contractor’s discovery of unauthorized use or disclosure of State data and thereafter all information the State (or Agency) requests concerning such unauthorized use or disclosure.
- 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 Agency) and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

3.7.8 Data Breach Responsibilities

- A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:
- 1) Notify the appropriate State-identified contact within 24 hours by telephone 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.

3.7.9 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.

3.7.10 Provisions in Sections 3.7.1 – 3.7.8 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of Sections 3.7.4 - 3.7.8 (or the substance thereof) in all subcontracts.

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

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

3.10 Experience and Personnel

The Contractor may propose alternative key personnel with equivalent experience.

3.10.1 Key Personnel Experience

- A. Project Manager – Must have a minimum of five (5) years; demonstrated experience leading projects that include work streams specified in this solicitation, such as health disparities measurement, health IT assessment, and cost effectiveness assessment. The individual should be a skilled manager with a demonstrated capability to manage a multi-disciplinary project team and communicate effectively with MHCC managers and stakeholders. At least two (2) years' experience leading projects that include the study of health IT adoption, preferably telehealth. The individual should have seven (7) or more years conducting health care policy consulting with data analysis and report writing deliverables for government clients. Experience leading projects that include survey research, the study of health disparities, and the analysis of claims data is strongly desired. The MHCC will consider co-Project Managers given the scope of this solicitation.
- B. Survey Statistician – Statistician with at least three (3) years' demonstrated experience in survey research development including sample design, questionnaire development, and survey analysis. The individual should have a degree in statistics or a related field. Experience in directing health care surveys involving providers is a plus.
- C. Research Statistician – Must have a minimum of five (5) years' demonstrated experience conducting consumer surveys and providing health care consulting services. The individual shall possess expert knowledge and understanding of standard research methodology and principles; techniques of descriptive and

predictive statistics; and principles involved in designing and executing statistical research studies in public health, health-related fields, or public administration.

- D. Senior Health Policy Analyst – Must have a minimum of seven (7) years’ demonstrated experience in health policy analysis and report writing and coordinating the overall generation of study reports. At least two (2) years’ experience conducting studies or evaluations on the diffusion of health IT. This individual should have experience in all aspects of health services research, including research design, analysis, reporting planning, reporting writing, and presentation. The individual should have experience synthesizing clinical and policy studies and identifying common themes. The individual should have demonstrated experience conducting original research on qualitative and quantitative data for submission to clients, including state and federal regulatory agencies. This individual should have experience in all aspects of health policy research including the development, preparation, writing, reviewing, and editing study reports and related materials that summarize analysis and survey data from clinical and policy studies.
- E. Senior Health Policy Analyst – Must have a minimum of seven (7) years demonstrated experience in health policy analysis and report writing and coordinating the overall generation of study reports. At least two (2) years’ experience conducting studies or evaluations on health care interventions impact on health disparities and the cost-effectiveness of the interventions. This individual should have experience in all aspects of health services research including research design, analysis, reporting planning, reporting writing, and presentation. The individual should have experience synthesizing clinical and policy studies and identifying common themes. This individual should have demonstrated experience conducting original research using qualitative and quantitative data for submission to clients, including state and federal regulatory agencies. This individual should have experience in health policy research including the development, preparation, writing, reviewing, and editing study reports and related materials that summarize analysis and survey data. Prior experience conducting telehealth policy research is preferable.

3.10.2 Contractor Personnel Experience Equivalency (including Key Personnel submitted in response to this RFP)

- A. A Substitution of Education for Experience: Bachelor’s Degree or higher may be substituted for the general and specialized experience for those labor categories requiring a High School Diploma. A Master’s Degree may be substituted for two years of the general and specialized experience for those labor categories requiring a Bachelor’s Degree. Substitution shall be reviewed and approved by the State at its discretion.
- B. Substitution of Experience for Education: Substitution of experience for education may be permitted at the discretion of the State.
- C. Substitution of Professional Certificates for Experience: Professional certification (e.g., Microsoft Certified Solutions Expert, SQL Certified Database Administrator) may be substituted for up to two (2) years for general and specialized experience at the discretion of the State.

