



STATE OF MARYLAND

MARYLAND DEPARTMENT OF HEALTH (MDH)

REQUEST FOR PROPOSALS (RFP)

MEDICAID HOSPITAL CLAIMS AUDIT CONTRACTOR

RECOVERY AUDIT CONTRACT (RAC)

RFP NUMBER OCMP-26-25113/BPM058679

ISSUE DATE: OCTOBER 2, 2026

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

NOTICE TO OFFERORS

SMALL BUSINESS RESERVE PROCUREMENT

This is a Small Business Reserve Procurement for which the award will be limited to certified small businesses. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501—14-505, Annotated Code of Maryland, and that are certified by the [Governor's Office of Small, Minority & Women Business Affairs \(GOSBA\) Small Business Reserve Program](#) are eligible for award of a contract. Before awarding a contract under a procurement designated as a small business reserve procurement, the Procurement Officer shall verify that the apparent awardee is certified by the GOSBA as a small business through eMMA. However, if small businesses do not show interest in this solicitation, the Procurement Officer has the right to remove the SBR designation via an Amendment on eMMA.

NOTICE TO OFFERORS

MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO RESPOND TO THIS SOLICITATION.

STATE OF MARYLAND
MARYLAND DEPARTMENT OF HEALTH (MDH)
KEY INFORMATION SUMMARY SHEET

Request for Proposals	Services - Medicaid Hospital Claims Audit Contractor (RAC)
Solicitation Number:	OCMP-26-25113
RFP Issue Date:	October 2, 2026
RFP Issuing Office:	Maryland Department of Health (MDH or the "Department")
Procurement Officer: Email: Phone Number:	Richard McCray 201 W. Preston Street, Baltimore MD 21201 richard.mccray1@maryland.gov 443-721-8703
Proposals are to be sent to:	Submit on emma.maryland.gov under Solicitation Number OCMP-26-25113 To submit a proposal, offerors must first register on emma.maryland.gov . We recommend registering in advance to become acquainted with the site.
No Proposal Notice Feedback Form	If you are not submitting a proposal for this solicitation, submit Attachment 1 with your reasons why.
Pre-Proposal Conference:	Wednesday, October 14, 2026 at 2 p.m. Local Time, at Google Meet joining info Video call link: https://meet.google.com/euk-ecaa-azi See Section 4.3 for additional details. See Attachment 2 to RSVP by Monday, October 12, 2026 to Attend
Scheduled Site Visit	N/A
Questions Due Date and Time:	Wednesday, November 4, 2026 at 2 p.m. Local Time

Proposal Due (Closing) Date and Time:	Friday, November 20, 2026 at 2 p.m. Local Time Offerors are reminded that a completed Feedback Form is requested if a proposal decision is made (see Attachment 1 - No Proposal Notice/Vendor Feedback Form).
MBE Subcontracting Goal:	An overall Minority Business Enterprise (MBE) subcontract participation goal of 14% percent of the total contract dollar amount, including all renewal option terms, if any, has been established for this procurement. Refer to Exhibit 1 for information on how goal setting was determined. Also, refer to Appendix 4 for information about the MBE program and goals.
VSBE Subcontracting Goal:	This solicitation includes a Veteran-owned Small Business Enterprise (VSBE) participation Goal of 2% Refer to Exhibit 1 for information on how goal setting was determined. Also, refer to Appendix 5 for information about the VSBE program and goals.
Procurement Method:	A Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03 .
Multiple or Alternate Proposals:	Multiple or alternate Proposals will not be accepted.
Contract Type:	Indefinite Quantity with Fixed Prices (Fixed Recovery Percentages of 10%) as defined in COMAR 21.06.03.06 (A)(2)
Contract Duration and Expected Start Date:	The Contract Term will have three (3) base years beginning August 1, 2027, and (2) two one (1) year option periods as described in Section 2.3.13.2.
Primary Place of Performance:	Contractor's location.
SBR Designation:	Yes
Federal Funding:	Yes (See Section 3.9)

**Capitalized Words,
Terms, and
Abbreviations**

Word, terms, acronyms, Initialisms, that are defined or described in RFP Appendix 1 are capitalized throughout the RFP to indicate that their specific meaning within the context of the RFP and resulting Contract can be ascertained in **RFP Appendix 1 Abbreviations and Definitions**. Sometimes, a word that appears in the RFP can have both a general, generic meaning that can be ascertained from a standard dictionary, as well as a specific meaning as found in **RFP Appendix 1 Abbreviations and Definitions**. In such instances, whenever such a word is used in the sense in which it is defined in **RFP Appendix 1 Abbreviations and Definitions**, it will generally be capitalized. Conversely, when such a word is used in the general sense, it will not be capitalized. The meaning of capitalized terms used throughout the RFP may also be indicated by context.

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1 Minimum Qualifications

1.1 Offeror Minimum Qualifications

The Offeror must document in its Proposal that it satisfies the following Minimum Qualifications:

1.1.1 The Offeror:

- A. Shall have at least three (3) years of experience providing hospital claims and payments auditing in accordance with the payment rules and conditions of the public or private customer(s) (e.g., Medicare or Medicaid Programs, state-subsidized health plans, private medical insurance companies, union or private firm self-administered health plans) for which the audits were conducted. Such experience must have been obtained within five (5) years prior to the submission of a Proposal.
- B. Must not be on the federal [List of Excluded Individuals or Entities](#) (LEIE) or on the federal [System for Award Management](#) (SAM) exclusion list. The Offeror must provide a letter of self-certification with its Proposal that it is not on the LEIE or SAM exclusion lists.

(Links to the LEIE and SAM lists are as follows:
https://oig.hhs.gov/exclusions/exclusions_list.asp and <https://www.sam.gov/SAM/>. (If the SAM link creates problems, copy the link, and manually insert it into the address bar.)).
- C. Must not have any current contractual relationship with or provide any type of services, paid or unpaid, for any hospital that may be audited under the Contract, nor have had any such relationship within three (3) years prior to the date of its Proposal submission.
- D. Must attest either that it has no non-compete agreements with any of its employees other than a person functioning as its Project Manager as described in **Sections 2.4.4 and 5.3.2 Table A, Tab F, item 6** of this RFP or that if it has any such non-compete agreements that it will not enforce them to prevent any such Non-Project Manager employees from working for any entity that may provide recovery audit-type services for the Department for a period of three (3) years after the expiration of this Contract, including the duration of any renewal option or Contract extension.

1.2 Required Documentation

Required documentation for satisfaction of **Section 1.1 Minimum Requirements**. Each Documentation item below corresponds to the **Section 1.1** requirement with the same letter (e.g. 1.2 A pertains to 1.1.A, etc.)

- A. The Offeror shall provide with its Proposal proof of meeting this requirement, under **Section 5.3.2 Table A (Tab E)** the specific customers and engagements that it offers as proof of satisfying this minimum experience requirement.
- B. The Offeror must provide a letter of self-certification with its Proposal that it is not on the LEIE or SAM exclusion lists.
- C. The Offeror must provide a letter of attestation with its Proposal that it does not have any current contractual relationship with or provides any type of services, paid or unpaid, for any hospital that may be audited under the Contract, nor has it had any such relationship within 3 years prior to the date of its Proposal submission.

- D. The Offeror must provide a letter attesting, as applicable, that it either has no non-compete agreement with any of its employees that is not the Project Manager, or if it has any such non-compete agreement that it will not seek to enforce it/them to prevent any such Non-Project Manager employee from working for any entity that may provide recovery audit-type services for the Department for a period of (3) three years after the expiration of this Contract, including the duration of any renewal option or Contract extension.
- 1.3 Use of Attachment L: For each reference provided to evidence satisfaction of the requirements of this RFP Section 1, a separate Attachment L. – Reference Checks - must be provided per reference. The reference must focus on the Contractor's experience providing hospital claims and payments auditing in accordance with the rules and conditions of the customer for which it performed the audits. Attachment L must also be used for any reference the Offeror wishes to provide in excess of those required in RFP Section 1 to demonstrate its overall qualifications and capability.
- 1.4 Use of Attachment I: Attachment I. Reference Checks must be submitted in response to RFP Section 5.3.2, Table A, TAB E.)

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2 Contractor Requirements: Scope of Work

2.1 Summary Statement

- 2.1.1 This Request for Proposals (RFP) is issued to procure the services, as specified in this Section 2, from a contract between the selected offeror(s) and the State of Maryland ("State"). The Maryland Department of Health (MDH or the "Department") is issuing this RFP in order to assist in its mission to reduce Medicaid Improper Payments through the efficient identification of Overpayments, Underpayments, and actions to prevent future Improper Payments for the three (3) hospital provider types identified in **Section 2.2.1, Table 2.1**. This RFP includes the following tasks:
- A. Identifying Medicaid claims that contain Underpayments or Overpayments for which payment was made under Title XIX and XXI of the Social Security Act;
 - B. Supporting the Department in preventing future Improper Payments by making recommendations in an Improper Payments prevention plan;
 - C. Providing support to the Department in the hearing process, should any Provider appeal an Underpayment or Overpayment detected by the Contractor; and
 - D. Providing support to the Department in responding to any external audits such as State or federal oversight agencies involving hospitals. (See Exhibit 2, Sample Contract Section 24.).
- 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 There will be a single award from the procurement to result from this RFP. See **RFP Section 6.5 Selection Procedures** for more Contract award information.
- 2.1.4 A Contract award does not ensure the Contractor will receive all or any State business under the Contract.
- 2.1.5 An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

2.2 Background and Purpose

- 2.2.1.1 The State of Maryland, acting through the Department, is soliciting proposals from Offerors with demonstrated experience and expertise performing Audit (**See Appendix 1 Abbreviations and Definitions**) services to detect improper Medicaid payments. The identification of Underpayments and Overpayments will occur for claims paid under the Maryland Medicaid Fee-For-Service (FFS) for services for which payment is made under Title XIX and Title XXI of the Social Security Act. Overpayments are made to Medicaid Providers (**See Appendix 1 Abbreviations and Definitions**) arising from inappropriate claims and, where indicated, the Contractor for the hospital claims Audit

shall make referrals to the Contract Monitor for potential fraud and will recommend preventive and educational measures to the appropriate parties. The Contractor must be able to perform data mining of Medicaid claim information. **Table 2.1** describes the different Provider types and information.

- 2.2.1.2 The Department has a current recovery Audits contractor that is working on hospital audits for Medicaid payments made prior to the 2025 calendar year. The years to be covered by Audits under this Contract are listed in Table 2.2 in Section 2.3.3. The Audit period accounts for the completion of the **timely filing period** – twelve months from the date of service - outlined by law.
- 2.2.1.3 **Table 2.1**, below, provides claim and Provider information for Medicaid hospital payments for the 2024 Calendar Year.
- A. The Provider information is relatively static from year to year - it is unusual either for a new hospital to be authorized or for a hospital to cease operating or cease accepting Medicaid payments - and for the most part should be accurate for the duration of this Contract.
 - B. It is believed the claim information is representative of the number and value of claims that will occur during each calendar audit year.
 - C. MDH has identified overpayments of about \$30 million dollars annually on roughly 3% of all claims paid. Of these, the largest areas for overpayments are bundling errors, lack of supporting documentation, and duplication of charges. The highest cost areas tend to be labor and delivery, operating room charges, pharmacy and some of the respiratory and ancillary support charges. While the current Contract also includes the identification of Underpayments, over the prior 3 years no Underpayments have been identified. The selected Contractor will be eligible for the same contingency fee as Overpayments for identifying Underpayments, as illustrated in the Price Form (Attachment B)."

Table 2.1 Claim and Provider Information

The three (3) following hospital Provider types (General In-State, General Out-of-State, and In-State Psychiatric) are to be audited under this Contract.

Provider Types	Number of Providers Calendar Year 2024	Total Amount Paid Calendar Year 2024	Total Number of Claims Paid Calendar Year 2024
<u>General Hospitals</u>			
In-State	107	\$1,014,609,083*	335,411

Out-of-State	642	\$176,140,833*	38,162
<u>In-State Psychiatric Hospitals</u>	10	\$116,849,627*	132,963

*All dollar amounts and values are illustrative and do not reflect actual amounts that may be paid for claims in any future year.

2.2.2 Mission and Goals

2.2.2.1 Mission

- A. The Contractor's mission is to reduce Improper Payments through the efficient detection and collection of Overpayments, the identification of Underpayments, the reporting of suspected fraudulent and/or criminal activities, and the recommendation of actions that will prevent future Improper Payments.
- B. The Contractor shall receive compensation on a contingency fee basis, primarily based on a percentage of the dollars recovered as Provider Overpayments by the Department as quoted in its Financial Proposal. While the Contractor will also receive payment for uncovering Provider Underpayments by the Department, as per its quoted Financial Proposal rate, historically there are far fewer instances of discovered Provider Underpayments than Overpayments and this Contract aspect historically is relatively negligible.

2.2.2.2 Goals

As stated in Section 2.2.1.2, the Department has a current RAC contract for the Audit of hospital claims for years prior to 2025. The Department's goal via this Contract is to achieve the goals of completing existing hospital Audits in progress and then remain up to date in its hospital Audit responsibilities. This goal is reflected by Table 2.2 in Section 2.3.3. To accomplish this, as described in Section 2.3.12.B, this Contract may start while the current contract is still being performed; however, the Audit periods each Contractor is responsible for managing do not overlap. Also see sections 2.3.1.13 and 5.3.2., Table A, Tab F, item 5.

2.2.3 State Staff and Roles

In addition to the Procurement Officer and Contract Monitor, the State will provide additional support staff, as needed.

2.2.4 Other State Responsibilities

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

2.3 Contractor Responsibilities and Tasks

2.3.1 General Requirements

2.3.1.1 Data Mining

The Contractor must be able to perform data mining of Medicaid claim information. Medicaid claims information will be exchanged electronically in a secure format between the Department and the Contractor.

2.3.1.2 Algorithms Samplings and Claim Reviews

The Contractor is expected to apply complex algorithms, based on the Medicaid claims detail provided by the Department and have the ability to prepare valid sampling methodologies, and perform Automated and Complex Reviews on designated claim types of the Medicaid Program.

2.3.1.3 Hospital Audit Frequency

A. Two-Year Audit Cycle

The Contractor must Audit all hospitals at least once every two years, regardless of the sampling methodology.

B. Out-of-schedule (extra or special) Audits (Also see section 2.3.3.)

1. At the direction of the Contract Monitor, the Contractor can be directed to perform Audits more frequently than every two years, or on a schedule other than may have previously been approved. (Different than as per the Notice of Approval of the final Audit Schedule described in 2.3.1.12.)
2. Circumstances that may prompt such extra or accelerated Audits may be the addition of new services, suspicion of fraud, and high rates of recovery.

C. Right to limit scope of Out-of-schedule Audits

As per the directions from the Contract Monitor, any such “extra” or “Special” out-of-schedule Audit may be limited in scope to one or a few aspects, rather than a complete Audit.

D. Submission of Out-of-schedule Audit Work Plan

If there is an out-of-schedule Audit assignment from the Contract Monitor, the Contractor must submit its plan for conducting this Audit to the Contract Monitor within 15 days after the date of assignment, with the objective of completing the Audit within 60 days after the date of commencement, unless a longer period is approved by the Contract Monitor.

E. See Section 3.4.2.2.1 for Liquidated Damages (LD) associated with the failure of the Contractor to abide with the requirements of this section

2.3.1.4 Opportunities for Contesting Preliminary Findings

The Contractor must notify the Medicaid Providers of the Overpayment discovered and review any support documentation that is subsequently submitted by the Provider within allowable timeframes, that may negate the Overpayment and have a process in place for any disagreements. (See Sections 2.3.6.2.C 2 and 2.3.8) Also see section 5.3.2, Table A, Tab F, item 13.

2.3.1.5 Contract Findings Notification

The Contractor must send the information to the Contract Monitor upon the final determination of an Overpayment for verification of recovery and be responsible for identifying Underpayments in all areas defined by the Department.

2.3.1.6 Provider Portal

- A. The Contractor must create and maintain a web-based Provider portal to track and support Audit activity and a hospital claims audit database for Provider types such as general in-state, out-of-state and in-state psychiatric hospitals. (See **Section 2.3.11**).
- B. See section 5.3.2, Table A, Tab F, item 16 where Offerors are requested to describe their experience with portals and similar remote data transfer platforms.
- C. Also see Section 3.4.2.2.2 for LDs associated with the failure of the Contractor to abide with the requirements of this section.

2.3.1.7 Compensation Overview

The Contractor shall receive compensation on a contingency fee basis, based on a percentage of the dollars recovered as an Overpayment or paid as an Underpayment by the Department as outlined in response to **Attachment B** (the Financial Proposal) and **Section 3.3**.

2.3.1.8 Meetings, Agendas, and Minutes

2.3.1.8.1 Meetings

A. Scheduled Meetings

The Contractor shall participate in monthly meetings with the Contract Monitor and other appropriate Department personnel and participate in quarterly combined meetings with the Office of the Inspector General for Health to provide updates in program progress and address outstanding issues. The schedule for meetings will be established during the Start-up process, as described in **Section 3.1**.

B. Unscheduled Meetings

1. The Contractor must participate in emergency meetings with at least three (3) hours' notice, typically by conference call, but at the direction of the Contract Monitor, may be held in person at the State Office Building, 201 W. Preston Street Baltimore, Maryland. Emergency meetings may only be called during Normal State Business Hours on Business Days.
2. The typical purpose of unscheduled emergency meetings will be to discuss issues that:

- a. Arise unexpectedly that the Contract Monitor deems of sufficient importance that they cannot wait until the next scheduled meeting to discuss.
- b. May have been mentioned or discussed to a limited degree in a scheduled meeting or weekly call but the Contract Monitor now determines that it is necessary to have a more detailed discussion, likely with additional State attendees and it is not appropriate to wait to include this additional discussion until the next scheduled meeting or weekly call.
- c. May be to discuss what the Contract Monitor determines to be serious deficiencies in Contractor performance that the Contract Monitor determines cannot wait until a scheduled meeting to discuss and/or that requires the exclusive focus of a special meeting. For example, such meetings may be called if the Contract Monitor determines it is necessary to require a Corrective Action Plan (CAP) (see Section 3.15) to redress some aspect of Contractor non-performance or if the Contract Monitor determines the Contractor is not making satisfactory progress in implementing an existing CAP.

2.3.1.8.2 Agendas

The Contractor must prepare an agenda prior to each scheduled meeting and if provided with sufficient notification of the nature and purpose of the meeting by the Department, also for unscheduled meetings. For scheduled meetings, a draft agenda must be provided to the Contract Monitor at least one (1) Business Day prior to the meeting. For unscheduled meetings, the agenda must be provided to the Contract Monitor at least one (1) hour prior to the meeting. The Contractor must make any changes in the draft agenda directed by the Contract Monitor and have the revised/corrected agenda ready for distribution at the meeting.

2.3.1.8.3 Minutes

- A. The Contractor must prepare draft minutes following each meeting, both scheduled and unscheduled, and send them to the Contract Monitor for approval.
 1. The Contractor must distribute a draft of these minutes to the Contract Monitor within five (5) Business Days for regular meetings and three (3) Business Days of emergency meetings.
 2. Within two (2) Business Days of receipt of the draft minutes, the Contract Monitor will either approve the minutes in writing or will identify required changes.

3. Any required changes must be made by the Contractor within two (2) additional Business Days.

- B. The final Contract Monitor approved version of the minutes must be distributed by the Contractor within two (2) Business Days to the Contract Monitor and other designated Department personnel, designated Contractor personnel, and any other attendees at each meeting.

2.3.1.9 Weekly Calls

- A. The Contractor's Project Manager and Quality Improvement Manager (**See Section 2.4.2 for descriptions**) must have weekly calls with the Contract Monitor to discuss any revisions to the work plan, hospital Audit project updates, problems occurring with the recovery work, and other items of importance for discussion.
- B. The Contract Monitor, at his or her discretion, may decrease the frequency of calls based on Contractor performance.
- C. The schedule of days and times for such calls will be established during the Start-up Period. (Start-up is described in **Section 3.1.**) However, the Contract Monitor may alter the times or days of the weekly calls upon written notice to the Contractor with at least one (1) Business Days' notice and taking due consideration of the Contractor's ability to reasonably accommodate such change.

2.3.1.10 Reporting Special Circumstances

- 2.3.1.10.1 If in the course of performing work under this Contract the Contractor discovers any circumstance concerning improper, unallowable, or unusual costs, or has any recommendations that it believes should be communicated to the Department prior to when it normally would do so:

- A. If not considered urgent in nature, the information should be included in the next Weekly Call as per item 2.3.1.9.
- B. If considered urgent in nature, the information should be provided as promptly as feasible in a Special Report (**See Appendix 1 Abbreviations and Definitions and 2.3.1.10.2.**).
- C. If not initially considered urgent in nature by the Contractor and brought up in a Weekly Call but the Contract Monitor directs the Contractor to provide a Special Report on the issue(s), the Contractor shall as promptly as feasible provide a Special Report in accordance with **section 2.3.1.10.2.**

- 2.3.1.10.2 A Special Report should detail the Contractor's findings, as described in 2.3.1.10.1, to include what it perceives as the danger or severe negative consequence of allowing this circumstance to continue, and any timeframe by which some action should occur to prevent or mitigate serious negative consequences.

2.3.1.11 Work Plans and Audit Schedule

2.3.1.11.1 Work Plans

- A. The Contractor shall submit a work plan to the Contract Monitor by the 15th Business Day after Contract Commencement.
 - 1. This initial work plan must include an estimated Audit begin date based on time after the Contract Commencement date. **(See Section 2.3.12.2)**
 - 2. Thereafter, a revised work plan must be submitted to the Contract Monitor no more than forty (40) and no less than thirty (30) days prior to the start of each subsequent Contract Year before review work for that year may begin.
- B. For any work plan, initial or annual, the following procedure must be followed:
 - 1. Within five (5) Business Days of receiving any comments on the proposed work plan from the Contract Monitor, the Contractor must make appropriate changes to the work plan and resubmit it to the Contract Monitor.
 - 2. Upon resubmission of the work plan incorporating the Contract Monitors comments, the Contract Monitor will either advise of further needed revisions or provide a formal Notice of Approval of the final work plan. If further revision of the work plan is required, upon acceptance, the Contract Monitor will issue a notice of approval indicating this is the final approved work plan for the first year of the Contract.
 - 3. This same procedure will be followed for the work plan to be submitted for each subsequent Contract Year.
- C. The work plan must include the Contractor's proposed means of outreach to notify Provider communities of the hospital Audit's purpose and activities. The work plan must identify the Contractor's Project Manager and Quality Improvement Manager, who as **per section 2.3.1.9** will be required to have calls with the Contract Monitor either weekly or less frequently as directed by the Contract Monitor to discuss any revisions to the work plan, hospital Audit project update, problems occurring with the recovery work, and other items of importance for discussion.
- D. See Section 3.4.2.2.3 for Liquidated Damages (LD) associated with the failure of the Contractor to abide with the requirements of this section.

2.3.1.11.2 Audit Schedule **(See Appendix 1 Abbreviations and Definitions)**

- A. The Contractor shall provide to the Department an Audit schedule with a work plan for all of the provider types, as well as an accompanying narrative description of the selection process, and justification for inclusion and exclusion. The schedule shall include the following:
 - 1. Provider type; and
 - 2. Number of Audits scheduled to be performed for each year of service.
- B. The Contractor may expand the time frame of dates and Provider types with the approval of the Department.

- C. Once the Audit schedule is approved for a given year, any changes with justification therein must be approved by the Contract Monitor before implementation.

2.3.1.12 Objective Accomplishment Deliverable

Within 30 calendar days after the Contract Monitor's issuance of a Notice of Approval of the final accepted work plan the Contractor shall provide, as a deliverable, a detailed description outlining how the objectives listed in **Section 2.2.2.2** will be accomplished. **Also see Section 5.3.2, Table A, Tab F, item 5.**

2.3.1.13 General Contract Time Frames

Except for the last year of a Contract (as separately described in item I below) or unless specifically otherwise stated elsewhere in the RFP, Contract activities with the following time frames shall be defined and due as stated below.

The Contractor shall provide:

- A. Weekly Reports - due on the Wednesday following each normal calendar week.
- B. Monthly Reports - due no later than 15 Calendar Days after the end of each normal calendar month.
- C. Quarterly Reports - The initial period may be less than an actual three (3)-month period but, thereafter, shall conform to the three (3)-month calendar as follows:
 - 1. July 1 through September 30
 - 2. October 1 through December 31
 - 3. January 1 through March 31
 - 4. April 1 through June 30

Reports are due the 15th of the month following the close of the quarter.

- D. Annually - Each full twelve (12) month period of the Contract starting with the NTP Date. Annual activities or items shall be due no later than 30 Calendar Days after the end of each 12-month period of the Contract.
- E. State Fiscal Year (FY) - The twelve (12) month period beginning on July 1 of one (1) calendar year and running until June 30 of the next calendar year.
- F. Business Day Adjustment - If any of the above due dates falls on other than a Business Day, it shall be due on the next Business Day thereafter.
- G. Last Year of Contract Adjustment - In the last year of the Contract, unless specifically otherwise stated elsewhere in the RFP, each of the above listed time frames shall automatically be shortened so that the required activity or item is produced or provided prior to the last day of the Contract.

2.3.2 Contract Administration

- 2.3.2.1 The Contractor shall be responsible for ensuring that all assigned Audit staff are familiar with the applicable State and federal laws and regulations governing the Maryland Medicaid Fee-For-Service (FFS) Hospital Program identified in the Maryland Secretary of State's Division of State Documents website at [COMAR 10.07.01](#); [COMAR 10.09.92](#); and [COMAR 10.09.93](#) for the Provider type Audits performed.
- 2.3.2.2 The Contractor shall also be responsible for the following duties;
- A. Detecting patterns of Improper Payments and abuse by specific Providers using algorithms.
 - B. Making referrals of suspected fraud, waste or abuse to the Contract Monitor, and to the Office of the Inspector General for Health. (See **Sections 2.3.3.6 C** and **2.3.1.10.B**)
 - C. Conducting Department-approved Audits of Providers.
 - D. Handling Provider submission of additional documentation, e.g., medical records. (See **Section 2.3.6.2.1.c**)
 - E. Tracking any changes to the findings of Improper Payments based on submission of additional documentation from Providers. (See **Section 2.3.6.2.B**)
 - F. Sending Overpayment letters and providing necessary witness testimony at resulting appeal proceedings (the Contractor shall work in consultation with the Department staff). See **Section 2.3.5**.
 - G. Compiling and updating a database of Provider-approved addresses and points of contact.
 - H. Maintaining all Audit work papers (paper and electronic) and disposing of information in accordance with the Department's approved records retention plan. (Per **Section 2.3.3.10**, five (5) years after the end of the Contract.)
 - I. Providing and maintaining hardware and software to import claims from the Maryland Medicaid Management Information System (MMIS) (See **Appendix 1** Abbreviations and Definitions) in accordance with applicable privacy and security standards, as well as using data-mining analysis software.

2.3.3 Identification of Improper Payments

The Contractor shall Audit the following hospital provider types: General: In-State and Out-of-State, and In-state Psychiatric. See **Table 2.2** below for Provider types under review.

Table 2.2: Minimum Number of Audits to be performed by hospital Provider type and Contract Year

(* See **Appendix 1** Abbreviations and Definitions of Contract Year which includes a reference to what constitutes Contract Year One)

Provider Types	Contract Year*, Audit Period(s), and Number of Provider Types to be Audited				
	Contract Year 1* July 1, 2027- June 30, 2028 <u>Audit Period</u> <u>Dates of Service</u> CY 2026	Contract Year 2 July 1, 2028- June 30, 2029 <u>Audit Period</u> <u>Dates of Service</u> CY 2026 – 2027	Contract Year 3 June 1, 2029- June 30, 2030 <u>Audit Period</u> <u>Dates of Service</u> CY 2027 - 2028	Option Year 1 July 1, 2030 – June 30, 2031 <u>Audit Period</u> <u>Date of Service</u> CY 2028 - 2029	Option Year 2 July 1, 2031 - June 30, 2032 <u>Audit Period</u> <u>Date of Service</u> CY 2030
<u>General Hospitals</u>					
In-State	15	15	15	15	15
Out-of-State	6	6	6	6	6
<u>In-State Psychiatric Hospitals</u>	1	1	1	1	1
Totals	22	22	22	22	22

- 2.3.3.1 Within thirty (30) Business Days of receiving the Notice of Approval as described in Sections 2.3.1.11.1.B.2 and 2.3.1.12, the Contractor must cooperatively work with the Contract Monitor to identify the hospital Providers to be audited.
- 2.3.3.2 The Contractor is to submit, in a format acceptable to the Contract Monitor, a detailed overview with supporting documentation to justify the Audit. Selection of Providers for Audit shall be based on information gathered either from the Department or Contractor data, and a review of MMIS claims data.
- A. The Department reserves the right to direct the Contractor to Audit a Provider not previously identified by the Contractor. The Contract Monitor shall approve all Audits on a case-by-case basis prior to the Contractor starting the Audit process. The Contingency Fee (see **Appendix 1 Abbreviations** and Definitions) may not be paid until all aspects of the requirement are fulfilled and then approved by the Department. (See **Section 3.3.**)
- 2.3.3.3 The Department reserves the right to limit the period available for the Contractor to review by region, by claim type, by Provider type, or by any other reason where the Department believes it is in the best interest of the Maryland Medical Assistance Program to limit claim review. This notice will be made in writing to the Contractor (paper or electronic) and will be effective immediately. (See **Section 2.3.1.3.**)

- 2.3.3.4 The Contractor shall not request more than 150 medical records from a Provider in any one (1) request, nor shall the Contractor request more than 500 medical records from any Provider in any 6-month period. (See **Section 3.4.2.2.4** for Liquidated Damages (LD) associated with the failure of the Contractor to abide with the requirements of this section).
- 2.3.3.5 Claims Identification Guidelines
- The Contractor shall:
- A. Identify Providers that have received payments from the State in error, because of suspected fraud, duplicate payments or benefits, Overpayments, or payments made for services not ordered or otherwise performed, or are otherwise ineligible under the law, rules, terms, or conditions of the Maryland Medicaid program.
 - B. Ensure that processes are developed to minimize Provider burden to the greatest extent possible when identifying Improper Payments. This may include, but is not limited to, ensuring Audit parameters are refined to select only those claims with the greatest probability of Improper Payments.
 - C. NOT order medical records from the Providers being audited on a random, unscientific basis, with little or no effort to both attempt to minimize the burden on the hospital Providers and maximize the potential for identifying Overpayments. Instead, the Contractor shall utilize data analysis techniques to identify those claims most likely to contain Overpayments. (See **5.3.2, Table A, TAB F, Item 23**).
- 2.3.3.6 The Contractor may receive referrals from the Medical Assistance Program or other contracting entities with the Department and, upon approval from the Contract Monitor, may perform Provider-specific reviews.
- 2.3.3.7 Excluded Improper Payments
- 2.3.3.7.1 The Contractor shall NOT attempt to identify Improper Payments arising from any of the following:
- A. Services provided under a program other than the Maryland Medical Assistance Program.
 - B. Claims more than eight (8) years past the claim paid date. The Contractor shall take no further action on any Improper Payments inadvertently identified eight (8) years past the claim paid date.
 - C. Claims of Providers under investigation
Any Overpayment or Underpayment for those Providers known to be under investigation by law enforcement, including the Office of the Attorney General's Medicaid Fraud Control Unit, the Office of the Inspector General for Health, the Department of Justice, the Federal Bureau of Investigation, or any other law enforcement entity that might be investigating Improper Payments.
 - D. Claims previously reviewed, subjected to Audit, or subjected to third party liability (TPL) recovery.