3.10.3 Work Hours

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

- A. Business Hours Support: Contractor shall assign Contractor Personnel to support Normal State Business Hours (see definition in **Appendix 1**), Monday through Friday except for State holidays.

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 described in **Section 3.11.4**.

- 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, Agency 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 Agency'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 Agency'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

If this solicitation includes a VSBE Goal (see **Section 4.27**), the Contractor shall:

- A. Submit the following reports by the 10th of the month following the reporting period to the Contract Monitor and the Agency VSBE representative:
 - 1) VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (Attachment E-3) listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice and the reason payment has not been made; and
 - 2) **Attachment E-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.

- B. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly by the 10th of the month following the reporting period to the Contract Monitor and Agency VSBE representative a report that identifies the prime contract and lists all payments received from Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amount of those invoices (**Attachment E-4**).
- C. Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE 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 VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. At the option of the Agency, 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 VSBE subcontractors.

3.14 Work Orders

THIS SECTION IS INAPPLICABLE TO THIS RFP.

3.15 Additional Clauses

3.15.1 Purchasing and Recycling Electronic Products

This section does not apply to this solicitation.

3.15.2 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.

3.15.3 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.

4 Procurement Instructions

4.1 Pre-Proposal Conference

- 4.1.1 A pre-Proposal conference (Conference) will be held at the date, time, and location 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/Site Visit 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 If there is a need for sign language interpretation or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Conference date. The Agency will make a reasonable effort to provide such special accommodation.
- 4.1.7 Seating at the Conference will be limited to two (2) attendees per vendor.
- 4.1.8 Those wishing to attend shall request a meeting invitation by emailing the Pre-Proposal Conference Response Form (Attachment A) to Andrea Allen at andrea.allen@maryland.gov **no later than 2:00 PM on Wednesday, July 7, 2021**. Upon receipt of the email, the Procurement Officer will reply with a registration a link that must be used to register for the conference. **Registration must be completed by 2:00 PM Monday, July 12, 2021.**

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, 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 or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title (MHCC 22-003 - Telehealth Study), and shall be submitted in writing via e-mail to the Procurement Officer. 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 Agency 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 e-mail submission is determined by the date and time of arrival in the e-mail address 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: 180 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 Agency 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** Acknowledgment 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 Agency 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:
http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.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 Agency 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 to:

- 1) Submit Proposals;
- 2) Ask questions regarding the solicitation;
- 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.

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 Agency 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

There is no MBE participation goal for this procurement.

4.27 VSBE Goal

There is no VSBE participation goal for this procurement.

4.28 Living Wage Requirements

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Maryland Department of Labor requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor website <http://www.dlhr.state.md.us/labor/prev/livingwage.shtml>.
- C. Additional information regarding the State's living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If the Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
- D. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.
- 1) The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, the Contract will be determined to be a Tier (enter "1" or "2," depending on where the majority of the service recipients are located) Contract.
 - 2) The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The

Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.

- 3) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- 4) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.

If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.

The Offeror shall identify in the Proposal the location from which services will be provided.

NOTE: Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change or a change in the State minimum wage.

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.

4.31.2 Non-Disclosure Agreement (Contractor)

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

4.32 HIPAA - Business Associate Agreement

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

4.33 Nonvisual Access

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

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.

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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 searchable Adobe PDF format,
- 2) 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 Attachment B – Financial Proposal and all supporting material in searchable Adobe PDF format,
- 2) a second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.8**).

5.2.7 Offerors may alternatively submit Proposals by hand or by mail as described below to the address provided in the Key Information Summary Sheet.

- A. Any Proposal received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. The State recommends a delivery method for which both the date and time of receipt can be verified.
- B. For hand-delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery. Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror.

5.2.8 The Procurement Officer must receive all 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.

5.2.9 Offerors shall provide their Proposals in two separately sealed and labeled packages as follows:

A. Volume I - Technical Proposal consisting of:

- 1) One (1) original executed Technical Proposal and all supporting material marked and sealed,
- 2) An electronic version of the Technical Proposal in Microsoft Word format, version 2007 or greater,
- 3) The Technical Proposal in searchable Adobe PDF format, and
- 4) A second searchable Adobe PDF copy of the Technical Proposal with confidential and proprietary information redacted (see **Section 4.8**).