1. Any Overpayment or Underpayment for Providers whose claims have been subjected to a formal Audit by the Department or any administrative or law enforcement agency.
 2. Any Overpayment or Underpayment for claims that have been recovered from a third party through the TPL contractor. TPL recoveries are when the Department has a contract with a vendor for the specific purpose of identifying TPL situations and potential recovery of monies for claims that were paid by Medicaid but that should have been paid by a third party.
- 2.3.3.7.2 See section 5.3.2, Table A, Tab F, item 24 for Proposal response guidance concerning section 2.3.3.7.
- 2.3.3.7.3 See Section 3.4.2.2.5 for Liquidated Damages (LD) associated with the failure of the Contractor to abide with the requirements of this section.

2.3.3.8 Evidence

Under current Maryland law, the Contractor shall NOT use Extrapolation (**See Appendix 1 Abbreviations and Definitions**) for its findings. If federal or State legislation or regulation is enacted to permit Extrapolation, the Contractor may utilize Extrapolation. The Contractor shall have supporting evidence of a Medicaid Overpayment for every claim that it identifies. See **Section 3.4.2.2.6** for Liquidated Damages (LD) associated with the failure of the Contractor to abide with the requirements of this section.

The Contractor shall use one of two (2) ways to determine an Improper Payment in a targeted review process: Automated Review or Complex Review. The Contractor shall determine which review process to use based upon the criteria stated in **Sections 2.3.4.7 A.1 and B.1** below:

- A. Automated Review occurs when a Contractor makes a claim determination at the system level without a human review of the medical record or supporting documentation.
 1. Automated Reviews are applied in scenarios where Improper Payments can be identified clearly and unambiguously. In these cases, the Improper Payments can be determined from claim data elements, well-established policy, and rules. The Contractor must obtain approval from the Contract Monitor for determining that no more complex review of documentation is required to validate that an Improper Payments exists.
 2. The Contractor will make determinations based upon coding determinations defined in the international classification of diseases (ICD -9, or 10, HCPCS CPT or CPT Assistant. (**See Appendix 1 Abbreviations and Definitions** for the meaning of these acronyms.)).
- B. Complex Review occurs when a Contractor makes a claim determination using human review of medical records, vendor records, and other supporting documentation.
 1. The Contractor may use Complex Review when the criteria of Automated Reviews are NOT met.
 2. The Contractor shall flag the case for further review and determination of what further information may be required to validate that an Improper Payments exists. Records or documentation may be requested from the Provider or other appropriate party and then a review

to validate the Improper Payments determination will be performed. On-Site (See **Section 7.1, Table C Appendix 1** for definition) auditing and reviewing may also be required.

3. Copies of the medical records must be maintained to support any adverse determinations.

2.3.3.9 Preventing Duplication of Effort

- 2.3.3.9.1 In order to minimize the impact on the Provider community, it is critical that the Contractor avoids situations where it and another entity are working on the same claim.
- 2.3.3.9.2 The Contractor shall not begin an Audit without the consent of the Contract Monitor. Before the Contractor may begin an Audit, the Contractor and Department shall make every effort to ensure the Audit will not interfere with the review by another agency or law enforcement agency.
- 2.3.3.9.3 The Department shall provide a monthly electronically secure list of these Audit targets to the Medicaid Fraud Control Unit (MFCU) for review and request the MFCU share the list with their federal counterparts and coordinate recovery audit efforts of their hospital Audit with other auditing entities. The MFCU has 30 days to review the list and indicate to the Department if any Audits should not proceed. The Department will also review the list with any federal contractors conducting audits of State Medicaid providers.
- 2.3.3.9.4 See Section 3.4.2.2.7 for a Liquidated Damage associated with violating this prohibition.

2.3.3.10 Obtain and Storing Records for Reviews

- A. The Contractor shall request, obtain, store, and share imaged medical records and supplemental information.
 1. The Contractor shall maintain a document management system and store medical records associated with an Overpayment for the duration of the Contract plus five (5) years (See **Exhibit 2, the Contract, §23**). All such documentation must be retained for five (5) years after final payment under the Contract and/or the completion/satisfaction of all Close-out activities or requirements as per **Section 3.2**. (See **Section 5.3.2, Table A, Tab F, item 18** for Proposal response guidance concerning this section.)
 2. The Contractor shall maintain a log of all requests for medical records by the Contract Monitor or any authorized State or federal agency, such as but not limited to, the Maryland Office of Legislative Audits, the Office of the Inspector General for Health within the Maryland Department of Health, indicating, at a minimum, the Provider, the information being requested, the date the request was received, and the date the request was fulfilled. Refer to **Section 2.3.4.2C**.
 3. Also see Section 5.3.2, Table A, Tab F, item 18 for additional Proposal response guidance concerning this section.
 4. See Section 3.4.2.2.8 for Liquidated Damages associated with the Contractor establishing and maintaining a document management system.
- B. Whenever needed for reviews, the Contractor shall obtain medical records by going On-Site to the Provider's physical location (if feasible) to view/copy the records or by requesting that the Provider securely transmit the records to the Contractor. The decision to go on-site or to have records submitted to the Contractor is solely at the Contractor's discretion but may be overruled by

the Department if determined appropriate. The Provider cannot demand an on-site review or deny the Contractor's request to perform an on-site review.

The following wording from the Maryland Medicaid Provider Agreement states (in part) the obligations and responsibilities of Providers in terms of cooperating with the Department with respect to hospital claims audits. Providers must cooperate with the Contractor, as the designee of the Department for hospital claims audits, the same as they are required to cooperate with the Department itself. Moreover, again as the Department designee, the Contractor is also bound by the obligations of the Department in the Provider Agreement.

"The Provider agrees to provide access upon request to its business or facility and all related Recipient information and records, including claims records, to the Department, the Medicaid Fraud Control Unit (MFCU) of the Maryland Attorney General's Office, the U.S. Department of Health and Human Services, and/or any of their respective employees, designees or authorized representatives. This requirement does not proscribe record requirements by other laws, regulations, or agreements. It is the Provider's responsibility to obtain any Recipient consent required to provide the Department, its designee, the MFCU, federal employees, and/or designees or authorized representatives with requested information and records or copies of records. Failure to timely submit or failure to retain adequate documentation for services billed to the Department may result in recovery of payments for Services not adequately documented and may result in the termination or suspension of the Provider from participation as a Medical Assistance provider."

- C. If the Contractor attempts an on-site visit and the Provider refuses to allow access to its facility, the Contractor must contact the Contract Monitor as soon as possible but not later than one (1) Business Day. The Contract Monitor shall make an attempt to contact the Provider to obtain the reason for the refusal of the visit. The Contractor may not make an Overpayment (see **Appendix 1 Abbreviations and Definitions**) determination based upon the lack of access. Instead, the Contractor shall request the needed records in writing. (See **Section 2.3.6.2.B**) concerning a Provider's failure to timely provide records).
- D. The Contractor shall only request medical records for claims approved by the Department for review.
- E. The Contractor must accept electronic medical records via the Provider web portal, on CD/DVD, or thumb drive at the Provider's request.
- F. The Contractor shall copy the relevant portions of the medical record and retain them for future use when on-site review results in an Improper Payments finding.
- G. When an on-site review results in no finding of Improper Payments, the Contractor shall not retain a copy of the documentation and should follow agreed upon data destruction protocols, as follows:
 - 1. During the Start-up Period, described in **Section 3.1**, the Department and Contractor may work cooperatively to establish a data destruction protocol.
 - 2. If not established during the Start-up Period, such a destruction protocol may be established at any time prior to the first occasion when documentation must be destroyed.
 - 3. At any time the Contract Monitor may revise an already established destruction protocol and may direct the Contractor to thereafter adhere to the revised protocol.

2.3.4 Claim Audit Determinations

2.3.4.1 Rationale for Determination

- A. The Contractor shall ensure that policies utilized in making an Audit determination are applicable at the time the service was rendered. The Contractor shall document the rationale for the determination. This rationale shall list the Audit findings, including a detailed description of the Medicaid policy or rule that was violated and if the violation resulted in an Improper Payment. Because these determinations can be appealed (See **Section 2.3.8**), it is important that the rationale for the determination be documented both initially, during the period that is allowed between the preliminary audit findings letter and the final audit findings letter (e.g., when a provider may submit additional documents for consideration), and at each level of appeal.
- B. If an issue is brought to the attention of the Department by any means and the Department instructs the Contractor on the interpretation of any policy and/or regulation, the Contractor shall abide by the Department's decision.

2.3.4.2 When the Contractor reviews a claim, it may make any or all of the determinations listed below:

- A. **Coding Determinations** – The Contractor may find that an Overpayment or Underpayment exists if the service is not correctly coded (i.e., it fails to meet one or more of the coding requirements listed in the ICD-9, ICD-10, NCCI (See **Appendix 1 Abbreviations and Definitions**), HCPCS, CPT, or CPT Assistant) and the finding results in a monetary discrepancy. In determining Improper Payments, service lines or payment groups that a Provider failed to include on a claim are NOT considered Underpayments for the purposes of this Contract.
- B. **Other Determinations** – The Contractor may determine that an Overpayment or Underpayment exists if the claim was paid twice (i.e., a duplicate claim), was paid incorrectly, or the claim was processed and did not apply a payment policy (e.g., paying the second surgery at 50% of the fee schedule amount), or the service was not provided in accordance with regulations.
- C. **Failure to Provide Requested Records** – The Contractor may find a claim to be an Overpayment if requested records are not received within 45 calendar days of an initial written request or 15 days after a second notification (see **section 2.3.6**). If a Provider refuses to provide requested records or simply has not provided the records within this timeframe, the Department will retract from the Provider's future Medicaid payments the full amount of the claim.
- D. **Potential Quality Problems** – The Contractor shall report potential Provider quality issues discovered during Complex Reviews as soon as possible but not later than one (1) Business Day to the Department. The mechanism to report potential quality issues shall be provided by the Contract Monitor after Contract Commencement and before the Go-Live Date.
- E. **Voluntary/Self-Reported Overpayments by the Provider** - If during the course of the Contractor's review work, a Provider identifies additional claims

as potential Overpayments, these claims should be referred to the Department. The Contractor will not receive payment for voluntary/self-reported Overpayments by the Provider.

2.3.5 Identifying Underpayments

- 2.3.5.1 The Contractor will review each line-by-line comparisons on the claim and consider all possible occurrences of an Underpayment (see **Appendix 1 Abbreviations and Definitions**) for all Provider types. Service lines or payment groups that a Provider failed to include on a claim are NOT considered Underpayments per **Section 2.3.4.2.A** for the purposes of the Contract.
- 2.3.5.2 The Contractor will review claims to identify potential Maryland Medical Assistance Underpayments. On a monthly basis, the Contractor will submit a report of Underpayment findings to the Contract Monitor. This report shall be separate from the Overpayment reports.
 - A. By the 15th of each month, the Contractor shall submit a report to the Contract Monitor listing all Underpayments the Contractor identified during the previous calendar month. The report shall include the Medicaid Internal Control Number (ICN), date(s) of service, the Provider number, the claim paid date(s), the original amount paid and the reason for the Underpayment. This reporting will be separate from the reporting of Overpayments. See **Section 2.3.9** for details on reporting requirements.
 - B. The Contractor shall keep an accurate and up-to-date database of Underpayments.
- 2.3.5.3 After receipt, the Department will evaluate all Underpayment findings. If necessary, the Contractor shall provide any documentation supporting the Underpayment determination to the Contract Monitor. The Department will make all final Underpayment determinations.
- 2.3.5.4 The Contractor will not be responsible for case files received from Providers for an Underpayment case review if the files were not requested by the Contractor. The Contractor shall dispose of the records as directed by the Provider using agreed upon data destruction protocols that meet the Department's standards, as described in **Section 2.3.3.9.G**.

2.3.6 Notice to Providers

- 2.3.6.1 The Start-up process described in **Section 3.1.2.A.3** provides that the Department will work with the Contractor to establish the following types of template letters to be sent to Providers at the following times or under the following circumstances. Each of these template letters is further described under **Section 2.3.6.2**.
 - A. Notification of Selection for Audit and Request for Records;
 - B. Second Notification (Repeat Request for Records);
 - C. Third Notification (Failure to Provide Records and Associated Payment Retraction Notice)

D. Preliminary Findings Letter

E. Final Findings Letter

2.3.6.2 Initial Notification and Reminder Template Letters

A. Notice of Selection and Reminder Letters

1. Notice of Selection for Audit and Request for Records

Prior to the commencement of the Audit, the Contractor shall send a first letter by certified mail to the Provider informing them of their requirement to submit medical record documentation for review. The Contractor may also communicate electronically with the Provider via secure email with read receipt to at least two points of contact, if the Provider agrees to accept electronic communication and the Contractor is able to have a read receipt or other evidence of delivery of the electronic communication. The Provider has thirty (30) calendar days to submit the required documentation as outlined in **Section 2.3.6.2.A.2.**

2. Second Notification (Repeat Request for Records)

- a. After the initial 30 days, the Contractor shall send a letter by certified mail and if the Provider has agreed to electronic communication, also a secure email with read receipt, to advise unresponsive Providers that they have 15 additional calendar days to submit any information related to the Audit before a final determination.
- b. The letter should reference the Internal Control Numbers (ICNs), repeat communication methods for contacting the Contractor for reconsideration, and note a lack of response will result in a negative finding and retraction of the full amount of the claim.

B. Failure Letter (Third Notification Letter from 2.3.6.1.)

If the Provider fails to provide any of the requested medical record information by close of business on the 45th day of the period, the Contractor will issue a Failure to Provide Records and Notice of Retraction Notice.

C. Audit Finding Letters

Upon completion of the Audit, the Contractor, at its expense, shall send letters to Providers informing them of both the preliminary and final Audit results. The Contractor may communicate electronically with the Provider if the Provider agrees to accept electronic communication and the Contractor is able to have a receipt or other evidence of delivery of the electronic communication.

1. Preliminary Findings Letter

- a. The preliminary findings letter shall clearly identify the potential discrepancies and document nationally recognized references as outlined in **Section 2.3.4.2.A** and/or specific Departmental rule violations for each discrepancy.

- b. The preliminary findings letter shall include the ICN of each claim line with discrepancies.
- c. The letter shall explain that the Provider has 15 calendar days to submit additional documentation regarding the potential discrepancies or to otherwise explain why it believes the payment amount at issue was proper prior to a final determination. If the Contractor has instituted a formal reconsideration process aside from what is in the first sentence of this Section 2.3.6.2.C.1.c, the preliminary finding letter shall identify that process, including, if appropriate, how Providers can send written and/or electronic requests for reconsideration (e.g., U.S. mail, communications via the Provider portal, web conferencing, telephonic conferences, in-person meetings, etc.). The Contractor shall have the discretion to refuse in-person meeting requests with Providers. (Also see Section 5.3.2, Table A, Tab F, item 13.C for Proposal response guidance concerning this section.)

2. Final Findings Letter

- a. Within 60 calendar days of the preliminary findings letter, the Contractor shall issue a final findings letter by certified email with read receipt, and if approved for electronic communication by the Provider, also by secure email with read receipt.
- b. The final findings letter shall inform the Provider of the amount identified as an Improper Payment for each ICN and include a statement that the Department's Division of Recoveries and Financial Services will pursue measures of recovery including, but not limited to, offsetting future payments.
- c. The Contractor shall inform the Provider of the opportunity to appeal. Letters shall clearly identify the time for making an appeal and identify pertinent rules. (See Section 5.3.2, Table A, Tab F., Item 13 for additional Proposal response guidance concerning this section.)

2.3.6.3 See Section 3.4.2.2.9 for a description of liquidated damages associated with the establishment of template letters.

2.3.7 Customer Service Measures

- 2.3.7.1 The Contractor shall be available by telephone at least during Normal State Business Hours or the additional or longer days and hours described in Section 5.3.2, Table A, Tab F, Item 28, if this is longer or in excess than Normal State Business Hours to address the Provider's and Department's concerns. The Contractor in its Technical Proposal shall provide a detailed explanation ensuring that varying communication and language needs are addressed. A relay service for the deaf and hard-of-hearing must be used when appropriate.

- A. Ensure staff greet the caller and identify themselves by name when answering, treat all callers with dignity, and respect the caller's right to privacy and confidentiality.
 - B. Ensure that personnel responding to inquiries and requests are fully trained and knowledgeable about Maryland Medicaid standards and protocols, the recovery Audit program, recovery, and appeals processes.
 - C. Provide a properly functioning toll-free voice line and a Telecommunication Device for the Deaf (TDD/TTY) telephone numbers/line (in-state and out-of-state) for Providers to call for services as described in this RFP and/or proposed use of the Maryland Relay Service.
 - D. Provide fax capabilities with sufficient memory or buffers to handle multiple incoming and outgoing transmissions. There shall be a written back-up plan to implement in the event of a fax system failure.
 - E. Establish one (1) or more toll-free telephone number(s) to be used for this activity, including paying all associated expenses.
- 2.3.7.2 See Section 5.3.2, Table A, Tab F, Item 28 for additional Proposal response guidance concerning this section.
- 2.3.7.3 See Section 3.4.2.2.10 for Liquidated Damages associated with the failure of the Contractor to abide by the requirements of this Section 2.3.7.
- 2.3.8 Supporting Maryland's Appeal Process**
- 2.3.8.1 Any final action by the Department to seek recoupment of monies from a Provider based upon an Audit performed by the Contractor under this Contract is subject to being appealed. An appeal is a formal legal proceeding that starts with the Maryland Office of Administrative Hearings (OAH) located in Lutherville, Maryland. At OAH, an appeal decision is rendered by an Assigned Administrative Law Judge, usually after a formal hearing. Decisions of the Administrative Law Judge may be further appealed by either party to the regular court system, usually a Circuit Court in one (1) of Maryland's 24 jurisdictions.
- 2.3.8.2 The Contractor shall participate in any appeals and formal hearing processes resulting from cases it has audited for as long as appeals or hearings of those cases are active and even if such appeals or hearings for those cases extend beyond the term of the Contract. All Provider appeals shall be held in accordance with **COMAR 10.09.36.09**. However, the Department shall be responsible for defending against any appeals, with the Contractor's participation. Specifically, an Assistant Attorney General (AAG) will represent the Department in defending against an appeal by a Provider.
- 2.3.8.3 The Contractor shall provide the appropriate auditing staff as witnesses to address the subject matter for meetings between the Contractor, the Department, and Providers, and for depositions and hearings. The Contractor shall be responsible for gathering

and providing information for responses to hearing discovery at the request of the Department's attorney, in the format requested.

2.3.8.4 Under the typical process of the Department receiving an appeal directly from a Provider, (the Aggrieved Party) the Contractor will be notified by the Department that an appeal has been received. At the discretion of the Contract Monitor, the Contractor will be advised of the AAG(s) that will be defending the appeal. The Contractor must coordinate with this AAG(s) to determine the assistance that the Contractor should provide.

2.3.8.5 Time Frames

- A. All documents requested by the Contract Monitor or Department legal staff to defend the Program against a Provider appeal shall be provided within five (5) Business Days of the request.
- B. To the extent that required documents and/or information are already in the possession of the Department, as directed by the Contract Monitor the Contractor may either identify the documents and/or information with such specificity that the Department may readily access its own copies or provide the documents and/or information again, notwithstanding that the documents and/or information had previously been provided to the Department.

2.3.8.6 Contractor Requirements for OAH Appeal Hearings or Other Legal Proceedings

A. Pre-Hearing/Legal Proceeding Requirements

- 1. When directed by the Contract Monitor, it may become necessary for the Contractor to provide personnel who are articulate and knowledgeable about the Program to testify at Administrative Law and Appeal Hearings to serve as a witness and/or Subject Matter Expert instead of, or in addition to MDH personnel. In addition to program staff, Clinical Staff may need to attend the hearing as well.
- 2. The personnel chosen to function as witnesses must be approved by the Contract Monitor no less than two (2) weeks prior to the hearing and must confer with a State Assistant Attorney General and possibly Program personnel about their role at the hearing and the nature of their testimony.
 - a. Except as permitted in Section 2.3.8.6.(A)(2)(c), appropriate Contractor staff shall attend meetings in person to assist with the preparation of a defense at Administrative Hearings or other legal proceedings. Typically, such in-person meetings would occur at the State Preston Street complex (e.g., at 201, 300 or 301 W. Preston St.), the Office of the Attorney General at 200 St Paul Place in Baltimore, the future headquarters of the Department at 300 N. Greene St. in Baltimore City, or other location(s) in the Baltimore area.
 - b. If required by Department legal staff, appropriate Contractor staff shall provide depositions concerning an Improper Payments finding under the Contract, either in addition to or in lieu of in-person meetings described in Section 2.3.8.6.(A)(2)(a). Any such deposition could take place at the Contractor's office, or any location identified in Section 2.3.8.6.(A)(2)(a).

- c. With the approval of the Contract Monitor or Department legal staff, consultation with Contractor staff, including potential witnesses at hearings or other legal proceedings, may take place via teleconference or video conferencing (e.g., Google Meets, Zoom, etc.).
3. No less than two (2) weeks prior to a hearing date, the Contractor shall assemble and provide all appropriate records and other preparations for hearings/legal proceedings, as specified by the MDH Office of the Attorney General.

B. Hearing/Legal Proceeding Requirements

1. The Contractor Personnel chosen to function as witnesses or Subject Matter Experts as described in Section 2.3.8.6.(A), must attend the hearing and perform as directed by the AAG, as witnesses and/or to act as a real-time informational resource to the AAG, by answering questions from the AAG, providing descriptions of processes, or reacting to statements or testimony from the appellant or its attorney.
2. The Contract Monitor and/or other Program personnel may be called as a witness by the MDH AAG. If required, Contractor Personnel must provide real-time information, analysis or recommendations in support of such testimony.
3. The location of any hearing or other legal proceeding usually would occur at the Maryland Office of Administrative Hearings in Lutherville, Maryland, but could take place at any court location in Maryland, or even be conducted remotely.
4. At all times during hearings, the Contractor shall follow the directions of Department personnel, which may be Program Representatives or an AAG.

C. Monitoring and Assessment of Contractor Performance at Hearings/Legal Proceedings

1. The Contract Monitor or designee may be present at an Appeal Hearing to monitor the Contractor's performance.
2. The Contractor must engage in dialogue with the MDH AAG to discuss its performance at the hearing and for instruction on what to do differently in the future.

2.3.8.7 Duration of Appeal Responsibilities

- A. For the full duration of the Contract, the Contractor must perform all requirements described in Sections 2.3.8.1. – 2.3.8.9.
- B. After the Contract expires, if an appeal is based upon an Improper Payment finding made by the Contractor during the term of the Contract, the Contractor still must provide documents, consultation and, as requested, attend hearings as witnesses and/or Subject Matter Experts.

2.3.8.8 Payments for Appeal Related Activities

- A. Typically, any appeal will be based upon the Department trying to recoup monies already paid to a Provider. If a Provider disputes the validity of the Improper Payment finding by filing an appeal, they will not make such a payment unless and until its appeal has been finally adjudicated. The Department may elect to deduct the amount of any recoupment from future payments due to the Provider. Nevertheless, until such time as the Department has been upheld in its denial of an appeal, the Department will

not make any contingency payment to the Contractor. Since the Contractor will not receive any payment under the Contract except for contingency fees during the term of the Contract, the Contractor will not be paid for any effort by its staff to identify or provide any documents and/or information concerning the Contractor's determinations under the Contract, participation by its staff in meetings with Department legal staff to prepare a defense for an appeal, for providing depositions, acting as a real-time, in-person resource or appearing as witnesses at Administrative Hearings or other legal proceeding, or any other activity under the Contract.

- B. As described in Section 17 of the Key Information Summary Sheet (KISS) and Section 2.3.13.2, the Contract will not end until there is a final determination on all Audits, including any Audits for which the final findings are under appeal. The Contractor will not be paid for any expenses (mileage, tolls, parking, meals, lodging, etc.) for any meeting or other proceeding that occurs anywhere in Maryland.

2.3.8.9 See Section 3.4.2.2.11 for appeal-related Liquidated Damages.

2.3.8.10 See Section 5.3.2, Table A, Tab F, Item 13 for additional Proposal response guidance concerning this section.

2.3.9 Reports

2.3.9.1 The Contractor is required to complete the following reports:

A. Monthly Status Reports

1. The Contractor shall prepare and submit to the Department Contract Monitor a monthly status report of its findings with respect to the claims audited for each Provider during the previous month. Status reports shall be due to the Contract Monitor by the 15th of each month following the month in which services were provided.
2. Monthly status reports shall include, at a minimum:
 - a. A listing of all open and closed Audit cases;
 - b. Contractor assigned Audit case identifier number(s);
 - c. Case status (i.e. open, closed, in appeals, etc.)
 - d. Type of Improper Payments (Underpayment or Overpayment);
 - e. Provider names; and
 - f. Summary findings for each Provider.

B. Quarterly Reports by Fiscal Year

Quarterly summary reports requested by the Department shall be submitted in the format prescribed by the Contract Monitor, within 10 Business Days after the end of the quarter, unless otherwise specified by the Contractor Monitor.

C. Ad Hoc Reports

Ad hoc reports requested by the Department shall be submitted in the format prescribed by the Contract Monitor, within three (3) Business Days after the date of the request, unless otherwise specified by the Contractor Monitor.

D. Overpayment Reports

Overpayment reports shall include the Provider's name, Provider number, number of patient records reviewed, dates of service span, amount of recovery identified, and final agreed upon recovery amount.

E. Underpayment Reports

Underpayment reports shall include the Provider's name, Provider number, number of patient records reviewed, dates of service span, and amount of underpayment identified.

F. End of Year Trend Report

Within 2 weeks after the end of each Contract Year the Contractor shall submit a detailed report summarizing all findings for the just concluded Contract Year. This report shall include:

1. A detailed findings report by Provider audited during the just concluded Contract Year. Each Provider Findings report shall include:
 - A. The identity of the Provider by proper name, address, and Medicaid Provider ID number.
 - B. Whether the Provider is identified as an In-State or Out-of-State Provider.
 - C. The date of the Audit(s)
 - D. The number of claims audited.
 - E. The number of claims for which Improper Payments were identified and the number of separate individual findings. This may total more than the number of claims since there may be multiple findings per claim.
 - F. The gross total of all billings (the charged amounts) for the audited claims.
 - G. The gross total of payments actually made (the allowed payments) by the Program for the billings listed in Section 2.3.9.1.F.
 - H. The gross amount of Improper Payments identified, by Underpayment and Overpayments and the percentage of the actual (allowed) Program payment that this represented.
 - I. A list of the most commonly identified type(s) of Improper Payments.
 - J. Identification of the types of procedures or coding activities which most frequently had Improper Payment findings.
 2. A summary of all the totals of all the individual Provider reports.
 3. A comparison of the totals report to the previous 5 year-ending reports. The Department will provide any Year-Ending report totals for years prior to when the Contractor performed these Audits.
- 2.3.9.2 To a reasonable degree, the Contract Monitor may request additional or different information to be included in reports.

- 2.3.9.3 During the Start-up process the Contract Monitor will inform the Contractor of any additional or different reports or report contents from what is contained in this Section 2.3.9.
- 2.3.9.4 Once Audits actually start being performed, to a reasonable degree the Contract Monitor may request additional or different reports or report contents, either on a one-time or limited basis, or permanently for the remainder of the Contract.
- 2.3.9.5 See Section 5.3.2, Table A, Tab F, Items 17 and 26 for additional Proposal response guidance concerning this section.
- 2.3.9.6 See Section 3.4.2.2.12 for Liquidated Damages associated with the failure of the Contractor to provide reports in accordance with this section.

2.3.10 Office and Staffing Requirements and Role of Subcontractors

2.3.10.1 Office and Staffing Requirements

As of the Go Live Date, the Contractor shall have staff available during Normal State Business Hours.

- A. At a minimum, the Contractor shall provide a dedicated Project Manager and Quality Improvement Manager for this Contract (**See Section 2.4** for additional information about all Key Personnel positions), as well as ensure the presence of essential personnel needed to perform the audits, which may include Physician Reviewers, Registered Nurse Reviewers, or Clinical Pharmacist Reviewers, and one (1) or more Certified Professional Coders and other support personnel. All clinical support staff must possess the current, active, and unrestricted professional licenses in Maryland.
- B. The Contractor shall be responsible for assuring that all persons (including but not limited to employees, agents, and sub-contractors) are legally authorized to render services described in the Contract under applicable State laws or regulations.
- C. The Contractor shall not have an employment, consulting, or any other agreement with a person that has been debarred or suspended by any federal or state agency, licensing agency, or certification board for the provision of items or services related to the entity's contractual obligation to the State. In addition, staff may not have secondary employment with Providers that are subject to monitoring as outlined in this RFP.
- D. The Contractor shall be responsible for assuring that licensed Physician Reviewers, Registered Nurse Reviewers, Clinical Pharmacist Reviewers, and Certified Professional Coders are properly credentialed prior to the initiation, and throughout, the Contract.
- E. A single individual may not hold more than one (1) Key Personnel position unless otherwise approved in writing by the Contract Monitor.
- F. As required in **Section 2.5**, the Contractor shall seek approval from the Contract Monitor concerning any changes in Key Personnel at least fifteen (15) days in

advance or as soon as the Contractor is aware of circumstances when a change will or should occur.

- G. See Section 5.3.2, Table A, Tab F. Item #30 for additional Proposal response guidance concerning Contractor staffing.

2.3.10.2 Role of Subcontractors

As per section 5.3.2, **Table A, Tab M (Attachment P)**, the Contractor, as an Offeror shall identify by name, function(s), and qualifications, any current or anticipated subcontractors it will use to fulfill Contract requirements, and it will coordinate and communicate with any subcontractors and the Department to ensure effective integration of all services. Also see section 5.3.2, Table A, Tab F. Item #29 for additional Proposal response guidance concerning subcontractors, including an acknowledgement that as per **Section 2.1.5**, the Contractor shall be wholly responsible for the entire performance of this Contract, whether or not it chooses to use subcontractors.

- 2.3.10.3 See Section 3.4.2.2.13 for Liquidated Damages associated with the failure of the Contractor to abide by Key Personnel staffing requirements.

2.3.11 Technology Requirements (Web Portal and Databases)

The Contractor shall provide:

A. Case Tracking – Provider Web Portal

The Contractor will create a secure, password-protected web-based system (a web portal) for managing cases and tracking Audits and review findings. The system must have the ability to be securely accessed by the Department and by Providers who are or have been under review or audited by the hospital Audit Contractor to allow them to determine the status of their audit or review. Providers must be able to submit requested medical records to the Contractor via the portal. The web portal must include printable receipts, the ability for Providers to access and view uploaded documents, date and time stamping for all Provider entries, and a scanning function to add information to the record. Also see section 5.3.2 Table A, Tab F. Item #16 for additional Proposal response guidance concerning this section.

B. Hospital Audit Claims Database

1. The Contractor will build and maintain a hospital audit claims database. The database should be a secure portal where Medicaid claims examined by the Contractor can be reviewed by the Department to minimize duplication of effort between entities performing audit and review work of Medicaid Providers. Also see section 5.3.2 Table A, Tab F. Item #16 for additional Proposal response guidance concerning this section.
2. Appropriate security measures need to be taken to protect Protected Health Information (PHI) in order to comply with Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health (HITECH) requirements.