B. Volume II - Financial Proposal consisting of:

- 1) One (1) original executed Financial Proposal and all supporting material marked and sealed,
- 2) An electronic version of the Financial Proposal in searchable Adobe PDF,
- 3) A second searchable Adobe pdf copy of the Financial Proposal, with confidential and proprietary information redacted (see **Section 4.8**).

5.2.10 Affix the following to the outside of each sealed Proposal. Include the name, email address, and telephone number of a contact person for the Offeror be included on the outside of the packaging for each volume. Unless the resulting package will be too unwieldy, the State's preference is for the separately sealed Technical and Financial Proposals to be submitted together in a single package to the Procurement Officer and including a label bearing:

- RFP title and number,
- Name and address of the Offeror, and
- Closing date and time for receipt of Proposals

5.2.11 Label each electronic media (CD, DVD, or flash drive) on the outside with the RFP title and number, name of the Offeror, and volume number. Electronic media must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

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

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)

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**.

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.

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 (2.3.3). 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) Work Plan (2.3.3) – The Offeror shall include a detailed description of the project management flow chart.
- 5) Communication Plan (2.3.4) – The Offeror shall describe the proposed methodology for communicating with MHCC, other State agencies, providers, and consumers.

- 6) Research (2.3.5) - The Offeror shall describe the proposed approach for completing all research activities.
- 7) Analysis (2.3.6) – The Offeror shall describe the proposed approach for completing all analysis activities.
- 8) Provider Survey and Consumer Focus Groups Administration (2.3.7) - The Offeror shall describe the proposed approach for administering the provider survey and consumer focus groups.

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

The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract, 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)

At least three (3) 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 Agency 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.
- 5)

- O. 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 Agency.

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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 Agency 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 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)

6.3 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 equal weight with 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:

- A. For e-mail submissions, submit one (1) copy of each with signatures. 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 http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf)
Y	With Proposal	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf)
Y	With Proposal	H	Conflict of Interest Affidavit and Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf)
Y	With Proposal	L	Location of the Performance of Services Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf)

Applies?	When to Submit	Label	Attachment Name
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 http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf)
Y	With Proposal	0	Data Security Plan in accordance with Section 3.7.4 thru 3.7.8 (Security Plan) of this RFP
Appendices			
Applies?	When to Submit	Label	Attachment Name
Y	n/a	1	Abbreviations and Definitions (included in this RFP)
Additional Submissions			
Applies?	When to Submit	Label	Document Name
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see Section 3.6); 1 copy
Y	10 Business Days after recommended award		PEP; 1 copy

Attachment A. Pre-Proposal Conference Response Form

Solicitation Number MHCC 22-003

Telehealth Study

A Pre-Proposal conference will be held on Wednesday, July 14, 2021, via Zoom Web Conference.

Please return this form to andrea.allen@maryland.gov no later than 2:00 PM on Wednesday, July 7, 2021, 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:

Andrea Allen
MHCC
E-mail: andrea.allen@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 spreadsheet in accordance with the instructions in Section 5.4 Volume II – Financial Proposal and as specified herein. Do not alter the Financial Proposal spreadsheet 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) **All Financial Proposal prices 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.**
- 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 Agency 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 MHCC 22-003 Attachment B Financial Proposal.xls.

Attachment C. Proposal Affidavit

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf.

Attachment D. Minority Business Enterprise (MBE) Forms

This solicitation does not include a Minority Business Enterprise goal.

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

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf> to complete the Affidavit.

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
 - (1) A Contractor who:
 - (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (a) Services with a Public Service Company;
 - (b) Services with a nonprofit organization;
 - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan

area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.

- G. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dlir.state.md.us/labor/prev/livingwage.shtml> and clicking on Living Wage for State Service Contracts.

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)

This solicitation does not require a Non-Disclosure Agreement.