3. The hospital audit claims database should house all of the Department's Medicaid claim files, the Contractor's pursuits, identifications, and document collections. The Contractor must include all components of the identification of improper payments recovery and tracking process. This database will allow for the identification of the specific claim lines under audit by the Contractor.
 4. The Contractor shall set up and maintain a separate electronic file for each Provider case assigned, which shall include but not be limited to:
 - A. MMIS Provider Eligibility File Information;
 - B. Claim lines and ICNs for dates of service included in the sample;
 - C. Copies of Provider clinical and administrative records;
 - D. Copies of any correspondence sent or received by Contractor concerning Provider cases;
 - E. Copies of letters, charts, reports, summaries, certified mail receipts, and other documents created by the Contractor for each case; and
 - F. Appeal hearing documents.
 5. The Maryland Medical Assistance data, as maintained in MMIS, will always be considered the correct data if the Contractor's files do not agree with Medicaid files.
 6. The hospital claims audit database must be capable of accepting the Department's Medicaid claims files from Maryland MMIS at intervals determined by the Contract Monitor.
 7. The Contractor shall inform the Department in advance of any changes to information technology systems that would affect the Contractor's ability to fulfill the obligations of this RFP and resulting Contract.
- C. Technical Capabilities
1. Contractor shall use CONNECT: DIRECT® see [CONNECT DIRECT \(IBM\)](#) by Sterling Commerce, the supported connectivity standards for file exchange between the State-owned Annapolis Data Center (ADC) which houses Medicaid MMIS, and State of Maryland vendors, or a HIPAA equivalent method of compliant connectivity.
 - a. Vendors will establish connectivity via CONNECT: DIRECT® or HIPAA-compliant equivalent through ADC.
 - b. ADC uses an IP solution for its CONNECT: DIRECT® customers.
 - c. The IP connection using CONNECT: DIRECT® or HIPAA-compliant equivalent will be via the Internet, not a private connection to ADC.
 - d. With the connection via the Internet, it is mandatory to use the CONNECT: DIRECT® Secure+ feature or HIPAA-compliant equivalent feature, which is additional required software.

2. The Contractor shall have in effect and update, as needed, a Disaster Recovery Plan (See **Section 5.3.2, Table A, Tab F, item 27**) for all information systems used by the Contractor to meet the requirements of this Contract. The Disaster Recovery Plan shall include.
 - a. Objectives of the plan;
 - b. What situations and conditions are covered by the plan;
 - c. Technical considerations;
 - d. Roles and responsibilities of Contract staff;
 - e. How and when to notify the Department's Contract Monitor;
 - f. Recovery procedures; and
 - g. Procedures for deactivating the plan.
3. The Contractor shall ensure that secure protection, backup, and disaster recovery measures are in place and operational as of the Go-Live Date and for the duration of the Contract and shall ensure the integrity of the data and availability of data to the Department.
4. The Contractor must have the ability to be compatible with any new MMIS system developed by the Department during the Contract period.
- D. All data files and programs created under this Contract shall be the sole property of the State and provided to the State in the appropriate format upon request and at the end of the Contract as required by **Section 3.2**.
- E. See section 5.3.2, Table A, Tab F, Item #31 for additional Proposal response guidance concerning the technology requirements of this section.
- F. See Section 3.4.2.2.2 for liquidated damages associated with the establishment of a web portal and database.

2.3.12 Contract Start-up Period and Transition

It is the Department's goal for the Contractor to become operational as soon as feasibly possible, to demonstrate knowledge of all current Provider Audit responsibilities, and to maintain performance thereafter. See Section 5.3.2, Table A, Tab F, item 4. Also reference Section 3.4.2.2.15 for a liquidated damage associated with the commencement of services under the Contract.

2.3.12.1 Contract Start-up Period Requirements

A minimum 30-day Start-up Period shall begin at Contract Commencement. During the transition, the Contractor shall work cooperatively with the Department to ensure an efficient and timely commencement of Contract responsibilities. (Also see Section 3.1.).

- A. The Contract Monitor must approve the Start-up Plan before it can be implemented. The Contractor shall have five (5) Business Days to make any changes requested by the Contract Monitor.

- B. The Department and the Contractor shall define the initial claim file required to be transferred during this Start-up period. The Contract Monitor will have the final authority for determining the information transmitted.
- C. Consistent with its approved Start-up Plan described in Section 3.1, and subject to monitoring by the Contract Monitor the Contractor shall acquire appropriate software, hardware, records, equipment, and satisfy all other requirements deemed necessary by the Contract Monitor to successfully perform the Contract.
- D. If the Contract Monitor determines the Contractor is ready to commence work prior to the end of the Start-up period, the Contract Monitor may give the Contractor Go-Live approval via a Notice-To-Proceed to begin performing the duties and tasks outlined in the Scope of Work. To that end, each Offeror is to describe in its Technical Proposal how long it will take for it to begin Audit work after the Contract Effective /Contract Commencement Date. The NTP Date will not be less than the period of time after the Contract Effective Date that the Contractor stated in its **Section 5.3.2. Table A, Tab F, Item #4**, Technical Proposal response that it will require to begin work.

2.3.13 Contract Commencement Timeframe and Duration

- 2.3.13.1 As described in **Section 2.2.2.2**, it is the Department's Goal to as quickly as feasibly possible, become operational and knowledgeable of all current Provider Audit responsibilities and then maintain performance thereafter. In the furtherance of this Goal, the Department intends to permit the Contractor to commence Audit work as soon as it is able, as described below, preferably even while the current contractor for this activity is still working under its contract as described in Section 2.2.2.2 but no later than 60 days.

2.3.13.2 Contract Duration

- A. At a minimum, the anticipated duration of services to be provided under this Contract is three (3) years with two one-year option periods each. At the conclusion of the base Contract term, the Department will have the unilateral option of extending the Contract for two one-year periods. If the Department wants to exercise its unilateral renewal option, the Contract Monitor or other authorized Department official such as the Procurement Officer or Contract Officer will provide notice of the same to the Contractor prior to the expiration of the base Contract term.
- B. The Contractor may continue to work on and complete any Audit, with Contract Monitor approval, starting during either the base Contract term or the two (1) year renewal option periods. However, the Contractor may not initiate any new Audit after the expiration of the base Contract term or the two (1) year renewal option period, if exercised by the Department (i.e., the Contractor will not be required to transition work on any Audit it starts during the Contract base or renewal option term to any possible successor contractor.) Because of this, as described in Section 17 of the Key Information Summary Sheet, as well as the requirement to assist the Department in the defense of any Appeal as described in sections 2.3.8 and 2.3.13.3, there is not a pre-established ending date of the Contract.

- 2.3.13.3 As described in **Section 2.3.8**, the Contractor will be required to support the Department in any Appeal by a Provider of the Contractor's findings. The Contractor will also be responsible for retaining all records and documentation as required by **Section 2.3.4.8**, and as per **Exhibit 2 Section 25**, cooperating with any audit by State or federal entities of its work.

2.4 Experience and Personnel

2.4.1 Preferred Offeror Experience

THIS SECTION IS INAPPLICABLE TO THIS RFP.

2.4.2 Personnel Experience

The following experience for the Project Manager and Quality Assurance Manager is required and will be evaluated as part of the Technical Proposal (see **Section 6.2.2**, Experience and Qualifications of Proposed Staff, evaluation factor). To the extent that Offerors make specific experience or other qualifications-related commitments for these positions, those commitments will also be evaluated as part of the Technical Proposal as per **Section 6.2.2**.

A. Project Manager (Full-time Employee)

1. The Project Manager shall have at least three (3) years' experience in project management in an overpayment/underpayment Recovery Program, and supply evidence of project management education and/or credentials.
2. The Project Manager shall be the main point of contact with the State's Contract Monitor.
3. The Project Manager shall have general knowledge of the Medicaid program and relevant experience in managing Audits of Medicaid Providers and systems.
4. Must be fluent in the written and spoken English language.
5. Must have some experience in providing testimony in legal proceedings.

B. Quality Assurance Manager must:

1. Have at least five (5) years of healthcare experience in quality improvement, data analyses, or utilization review, with specific experience in developing and implementing performance measures;
2. A strong understanding of QA, quality systems, quality improvement, and quality management frameworks is essential.
3. Knowledge of internal auditing practices, including planning, data collection, observation, and reporting.
4. Awareness of regulatory requirements, patient safety protocols, and quality metrics relevant to healthcare.
5. Ability to analyze data, understand statistics, and assess data integrity to support findings.
6. Proficiency in compiling objective evidence, writing clear and concise audit reports, and maintaining documentation control.

C. Office and staffing requirements:

Staffing shall include, at minimum, these positions:

- A. Physician Reviewers, Registered Nurse Reviewers, or Clinical Pharmacist Reviewers, and one or more Certified Professional Coders; and
- B. Customer Support Representatives.

2.4.3 Number of Personnel to Propose

As part of the Proposal evaluation, Offerors shall propose exactly the number of personnel who are expected to be available as of the start date specified in the Notice to Proceed (NTP Date).

Offerors shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the Department. Offerors may generally describe planned positions in a Staffing Plan. Such planned positions may not be used as evidence of fulfilling personnel minimum qualifications.

2.4.4 Key Personnel Identified

For the Contract, the Project Manager and Quality Assurance Manager are deemed to be Key Personnel as described in this section 2.4 and section 2.5. As a Key Personnel, Offeror's proposed Project Manager and Quality Assurance Manager must be identified in their Technical Proposal and shall be required to meet the qualifications stated in **Section 2.4.2**.

2.4.5 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.

2.4.6 Contractor Personnel Maintain Certifications

Any Contractor Personnel provided under this RFP shall maintain in good standing any required professional certifications for the duration of the Contract.

2.5 Substitution of Personnel

2.5.1 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.

2.5.2 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.

2.5.3 Contractor Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of Contractor Personnel substitution described in **Section 2.5.4**.

- 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.

2.5.4 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, Department policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph **2.5.4.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 **2.5.4.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 **2.5.4.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 **2.5.4.B**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 2.5.3** 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.

C. Key Personnel Replacement Due to Sudden Vacancy

1. 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 2.5.4.B.1**.
2. 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 2.5.3** 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.

D. Key Personnel Replacement Due to an Indeterminate Absence

1. 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 2.5.3**.
2. 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.

2.5.5 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.

2.6 Supplemental Category of Work Requirements and Responsibilities

There is no supplemental category associated with this solicitation.

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3 Standard Terms and Conditions

3.1 Contract Initiation Requirements

Once all approvals have been obtained and the Contract is fully executed, the Procurement Officer may schedule a kickoff meeting to be held prior to commencement of Contract performance.

3.1.1 Meetings

3.1.1.1 Kickoff Meeting

The Procurement Officer shall schedule and hold a Kickoff meeting within ten (10) Business Days after the CED with the Contract Monitor and other involved Program personnel. At the kickoff, the Contractor shall furnish an updated Project Schedule (or work plan) describing the activities of the Contractor and requested or expected activities of the State and any third parties for fully transitioning to the Contractor's solution.

- A. This meeting will occur at MDH Headquarters (currently 201 W. Preston St. in Baltimore, Maryland but possibly 300 N. Greene St. in Baltimore, Maryland by the time of the Kickoff meeting) unless the Contract Monitor approves a virtual (via phone or teleconference) meeting.
- B. The purpose of this meeting will be for the State and Contractor Personnel to meet each other and share contact information, and to review major Contract requirements, including MBE and VSBE attainment reporting (**see Section 5.3.2 Table A, Tab P with Attachments D and E for MBE and VSBE matters**) and billing and payment requirements as per **Section 3.3**.
- C. In this meeting contact information will also be provided for the Medicaid Fraud Control Unit (See Appendix 1 Abbreviations and definitions) and the Office of the Inspector General for Health at the Maryland Department of Health as well as discussion of circumstances when it may be appropriate for the Contractor to provide notification to such entities as described under Special Reports in **Section 2.3.1.10.2**.
- D. At a minimum, the Contractor's Project Manager and Quality Improvement Manager must attend/participate in the Kickoff meeting, as should other personnel deemed appropriate by the Contractor that have started work as of the date of the meeting.

3.1.1.2 Scheduled Meetings

- A. As described in **Section 2.3.1.8.1.A**, the Contract Monitor will develop a schedule for monthly and quarterly meetings, including circumstances or provisions for altering that schedule in special circumstances.
- B. Included in this determination will be whether or under what circumstances meetings might be held remotely versus in-person at a given physical location.

3.1.1.3 Unscheduled Meetings

As described in **Section 2.3.1.8.1.B**, the Contract Monitor will review the circumstances, including timeframes, when unscheduled, ad hoc type meetings can be required, including when they may be conducted remotely versus in-person.

3.1.2 Contract Start-up Period Requirements

During the start-up transition, the Contractor shall work cooperatively with the Department to ensure an efficient and timely commencement of Contract responsibilities.

- A. Within ten (10) Business Days after Contract Commencement, the Contractor shall submit to the Department a Start-up Plan including a schedule of activities to facilitate the assumption of responsibilities, information, computer databases, software, and documentation, and materials. The Start-up Plan shall include, at a minimum, the following:
 - 1. The Contractor's proposed approach to the Start-up;
 - 2. The Contractor's tasks, subtasks, and schedule for all Start-up activities;
 - 3. The creation of template letters as described in **Sections 2.3.6.1 and 2**;
 - 4. At the direction of the Contract Monitor, establish one (1) or more toll-free telephone number(s) to be used for this activity, including paying all associated expenses.
 - 5. All aspects of hiring and training a sufficient number of customer service personnel to satisfy all requirements of **Section 2.3.7**;
 - 6. Means to determine the adequacy of technological aspects of Contract performance, such as but not limited to, telephone answering, document management, portal access, secure access to MMIS and the ADC, back-up and redundancy provisions and capabilities, and if appropriate, implement upgrades, expansions, and improvements to comply with any directions from the Contract Monitor to remedy any perceived inadequacies;
 - 7. Means to satisfy all periodic or event driven reporting requirements;
 - 8. Updated organizational chart and list of the Contractor's staff (titles, phone, fax, email) responsible for Start-up activities.
- B. The Contract Monitor must approve the Start-up Plan (See **Appendix 1** Abbreviations and Definitions) before it can be implemented. The provisions of **Section 2.3.1.2.4. B and C** apply for this initial Start-up Plan.
- C. The Department and the Contractor shall define the initial claim file required to be transferred during this Start-up period. The Contract Monitor will have the final authority for determining the information transmitted.
- D. The Contractor shall work closely and cooperatively with the Department to acquire appropriate software, hardware, records, equipment, and other requirements deemed necessary by the Department.

- E. As required by **Section 2.3.3.1**, within 30 days after the Contract Monitor issues a Notice of Acceptance, the Contractor must describe how it will achieve the objectives of **Section 2.2.2**.

3.2 End of Contract Transition

- A. The Contractor shall cooperate in the orderly transition of services from it to a subsequent contractor at the end of the contract term or upon receipt of a Notice of Termination from the State. Transition shall be provided in a prompt and timely manner and shall proceed in accordance with the schedule provided to the Contractor by the State in the Notice of Transition. Additional instructions regarding transition services may be provided in the event of a Notice of Termination issued by the State.
- B. In the event that a new Contractor is selected, the Contractor shall work cooperatively with the Department and a successor contractor at the end of this Contract to ensure an efficient and timely transition of Contract responsibilities with minimal disruption of services.
1. The Contractor shall prepare and submit an Exit Transition Plan and Schedule of Activities to facilitate the transfer of responsibilities and information, to a successor contractor and the Department. The Exit Transition Plan shall be submitted by the Contractor 90 days prior to the end of the term of the Contract or any extension term, or immediately if determined within 90 days of the end of the Contract. The Exit Transition Plan shall include at a minimum the following:
 - a. Proposed approach to transition operations to another contractor;
 - b. Identification and release of State owned documents;
 - c. Timely turnover of all records and other necessary data to the Department or the Department's designee;
 - d. Electronic records or files to be turned over in an acceptable format to the Department (the cost of converting to the appropriate format will be the responsibility of the Contractor);
 - e. Designation of a knowledgeable person who will be available daily to assist the Department during the transition process and for one month following the end of the term of the Contract or any extension term; and
 - f. Proposed timeline or the transition process.
 2. The Contract Monitor must approve the Exit Transition Plan before it can be implemented.
 3. The Contract Monitor and the successor contractor will define all data files related to the Contract for transfer during this transition period and deadlines for submission. The Contract Monitor will have the final authority for determining the information required.
 4. The Contractor shall work closely and cooperatively with the Department and the successor contractor to transfer appropriate records, and other items deemed necessary by the Department, and to ensure uninterrupted services to Providers and the Department

during the transition period. If any active/outstanding appeals and/or associated hearings (scheduled or unscheduled) remain on the Contractor's transition plan as of 90 days prior to the end of the contract, then the Department will provide a mechanism to retain the Contractor's services necessary to support the Department in these hearings, and to ensure confirmation of final payment to the Contractor.

5. At its sole discretion, the Contract Monitor will withhold the final Contract payment until all elements of the Exit Transition Plan are completed to the Department's satisfaction.

Additional instructions regarding transition services may be provided in the event of a Notice of Termination issued by the State.

3.3 Invoicing

- 3.3.1 Submission of an invoice constitutes the Contractor's verification that the information in the invoice is accurate as of the time of submission.
- 3.3.2 An invoice not satisfying the requirements of a Proper Invoice (as defined in **COMAR 21.06.09**) will not be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
 - A. Contractor name and address;
 - B. Remittance address;
 - C. Federal taxpayer identification (FEIN) number, social security number, as appropriate;
 - D. Invoice period (i.e. time period during which services covered by invoice were performed);
 - E. Invoice date;
 - F. Invoice number;
 - G. State assigned Contract number;
 - H. State assigned (Blanket) Purchase Order number(s);
 - I. Goods or services provided;
 - J. Amount due; and
 - K. Any additional documentation required by regulation or the Contract.
- 3.3.3 Invoices that contain both fixed price and labor hour or time and material items shall clearly identify each item as either fixed price, and labor hour, or time and material billing.
- 3.3.4 The State reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide all required deliverables within the time frame specified in the Contract or otherwise fails to satisfy the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
- 3.3.5 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
- 3.3.6 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. But, since the Contractor may complete all Audits it starts during the base term of the Contract, or the term of any officially executed Contract option period, there is not a pre-established ending date of the Contract. Accordingly, the Contract termination or ending date will be communicated to the Contractor by the Contract Monitor when all Audits are accepted by the Contract Monitor as being completed, which may not occur until any hospital appeal has been finally adjudicated.

3.3.7 Invoice Submission Schedule

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

3.3.7.1 Payment Type

The contingency fee shall be a percentage rate to be paid from monies actually recovered by the Department as a direct result of the Contractor's Recovery Audit or accepted by the Department as a valid Underpayment. See the **Financial Proposal Instructions** and form (**Attachment B**) which describes the Contractor's fee proposal guidelines in more detail.

Proposed contingency percentage rate(s) or Improper Payments shall represent the entire cost for the full and successful completion of all deliverables. No separate travel expenses or any other type of expenses shall be paid under the Contract resulting from this RFP. The Contractor will only be paid a contingency payment on the difference between the original claim paid amount and the revised claim paid amount.

The Department will report the amount of actual recoveries to the Contractor. The Department shall pay the Contractor the contingency fee when the recovery amount is recouped from the Provider (for Overpayments), or when the Provider receives the full amount for the ICN audited (for Underpayments). The contingency fee calculation shall be based on the amount of actual recoveries received by the Department or the previous calendar month multiplied by the agreed upon contingency fee rate.

- A. For claimed Underpayments. As described in **Section 2.3.6.3**, any claimed Underpayment must be reviewed and accepted by the Department as being valid. Upon receipt by the Contractor of an acceptance by the Contract Monitor or other Department personnel authorized by the Contract Monitor that a claimed Underpayment satisfies all valid Underpayment conditions, the Contractor may submit an invoice in accordance with its quoted Underpayment rate on its **Financial Proposal (Attachment B)** for the Contract Year when the audit was first initiated.
- B. For claimed Overpayments. Following the procedure described in **Section 2.3.7.2.B.2**, the Contractor must issue a Final Finding letter to a Provider, describing claimed Overpayments and informing the Provider of its appeal rights.
 1. If the Provider indicates that it accepts that it has been Overpaid, but has not filed an appeal of that finding within the allowed time frame for an appeal, upon the expiration of the appeal period, the Contractor may submit an invoice in accordance with its quoted Overpayment rate on its **Financial Proposal (Attachment B)** for the Contract Year when the audit was first initiated.

2. If the Provider files an appeal of a Final Overpayment Finding within the allowed time frame for an appeal, upon the conclusion of the appeal process the Contractor may submit an invoice in accordance with its quoted Overpayment rate on its **Financial Proposal (Attachment B)** for the Contract Year when the audit was first initiated based upon the amount of Overpayment adjudicated as being correct by the appeal determination.
3. Because of the potentially extensive duration of time that is permitted for a Provider to either file an appeal and/or for there to be a final determination from an appeal, the Contractor may be authorized by the Contract Monitor to submit an invoice for some or all of the claimed Overpayment. Any such authorization will be based upon the Contract Monitor's determination of the defensibility of the claimed Overpayment (i.e., anywhere from 100% of the claimed Overpayment amount in instances when the Contract Monitor is very confident that the appeal will be denied to 10% of the claimed Overpayment amount when there is less confidence in the result of the appeal).
4. Submit an invoice for the undisputed portion of the claimed Overpayment.

3.3.8 Travel Reimbursement

Travel will not be reimbursed under this RFP.

3.4 Liquidated Damages

3.4.1 MBE Liquidated Damages

MBE liquidated damages are identified in **Exhibit 2 – Sample Contract**.

3.4.2 Liquidated Damages other than MBE

- 3.4.2.1 General non-MBE liquidated damages provisions.

- 3.4.2.1.1 It is critical to the success of the mission of the Program that the services to be provided under the Contract that results from this RFP be performed properly and in strict adherence with required timeframes. It is also critical that the Contractor operates in an extremely reliable manner.
- 3.4.2.1.2 It would be impractical and extremely difficult to assess the actual damage sustained by the Program in the event of delays or failures in the provision of services and associated reporting to the Program. The State and the Contractor, therefore, presume that in the event of any such failure to perform to certain , the amount of damages which will be sustained will be the amounts set standards below in this Section, and the Contractor agrees that in the event of any such failure of performance, the Contractor shall pay such amount as liquidated damages and not as a penalty.
- 3.4.2.1.3 For amounts due the Program as liquidated damages, the Program, at its option, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.
- 3.4.2.1.4 The Program will not assess or invoke liquidated damages for any occasion of Contract non-performance otherwise subject to liquidated damages if such nonperformance is determined by the Contract Monitor to have resulted from circumstances beyond the control of the Contractor.
 - 3.4.2.1.4.1 In order for a determination to be made of whether this provision applies, the Contractor may provide an explanation for any occasion of Contract non-performance otherwise subject to liquidated damages of why it believes the non-performance was attributable to circumstances beyond its control.
 - 3.4.2.1.4.2 If the Contractor disputes the validity of a liquidated damages assessment, including that a liquidated damage should not be assessed based upon circumstances beyond its control, or disputes the amount of a given liquidated damage assessment, the liquidated damage will not be assessed unless and until the Contract Monitor makes a determination as described in §3.4.2.1.5 that the imposition of the liquidated damage and the amount of the damage is proper.
 - 3.4.2.1.4.3 To enable the Contract Monitor to render a timely decision regarding any dispute of an occasion when a liquidated damage is assessed, at the time the Contractor disputes the liquidated damage assessment it shall provide a full explanation of why it does not believe the liquidated damage should be assessed, or assessed for the amount indicated. If the Contract Monitor does not believe the submitted justification or substantiation thereof is sufficient, or if the Contractor fails to provide the required justification for its dispute, the Contract Monitor may request additional justification and/or documentation, and/or may give a finite deadline for the submission of such justification and/or documentation.
 - 3.4.2.1.4.4 If the requested justification and/or documentation is not submitted within the required timeframe, the Contract Monitor will render a determination based upon whatever information has been provided to that point in time.
- 3.4.2.1.5 Any time a liquidated damage assessment is disputed by the Contractor, the Contract Monitor will render a written (typically email) final decision concerning the imposition of the liquidated damage. This final decision can:
 - A. Uphold the liquidated damage assessment;
 - B. Rescind the liquidated damage, in full or in part; or,

- C. Determine that a given liquidated damages assessment is merited, but that the amount of assessment should be different than originally computed.

3.4.2.2 Specific Non-MBE Liquidated Damages

3.4.2.2.1 Concerning Section 2.3.1.3 on Hospital Audit Frequency

- A. Starting on the 20th Calendar Day after a request for the Contractor to perform an “extra,” “special,” or out-of-schedule audit as described in this section and continuing for 10 days, a LD of \$100 per Business Day if the Contractor has not submitted what the Contract Monitor considers a viable plan for conducting this audit.

3.4.2.2.2 Concerning Sections 2.3.1.6 and 2.3.1.1 on a Provider Web Portal and Database

- A. Starting on the 5th Business Day after the Contract Monitor approves the Contractor to commence the first Audit under the Contract and continuing for 15 Calendar Days, \$100 per Business Day that a Provider Portal and Database that the Contract Monitor determines to be viable for use under the Contract has not been established.

3.4.2.2.3 Concerning Section 2.3.1.11 on Work Plans

- a. For the 1st Contract Year
 - 1. Beginning on the 20th Business Day after Contract Commencement and continuing for 10 Business Days, a LD of \$250 per Business Day if the Contractor fails to provide a Work Plan or one that the Contract Monitor considers a serious effort to create a viable Work Plan for the 1st Contract Year.
- B. For Contract Years After the 1st
 - 1. A LD of \$250 per Business Day if for any Contract Year after the first one the Contractor has not submitted a Work Plan or one that the Contract Monitor considers a serious effort to create a viable Work Plan for the appropriate Contract Year by the 50th Business Day after the start of the Contract Year and continuing for 10 Business Days.

3.4.2.2.4 Concerning Section 2.3.3.3 on Requesting Medical Records From a Provider and Issuing Finding Letters

- 1. The Contractor will be subject to a LD of \$250 if it requests either more than 150 medical records from a Provider in one request or requests more than 500 medical records from any Provider in a 6-month period.
- 2. The Contractor will be subject to a LD of \$250 per occurrence for any Medical Records Request and / or Findings letters that are inaccurate and/or untimely. All letters must be clear regarding numbers of records being requested, time for completion, and dates of the letter itself and / or findings.

3.4.2.2.5 Concerning Section 2.3.3.6 on Excluded Improper Payments

3.4.2.2.6 Concerning Section 2.3.3.7 on Evidence

If despite the prohibition against using Extrapolation in this section, the Contractor uses or attempts to use Extrapolation, it will be assessed Liquidated Damages of \$250 per occasion of violation.

3.4.2.2.7 Concerning Section 2.3.3.8 on Preventing Duplication of Effort

If despite the prohibition in Section 2.3.3.8.2 the Contractor commences an Audit without the approval of the Contract Monitor, the Contract Monitor can refuse to approve payment of any invoice associated with claimed Improper Payments resulting from such unapproved Audits. Moreover, a LD of \$5,000 will be assessed if such unapproved Audit interferes with a review by another agency or law enforcement agency

3.4.2.2.8 Concerning Section 2.3.3.9 on Obtaining and Storing Records for Review

1. Starting 5 Business Days after the Go Live/ NTP Date and continuing for 10 Business Days, a liquidated damage of \$100 per Business Day will be assessed if the Contractor has not established a viable document management system.

3.4.2.2.9 Concerning Section 2.3.6 on Notice to Providers

1. Starting 5 Business Days after the Go Live/ NTP Date and continuing for 10 Business Days, a liquidated damage of \$100 per Business Day will be assessed if the Contractor has not established template letters acceptable to the Contract Monitor.

3.4.2.2.10 Concerning Section 2.3.7 on Customer Service Measures

1. A Liquidated Damage of \$200 per occasion will be assessed if the Contractor is verified as not being available by phone during Normal State Business Hours or any longer hours it commits to as identified in Section 5.3.2, Table A, Tab F, Item 28.
2. Concerning establishing Fax capabilities
 - a. Starting 5 Business Days after the Go Live/ NTP Date and continuing for 10 Business Days, a liquidated damage of \$100 per Business Day will be assessed if the Contractor has not established Fax capabilities in accordance with Section 2.3.7.1.
3. Concerning establishing a toll-free telephone number
 - A. Starting 5 Business Days after the Go Live/ NTP Date and continuing for 10 Business Days, a liquidated damage of \$100 per Business Day will be assessed if the Contractor has not established and publicized at least 1 toll-free telephone number.

3.4.2.2.11. Concerning Section 2.3.8 on Supporting the Maryland Appeal Process

- A. A liquidated Damage of \$200 for each person or position will be assessed, if personnel requested by Department legal staff to consult concerning the defense of an Appeal is not provided by the Contractor within a timely manner as determined by the Department legal staff.
- B. A liquidated Damage of \$500 for each person or position will be assessed, if a specific person still working for the Contractor or a person in a specific position is requested by Department legal staff to appear at a legal proceeding as a witness for the Department, but that person/position does not appear at the legal proceeding when and where it is held.

- C. A liquidated Damage of \$100 per Business Day will be assessed if requested documents and/or information aren't provided within the time frame specified by the Contract Monitor or Department legal staff. This assessment will continue until the Department determines that the request document or information can no longer be useful in defending against an Appeal.

3.4.2.2.12. Concerning Section 2.3.9 on Reports

- A. A liquidated damage of \$50 per Business Day will be assessed if an Ad Hoc report is not provided within the agreed upon time frame established between the Contractor and Contract Monitor of the date of the request. A liquidated damage of \$100 per Business Day will be assessed if a quarterly or year-ending trend report is not provided within 5 Business Days of the due date.

3.4.2.2.13. Concerning Section 2.3.10 on Key Personnel Staffing

1. Concerning the Key Personnel start date

A. Starting on the date of the Kick-off Meeting discussed in Section 3.1, and running for 10 Calendar Day thereafter, a liquidated damage of \$100 per Business Day will be assessed per Key Personnel position that is not filled.

B. Starting 31 Calendar Days after the initial assessment of LDs and running for 10 Calendar Days thereafter, a liquidated damage of \$200 per Business Day will be assessed per Key Personnel position that is not filled.

C.

2. Concerning Key Personnel vacancies

A liquidated damage of \$100 per Business Day per Key Personnel position will be assessed for each Business Day that a Key Personnel position has been continuously vacant beyond 31 Calendar Days. This penalty will not be assessed if the Contractor provides an Acting Key Personnel that is agreeable to both parties.

3.4.2.2.14 Concerning Section 2.3.11.C on connecting to the MMIS

Starting on the Go Live/NTP Date, a liquidated damage of \$200 per Business Day will be assessed if the Contractor does not have a secure, approved means to connect to the Annapolis Data Center to access MMIS.

3.4.2.2.15 Concerning the start date for the commencement of services

A liquidated damage of \$500 per Business Day will be assessed if the Contractor does not commence work under the Contract within 5 Business Days of the NTP Date that is issued as described in Section 2.3.12.1.D.