Attachment J. HIPAA Business Associate Agreement

This solicitation does not require a HIPAA Business Associate Agreement.

Attachment K. Mercury Affidavit

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

Attachment L. Location of the Performance of Services Disclosure

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

Attachment M. Contract

Maryland Health Care Commission (MHCC)

“Telehealth Study”

MHCC 22-003

THIS CONTRACT (the “Contract”) is made this ___ day of _____, 20___ by and between _____ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND HEALTH CARE COMMISSION (“MHCC” or the “Agency”).

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 Best and Final Offer (BAFO) and 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 Telehealth Study, Solicitation # MHCC 22-003, 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.
- 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 Agency following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until ("Initial Term").
- 3.2 The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.3 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 Agency 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 Agency'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 Agency 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 Agency 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 Agency or licensed by the Agency from third parties, including all information provided by the Agency 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 Agency 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 Agency, 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 Agency's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Agency 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 HITECH 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 provided that 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 of 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.

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 Agency 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 Agency's election. The Agency 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 Agency 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 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 Agency, in all subcontracts.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Agency, 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 Agency 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 Agency and the Contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of the Agency.

- 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 Agency may, consistent with COMAR 21.11.03.13, take the following measures:

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

- ii. Inspecting the jobsite; and
- iii. Interviewing subcontractors and workers.

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 Agency determines that the Contractor is not in compliance with certified MBE participation goals, then the Agency 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 Agency determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Agency requires, then the Agency may:
- i. Terminate the Contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by 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 Agency may withhold payment of any invoice or retainage. The Agency 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 Agency 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 Agency 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 Agency 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:

Nicole Majewski

Maryland Health Care Commission (MHCC)

4160 Patterson Avenue
Baltimore, MD 21215
Phone Number: 410-764-3839
E-Mail: nicole.majewski@maryland.gov

With a copy to:

Andrea Allen
Maryland Health Care Commission (MHCC)
4160 Patterson Avenue
Baltimore, MD 21215
Phone Number: 410-764-8970
E-Mail: andrea.allen@maryland.gov

If to the Contractor:

(Contractor's Name)
(Contractor's primary address)
Attn: _____

40. 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 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 Agency for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health, personally identifiable, and financial information.

SIGNATURES ON NEXT PAGE

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

Contractor

State of Maryland
Maryland Health Care Commission
(MHCC)

By:

By: Ben Steffen
Executive Director

Date

Date

PARENT COMPANY (GUARANTOR)
(if applicable)

By:

Date

Approved for form and legal sufficiency
this ____ day of _____, 2021.

Assistant Attorney General

Attachment N. Contract Affidavit

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.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:

- A. 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.
- B. Access – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource.
- C. Application Program Interface (API) – Code that allows two software programs to communicate with each other.
- D. 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).
- E. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- F. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
- G. 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 Agency may change the Contract Monitor at any time by written notice to the Contractor.
- H. Contractor – The selected Offeror that is awarded a Contract by the State.
- I. 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.
- J. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
- K. Maryland Health Care Commissioner (MHCC or the “Agency”).
- L. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
- M. 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.
- N. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
- O. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
- P. 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**.

- Q. 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.
- R. 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.
- S. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
- T. 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.
- U. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
- V. Offeror – An entity that submits a Proposal in response to this RFP.
- W. 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.
- X. 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 Agency may change the Procurement Officer at any time by written notice to the Contractor.
- Y. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
- Z. 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.
- AA. Request for Proposals (RFP) – This Request for Proposals issued by the Maryland Health Care Commission (Agency), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- BB. 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.
- CC. Security or Security Measures – The technology, policy, and procedures that a) protects and b) controls access to networks, systems, and data.
- DD. 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.

- EE. Service Level Agreement (SLA) - Commitment by the Contractor to the Agency that defines the performance standards the Contractor is obligated to meet.
- FF. 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.
- GG. 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.
- HH. 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.
- 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. Technical Safeguards – The technology and the policy and procedures for its use that protect State Data and control access to it.
- NN. 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.
- OO. 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.
- PP. Upgrade - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.
- QQ. 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.