3.5 Problem Escalation Procedure

No later than ten (10) Business Days after notice of recommended award or after the date of the Notice to Proceed, whichever is earlier, the Contractor must provide, and thereafter, 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 and must include:

- A. Contact information
- B. The process for establishing the existence of a problem;
- C. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- D. 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;
- E. Expedited escalation procedures and any circumstances that would trigger expediting them;
- F. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- G. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
- H. A process for updating and notifying the Contract Monitor of any changes to the PEP.
- I. The PEP must be updated within ten (10) Business Days after any change in circumstance which changes the PEP but not less than annually within ten (10) Business Days after the start of each Contract year.

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.

3.6 Work Orders

THIS SECTION IS INAPPLICABLE TO THIS RFP.

3.7 Payments by Electronic Funds Transfer

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

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.

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: <https://financialservices.umbc.edu/wp-content/uploads/sites/42/2021/07/GADX10Form-072821.pdf>

3.8 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 **Exhibit 2 - Contract**). Additional information is available on GOSBA's website at:

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

3.9 Federal Funding Acknowledgement

There are programmatic conditions that apply to the Contract due to federal funding (see **Attachment H**).

- 3.9.1 The total amount of federal funds allocated for the Medical Care Program is \$7.69 billion in Maryland State fiscal year 2026. This represents 57.7% of all funds budgeted for the unit in that fiscal year in Maryland State fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 3.9.2 The Contract contains federal funds. The source of these federal funds is Medical Assistance Program. The CFDA number is: 93.778. The conditions that apply to all federal funds awarded by the State are contained in Federal Funds **Attachment H**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment H** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror's intent to comply with all conditions which are part of the Contract.

3.10 Conflict of Interest Affidavit and Disclosure

- 3.10.1 The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with its Proposal.
- 3.10.2 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**.
- 3.10.3 Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by **COMAR 21.05.08.08**.
- 3.10.4 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 Bid in violation of this provision shall be classified as “not responsible.”

3.11 Non-Disclosure Agreement

3.11.1 Non-Disclosure Agreement (Bidder/Offeror)

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

3.11.2 Non-Disclosure Agreement (Contractor)

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

3.12 Maryland Healthy Working Families Act Requirements

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All Offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations website for Maryland Healthy Working Families Act Information: <https://dllr.state.md.us/paidleave/>.

3.13 The State of Maryland’s Commitment to Purchasing Environmentally Preferred Products and Services (EPPs)

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

3.14 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:

3.14.1 The following type(s) of insurance and minimum amount(s) of coverage are required:

- A. Commercial General Liability - One million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and three million dollars (\$3,000,000) annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
- B. Errors and Omissions/Professional Liability - One million dollars (\$1,000,000) per combined single limit per claim and three million dollars (\$3,000,000) annual aggregate.

- C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of one million dollars (\$1,000,000) per loss, and a minimum single loss retention not to exceed ten thousand dollars (\$10,000), with the State of Maryland listed as a "loss payee."
 - D. Cyber Security / Data Breach Insurance – Five million dollars (\$5,000,000) per occurrence. The coverage must be valid at all locations where work is performed or data or other information concerning the State's claimants or employers is processed or stored. Any "insured vs. insured" exclusions will be modified accordingly to allow the State additional insured status without prejudicing the State's rights under the policy(ies). Coverage shall be sufficiently broad to respond to the Contractor's duties and obligations under the Contract and shall include, but not be limited to, claims involving privacy violations, information theft, damage to or destruction of electronic information, the release of Sensitive Data, and alteration of electronic information, extortion, and network security. The policy shall provide coverage for, not by way of limitation, breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
 - E. Worker's Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
 - F. Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
 - G. 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.
- 3.14.2 All insurance policies shall be endorsed to include a clause requiring the insurance carrier to 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 canceled 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.
 - 3.14.3 Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.
 - 3.14.4 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.

3.14.5 Subcontractor Insurance

- 3.14.5.1 The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage (i.e., the same as contained in **Section 3.13.1**) and shall provide the Contract Monitor with the same documentation as is required of the Contractor. (The same as in **Sections 3.13.2–3.13.5.**)
- 3.14.5.2 As part of the Contract Start-up process, the Contract Monitor will review the Contractor’s list of subcontractors and determine which must meet the full insurance requirements as per this section. Subcontractors determined by the Contract Monitor as providing incidental Contract aspects will still have to have these minimum insurance levels:
- A. Commercial General Liability – of \$300,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$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 – \$300,000 per combined single limit per claim and \$500,000 annual aggregate.
 - C. Crime Insurance/Employee Theft Insurance – to cover employee theft with a minimum single loss limit of \$100,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the Department should be added as a “loss payee.”
 - D. 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 (\$300,000) per occurrence (unless a state’s law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
 - E. Automobile or Commercial Truck Insurance – The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.14.5.3 No more than 30 days after the CED, the Contractor must provide evidence to the Contract Monitor of required insurance coverage as per **Section 3.13. 5.2**, for subcontractors that will provide services during the Start-up Period but are determined by the Contract Monitor as only providing incidental Contract aspects.
- 3.14.5.4 No more than 30 days after the CED, the Contractor must provide evidence to the Contract Monitor of required insurance coverage as per **Section 3.14. 5.2**, for subcontractors that will provide services during the Start-up Period but are determined by the Contract Monitor as only providing incidental Contract aspects.

3.15 Non-Compete Clause Prohibition

The State of Maryland seeks to maximize the retention of personnel working under the Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's employees and agents filling the positions set forth in the staffing requirements of **Section 2.4 Experience and Personnel** working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State business.

3.16 Corrective Action Plan (CAP)

- A. MDH may issue a request for a CAP to address Contractor performance issues. If any Contractor requirements as described in Contract are not satisfactorily performed, in the determination of the Contract Monitor, the Contractor shall submit a CAP upon request, describing all actions it will take to ensure that the impacted requirements will be satisfied thereafter. This CAP must be submitted to the Contract Monitor for approval within five (5) days of the Contract Monitor's written request identifying such deficiencies.
- B. The Contractor shall include the following in the CAP:
 - 1. Background information;
 - 2. Problem definition statement;
 - 3. Findings and root cause description;
 - 4. Corrective actions; and
 - 5. Corrective action implementation dates
- C. If the Contract Monitor is not satisfied that the Contractor's proposed CAP will prevent a recurrence of the deficiency(ies), the Contract Monitor will notify the Contractor and require a revised CAP. The revised CAP must be submitted to the Contract Monitor within three (3) days of the Contract Monitor's rejection of the previous CAP.
- D. If the CAP still does not rectify the problem to the satisfaction of the Contract Monitor within a timeframe specified in the CAP request, the Procurement Officer can:
 - 1. Assess any applicable CAP-related Liquidated Damages.
 - 2. Suspend work under the contract as per Exhibit 2, Clause 20 until such time as a CAP is successfully completed.
 - 3. Not exercise any available renewal option under the Contract.

4. Terminate the Contract for cause (default), as per Exhibit 2, Clause 17.
 5. Since as per Maryland standard RFP template Section 5.3.2, Table A, Tab J, Attachment M, Offerors for procurements for Maryland State agencies are required to identify any State contracts they have held during the prior 5-year period, if another State agency contacts the Contract Monitor about the Contractor's performance under this Contract, it will be reported that not only was the Contractor required to institute a CAP, but failed to correctly implement that CAP.
- E. See section 3.4.2.2.13 for Liquidated Damages provisions associated with the failure to abide by corrective action provisions.

3.17 Nonvisual Access Compliance

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

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

The bidder or offeror shall indemnify the State for liability resulting from the use of information technology that does not meet the applicable nonvisual access standards.

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

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4 Proposal Submission Information and Instructions

4.1 eMaryland Marketplace Advantage (eMMA)

eMMA is the electronic commerce system for the State of Maryland. The RFP, Pre-Proposal Conference (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.

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.

4.2 Electronic Means

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 Bond documents determined by the State to require original signatures; or
- B. 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.

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

"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.

4.3 Pre-Proposal Conference

If a Conference will be held, the date, time, and location is indicated on the **Key Information Summary Sheet**. 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 participating 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.

It is highly recommended that all Prime Contractors bring their intended subcontractors to the Conference/Site Visit to ensure that all parties understand the RFP requirements and the socio-economic goals for this solicitation.

MBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.

In order to assure adequate accommodations at the Conference, please email the completed **Attachment 2** for those expected to attend the Conference to the Procurement Officer no later than the time and date indicated on the **Key Information Summary Sheet**. In addition, 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. Reasonable effort will be made to provide such special accommodation.

If the Conference is in person, attendees should bring a copy of the solicitation and a business card to help facilitate the sign-in process.

4.4 Questions

All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title for this RFP, must be submitted in writing via e-mail or eMMA to the Procurement Officer no later than the date and time specified in the **Key Information Summary Sheet**. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.

- 4.4.1 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.
- 4.4.2 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the State unless it issues an amendment to the solicitation in writing.
- 4.4.3 Answers provided in response to vendor questions cannot change the RFP. Only a formally identified and issued RFP Amendment can change the RFP. If any potential offeror believes that an answer provided by the procuring agency does in some way change the RFP but no amendment has been issued to implement the change, it should call this to the attention of the procurement officer or other appropriate State official identified in the RFP and seek clarification of whether an RFP change is warranted.

4.5 Proposal Due (Closing) Date and Time

Proposals must be received by the Procurement Officer no later than the Proposal due date and time indicated on the **Key Information Summary Sheet** to be considered. Except as provided in **COMAR 21.05.03.02.F** and **21.05.02.10**, Proposals received after that date will not be considered. Requests for extension of this date or time shall not be granted.

For Proposals accepted via email, the time stamp to indicate receipt of the Proposal by the State is the posted date and time in the Procurement Officer's email inbox.

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.

Proposals may not be submitted by facsimile or hard copy U.S mail, courier, or hand delivery. Proposals will not be opened publicly.

Potential Offerors not responding to this solicitation are requested to submit the "No/Bid/Proposal Notice/Vendor Feedback" form **Attachment 1**, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

4.6 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.

4.7 Public Information Act Notice

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. Table A, Tab 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.

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.

4.8 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.

4.9 Duration of Proposals

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

4.10 Revisions to the RFP

- 4.10.1 All revisions to the RFP before the due date for Proposals will be published in an addendum to the RFP and posted on eMMA and reasonable effort will be made 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 is the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.
- 4.10.2 Offerors shall acknowledge receipt of all addenda to this RFP issued before the Proposal due date in the Transmittal Letter accompanying the Offeror’s Technical Proposal.
- 4.10.3 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.
- 4.10.4 Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.
- 4.10.5 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.

4.11 Cancellations

- 4.11.1 This RFP may be cancelled as provided in **COMAR 21.06.02.02**.

- 4.11.2 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.
- 4.11.3 The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.11.4 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)**.
- 4.11.5 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 canceled in accordance with **Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2)**.

4.12 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.

4.13 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).

4.14 Offeror Responsibilities

- 4.14.1 An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work. Offerors must be able to provide all goods and services and meet all of the requirements requested.
- 4.14.2 If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified using Attachment D or Attachment E as appropriate. Guidance for completing the Attachments is provided in the appropriate Appendix or Appendices to this RFP (see “**Appendix 4 - MBE Participation Goal**” and “**Appendix 5 - VSBE Participation Goal**”).
- 4.14.3 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.

- 4.14.4 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.

4.15 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 **Exhibit 2 – Contract**. 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 State reserves the right to accept or reject any exceptions.**

4.16 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.

4.17 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 123 Market Place Baltimore, MD 21202. 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.

4.18 False Statements

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

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

- A. Falsify, conceal, or suppress a material fact by any scheme or device;
- B. Make a false or fraudulent statement or representation of a material fact; or
- C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

- 4.18.2 A person may not aid or conspire with another person to commit an act under this section.
- 4.18.3 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.

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5 Proposal Submission Information and Instructions

5.1 Two Part Submission

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

- A. Volume I – Technical Proposal
 - i. Technical Proposal shall be submitted by the due date and time stated on the Key Information Summary Sheet, page iii of the RFP.
- B. Volume II – Financial Proposal
 - i. Financial Proposal shall be submitted by the due date and time stated on the Key Information Summary Sheet, page iii of the RFP.

5.2 Proposal Delivery and Packaging

- 5.2.1 Proposals delivered by courier, postal service, facsimile, or email shall not be considered.
- 5.2.2 Pricing information shall not be included in the Technical Proposal. Pricing information shall not be included on the media submitted in the Technical Proposal.
- 5.2.3 Proposals shall only be accepted via the State’s internet-based electronic procurement system, eMMA.
- 5.2.4 The Procurement Officer must receive all electronic Proposal materials 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) labeled “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 in searchable Adobe PDF format, and
 - 2. a second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see **Section 4.7**), and
 - B. Financial Proposal consisting of:
 - 1. Financial Proposal entered into the price form spreadsheet within eMMA and all supporting material in Microsoft Excel.
 - 2. Financial Proposal in searchable Adobe PDF format,
 - 3. a second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.7**).

5.3 Volume I - Technical Proposal

NOTE: Omit all **pricing information** from the Technical Proposal (Volume I). Only include pricing information 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 Attachments, Documents, and Information Required with the Technical Proposal (Table A)

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:

Attachments A through E = Proposal will be rejected if the required Attachment is not submitted or is inaccurate or incomplete.

Attachments F through R = Proposal may be rejected if the required Attachment is not submitted or is inaccurate or incomplete.

TABLE A - Attachments and Documents Required with the Proposal		
Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
Tab 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.

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
Tab B		Claim of Confidentiality (If Applicable) 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 4.7 “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. Otherwise, note under TAB B - “Not applicable”.
Tab C	F	Bidder/Offeree Information Sheet https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-F.-Bidder-Offeree-Information-Sheet.pdf
Tab D		Executive Summary & Acknowledgement of all addenda to this RFP. 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 (Exhibit 2), or any other exhibits, appendices, supplementals, or attachments. Acceptance or rejection of exceptions is within

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		the sole discretion of the State. Exceptions to terms and conditions, including requirements, may result in having the Proposal determined to be unacceptable or classified as not reasonably susceptible of being selected for award or the Offeror determined to be not responsible.
Tab E		Minimum Qualifications 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 included in Attachment L.
Tab F		Offeror Technical Response to RFP Requirements and Proposed Work Plan
		1. The Offeror shall address each RFP requirement (RFP Sections 2 & 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 Sections 2 & 3 in order and shall contain a cross reference to the requirement.
		2. Regarding exceptions to requirements, terms, or conditions identified in the Executive Summary, Offerors should know that the Evaluation Committee (see Section 6.1), Procurement Officer or other Department personnel acting on behalf of the Evaluation Committee or Procurement Officer, such as the Contract Officer (see Key Information Summary Sheet and Appendix 1 definition), may request removal of any such exception during discussions, which if not removed upon such request may result in the Offeror's Proposal being classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		3. The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in 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. In providing this section-by-section description, the Offeror must address or answer all items listed in Section 5.3.2 Table A, Tab F, items (4–31) below, either in the section-by-section response or under the specific item number (4-31), but not both places. Wherever the information is addressed, make a notation in the other location of where the information is provided. For example, if any of items 4-31 is addressed in the section-by-section description, the information should be highlighted or italicized and after the information is described there should be a parenthetical notation that says that the preceding highlighted (or italicized) material is in response to Item 5.3.2, Table A, Tab F, item) X (or in partial response, if there are portions of the total response in multiple locations in the section description.) Conversely, if an Offeror chooses to provide all information concerning any of Items 5.3.2 Table A, Tab F, items 4–31) under the item itself, where appropriate in the section by section response there should be a parenthetical notation to see the response to “item X” for a full description of the issue. 4. Please provide a draft implementation schedule for performing this Contract as described in Section 2.3.12. This Start-up implementation schedule shall provide the

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		proposed Start-up Period duration from 30 to 60 days and state whether the Offeror has experience delivering the solution within the proposed time frame, i.e., the Offeror must explain how its implementation will be successful within whatever time frame is proposed. A. From the date that you receive a signed contract, how long will it take to hire or otherwise assign personnel to commence hospital audits in Maryland? Do you need to hire personnel to perform the Contract or do you have sufficient staff to satisfy the Contract requirements without hiring? Do you need to provide any additional or specialized training to the personnel you would assign to this contract? When do you anticipate you would begin hospital audit work? B. Identify the location(s) from which it is proposed to provide services, including, if applicable, any current facilities that it operates. Specifically, identify the actual or potential location(s) where Audits will take place, phone calls will be answered and the Provider Portal will be located and the location of all facilities that will provide data backup.
		5. As per section 2.2.2.2, describe how the implementation approach and the totality of planned resources to be devoted to the Contract, will both get the Department “caught-up” with its hospital Audits and allow it to remain “caught-up” for the duration of the Contract thereafter. A. How long do you anticipate it will take to initially get “caught-up”? B. If you are not “caught-up” by the time you anticipate, will you devote more resources to get caught-up by this timeframe or shortly thereafter? C. If at any time after getting “caught-up” the currentness of your Audits starts to delay, will you devote more resources to again get caught-up? D. Will you make any type of guarantee - i.e., put anything at risk financially - both as to when you will get caught-up with

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		Audits and as to whether you will remain caught-up for the remainder of the Contract thereafter? Section 2.3.1.13 states that the objectives of section 2.2.2.2 of getting caught-up and staying caught-up with the conducting of Audits is to be considered a Contract deliverable. To be a deliverable, there should be some financial consequence to this objective being met.
		6. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in Section 3.5.
		7. Non-Compete Clause Prohibition – To evidence compliance with the non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State business.
		8. Is it your experience over the past 2-5 years that hospitals have become more or less proficient in coding procedures so that Medicaid overbilling occurs more or less often? Or is your experience that overbilling has been relatively constant? 9 Do you prefer to do saturation audits of hospitals in a given jurisdiction, complete them and move on to another jurisdiction, before returning to the original jurisdiction in several years, or do you prefer to space all audits in all jurisdictions relatively evenly throughout all years of a contract. 10. Do you believe the best, most efficient use of your time and resources is to focus on areas that you consider most likely to result in overpayments, or do you believe that even if some types of audits might produce faster results that it is still worthwhile to do comprehensive audits intended to find all possible overpayments?

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		11. Is it your experience that certain types of hospitals or certain specific hospitals in a geographic area are more likely to be found to have overbilled Medicaid? 12. What is your experience with hospitals contesting your findings (i.e., are your findings well documented and presented so that there is a high acceptance rate? Or do you “push the envelope” and claim overpayments when it is not conclusive that they occurred and see how strongly the hospitals object?)? 13. Describe any experience in preparing for and providing testimony in Administrative Hearings, court cases and/or other types of legal proceedings. If practical, provide some type of summary of the typical outcome that results from such proceedings. (i.e., the degree to which the Offeror or the party for which the Offeror is testifying prevails.) In response to sections 2.3.6.2.C 2 and 2.3.8, describe how you will communicate preliminary and final Audit findings to Providers and the extent you will go to try to convince Providers of the accuracy of your findings, thereby hopefully avoiding Appeals. Affirm that you will provide all reasonable support in assisting the Department in defending against Appeals. A. What is the typical duration of time that you assist a state (or District of Columbia, Puerto Rico, or territories) Medicaid program in defending an audit finding against a hospital? B. What is the longest period of time that you have been involved in assisting a state Medicaid program in defending an audit finding against a hospital? C. Describe if you will implement a formal reconsideration process concerning preliminary findings as discussed in section 2.3.6.2.C.1.c, and if so, what that process will be. D. Affirm that you will work cooperatively with the Department during the Start-up process to draft template letters as described in section 2.3.6.1, including fully explaining Provider’s appeal rights. 14. How often does a state, etc., Medicaid program for which you are performing hospital payment audits fail to accept your findings? A. How often are your findings not accepted by the

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		Program upon your initial finding submission? B. How often are they not accepted if there is an Appeal? 15. Do you believe that performing such audits is a good training ground for entry level or relatively inexperienced audit personnel, or should the audits only be conducted by experienced, senior level auditors? Have you noticed any appreciable difference in the detection of overpayments or underpayments in Medicaid billings by experienced audit staff versus less experienced personnel? 16. What is your experience in providing electronic platforms for hospitals to upload Medicaid billing information? (i.e., Portals as per section 2.3.11.1.) How long have you hosted such platforms? Do you have dedicated staff for hosting such platforms or subcontract for platform hosting? 17. What is your experience in providing dashboards or other types of tracking platforms or databases so that the Medicaid programs for which you are performing hospital audits can know what you are doing at all times? (i.e., how much information do you typically provide for Medicaid programs so that they are able to be informed at any time – on demand - of audits you are conducting, the status of cooperation of hospitals, findings being contested by hospitals, etc.?) 18. Affirm your understanding that all documents, records, forms, justifications, determinations, and data must be retained for a period of five (5) years after the contract has ended. Also, describe how this requirement will be implemented, including the proposed storage and retrieval (document management) system for such items. Explain how this system will enable you to meet the requirement of section 2.3.3.10 for all such requests to be logged and tracked to ensure they are satisfied within the indicated timeframe (i.e., to provide requested records within 5 Business Days of the request). State whether such a long-term retention requirement has previously been required by a customer of the Offeror and satisfied. If so, provide examples of where the Offeror has done so (i.e., name of customer, when

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		the contract ended, duration of retention requirement, name and contact information for someone at the customer who can verify this information). 19. Has any Medicaid program or other customer for which you provided hospital audits terminated a contract with you or failed to exercise an available contract renewal option? If so, why? 20. Can you offer a typical rate or percentage of hospital Medicaid invoices that you determine to contain overbillings (i.e., do you expect every audit to result in substantial overbilling findings or is that a relatively rare occurrence? If a rare occurrence, do you still find enough overbillings to make your efforts worthwhile?)? 21. Are there issues that you have discovered in performing audits of Medicaid hospital payments that would make this process easier for your audit staff and/or personnel at the hospitals being audited(i.e., is there anything the Maryland Medicaid program can do that might make this process easier for all parties?)? 22. Is there a typical duration that it takes to complete an audit at a hospital? How is this audit duration affected by the number of Medicaid billings that typically occur in a year from a given hospital? 23. As per section 2.3.3.5, describe how you will earnestly seek to minimize the burden on Providers to provide documentation needed to perform Audits, while at the same time ensuring that you have sufficient documentation to make appropriate findings. For instance, describe the data analysis techniques that will be used to identify those claims most likely to contain Overpayments, instead of simply asking for records on a random basis, on the premise that the more records that are reviewed the greater the likelihood of finding Overpayments. (Also, keep in mind the section 2.3.3.4 limitations on the number of medical records that can be requested.) 24. Affirm that the Offeror will not seek to Audit Providers under investigation or any other of the Providers included in Section 2.3.3.7.1. Describe the specific process and efforts that will be used to unfailingly avoid Auditing any Provider under

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		investigation, as also prohibited by section 2.3.3.9. Affirm that no Audit will be undertaken unless it has specifically been approved by the Contract Monitor as required by section 2.3.3.10. 25. Affirmatively state that at the time of submission of its Proposal no Offeror Owner, or employee who would be working under the Contract, is on the federal List of Excluded Individuals or Entities. The Offeror must also affirmatively state that it will inform the Procurement Officer or Contract Officer if subsequent to Proposal submission but prior to any recommendation for contract award that any Owner or employee who would be working under the Contract appears on the federal List of Excluded Individuals or Entities. 26. Concerning reports, describe: A. The capabilities and limitations of providing Ad Hoc reporting. B The degree to which the Offeror will be flexible in providing more or different information or data in monthly or quarterly reports or reports at different timeframes. C. If desired by the Contract Monitor, would you be willing to provide cumulative data in monthly and quarterly reports, both Fiscal Year-to-date and Contract-to-date? 27. Provide a draft Continuity of Operations Plan detailing how it will ensure the appropriate performance of all Audit services required by the Contract despite personnel turnover, work stoppages, damage to Contractor work premises, the failure of its Information System, including due to an external denial of service attack, and any and all other potential business interruption events. 28 Fully describe all proposed aspects of Customer Service contained in section 2.3.7.3. Describe: A. Whether access to CSRs or any other customer service-related staff will be provided on any days or

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		any time of the day that are not included in the Appendix 1 definition of Normal State Business Hours; B. The proposed number and type of Customer Service Representatives (CSRs) and their training; C. The number of toll-free lines to be installed and the capacity of the proposed telephone system in terms of the number of calls that can simultaneously be answered, the ability of callers to leave messages and the ability to comply with any other phone-related requirements of this section. D. The ability to comply with Americans with Disabilities Act requirements, including how access will be provided to callers who may be hearing impaired. E. Proposed capability to accept text messaging and/or email communications. F. The Offeror's Fax capabilities and evidence that this complies with the fax storage requirements of this section. Also describe the backup system, process or plan in the event of the fax system failure. G. How Customer Services aspects will be monitored to determine whether there is need at any time to expand such aspects, identify and correct glitches or problems with any equipment or software, or to institute additional or remedial training for CSRs in terms of courteousness, knowledge of Contract requirements, and/or how to appropriately interact with Provider personnel to minimize inconvenience to Providers. H. Describe any Customer Service-related information that the Offeror can and will provide via Dashboards or through any other means that does not require an Ad Hoc report request from the Department.

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		29. Section 5.3.2, Table A.TAB M requires Offerors to identify all subcontractors they intend to use to perform the requirements of the Contract. Section 2.1.5 states: “An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work” To the extent that the Offeror in TAB M identified subcontractors, whether to satisfy MBE and VSBE requirements, or to augment its capabilities in various aspects, specifically acknowledge that it is understood that as per Section 2.1.5, that if selected for award the Offeror as the Contractor will be <i>exclusively responsible</i> for all Contract requirements. In other words, specifically state that it is understood that the failure of any subcontractor to perform as expected does not absolve the Offeror/Contractor of any responsibility under the Contract, including being responsible to pay damages or LDs as described in the RFP. Further, describe: Any prior usage of the proposed subcontractors for other activities and satisfaction with that prior usage (i.e., that the performance was as expected, without major issues). If the proposed subcontractor has not worked with the Offeror in the past, explain the basis by which the Offeror came to choose this subcontractor. The extent to which there has been discussion between the Offeror and each proposed subcontractor of their described role under the Contract. If each proposed subcontractor is specifically aware of the role that has been described in the RFP that it will

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		play and is in agreement that it can and will perform as described. That any proposed subcontractor deemed by the Offeror to be performing substantive activities under the Contract has, or is fully expected to have, the types and levels of insurance as described in Section 3.14.6.6. 30. Concerning staff, explain: A. How you determine the appropriate type of medical-related personnel to use under the contract, how you will recruit such personnel, unless they are already on staff, or if some or all will be obtained through subcontractor(s). B. How you will screen coders to ensure none also work for a Provider subject to Audit under the contract, C. How many Medical Coders you anticipate will be needed for the Contract, and how you will recruit such coders. D. How you will ensure that any staff that are required to be continuously licensed or credentialed are in fact continuously licensed or credentialed in all jurisdictions where required, E. How you will determine whether more and/or different staff will need to be added to work on the Contract and how do you anticipate being able to add such staff. F. Whereas as per Section 2.4 and other RFP sections the selected Offeror is required to have a Quality Assurance Manager meeting the qualifications of section 2.4.4.. Please explain how you will use this position to maximize performance under the Contract. 31. Fully explain how you will satisfy the requirement of section 2.3.11.2 for the creation and maintenance of a hospital Audits claims database. Similar to the information requested in items 16, 17 and 18 of this Table A, Tab F, what is your experience building and operating such a database? Is it your experience that such databases achieve the objective of minimizing duplication of effort, while permitting authorized personnel to appropriately monitor the status of Audits?

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		A. Affirm that this database will be able to allow the identification of the specific claims under Audit and explain how that will be done. B. Affirm that any such system and database will be able to interface with MMIS and shall remain able to communicate regardless of changes in either MMI itself or to the Contractor's database. C. Have you ever had any breaches of such databases, whereby Protected Health Information was inappropriately accessed? If so, provide details and specifically explain the measures taken to minimize any undue result of the breach(s) and the measures taken to prevent recurrence. D. State whether the CONNECT:DIRECT®SECURE+ feature or other HIPAA compliant equivalent feature will be used to access MMIS. State what formal arrangements, if any, have already been made to use this feature. Why did you choose this feature to provide the MMIS interface?
Tab G		Experience and Qualifications of Proposed Staff 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 2.4. Specifically, the Offeror shall:
		Describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
		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.
		Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). If

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		proposed personnel are included, 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 2.5.5).
		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.
		If proposing differing personnel work hours than identified in the RFP, describe how and why it proposes differing personnel work hours.
Tab H		Offeror Qualifications and Capabilities The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in Section 2.4.1. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information: • The number of years the Offeror has provided the similar goods and services; • The number of clients/customers and geographic locations that the Offeror currently serves; • The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under the Contract; • The Offeror's process for resolving billing errors; and • An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.
Tab I	L	Reference Checks

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		(Each reference shall be from a customer for whom the Offeror has provided goods or services within the most recent past five (5) years)
Tab J	M	List of Current or Prior State Contracts
Tab K		Financial Capability. (Submit under TAB K) The Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror <u>shall include</u> 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: • Dun & Bradstreet Number and Rating; • Standard and Poor's Rating; • Lines of credit; • Evidence of a successful financial track record; and • Evidence of adequate working capital.
Tab L		Certificate of Insurance 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 3.14 but would be the required insurance certificate submission for the apparent awardee.)
Tab M	P	<u>Prime Contractor List of ALL Subcontractors Anticipated/Used During Contract</u> 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

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		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.
Tab N	N	Legal Action Summary This summary shall include: • A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action; • A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years; • 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 • 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. • If an Offeror responds to this TAB with a generic statement such as, “See 10K” or “See SEC filing”: The referenced document must be included in the Technical Proposal. The location within the document where the requested information can be found should be specifically noted. • The information contained in the indicated section should be responsive to the information requested under this TAB. A generic statement in the document to the effect that there often are what might be called nuisance lawsuits filed against the Offeror will only be sufficient if it is a true statement(i.e., the Offeror is

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		asserting that in its opinion no lawsuit filed against it is noteworthy).
Tab O		Economic Benefit Factors If Section 6.2.4 Economic Benefit to the State of Maryland are required as an evaluation criterion, see Appendix 8 for guidance.
Tab P	A	Bid/Proposal Affidavit A Proposal submitted by the Offeror must be accompanied by a completed Bid/Proposal Affidavit. https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-A.-Bid-Proposal-Affidavit.pdf
	C	Bid Bond N/A
	D	MBE Forms D-1A https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf IMPORTANT: If this RFP contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is an MBE goal.
	E	Veteran-Owned Small Business Enterprise (VSBE) Form E-1A http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf IMPORTANT: If this RFP contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		submitted for each Functional Area or Service Category where there is a VSBE goal.
Tab Q	G	Maryland Living Wage Requirements Affidavit of Agreement (for Services and Facilities Maintenance Contracts - See Appendix 6 for Details) https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-G.-Maryland-Living-Wage-Requirements-Affidavit-of-Agreement.pdf
	H	Federal Funds Attachments https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-H.-Federal-Funds-Attachment.pdf
	I	Conflict of Interest Affidavit and Disclosure https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-I.-Conflict-of-Interest-Affidavit.pdf <i>Note: If this solicitation will result in the “selection of a contractor who will assist a unit in the formation, evaluation, selection, award, or execution of another State contract” the Offeror shall provide this Affidavit and other times as requested by the Procurement Officer.</i>
	J	Mercury Affidavit N/A
	K	Location of the Performance of Services Disclosure https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-K.-Location-of-the-Performance-of-Services-Disclosure.pdf
	O	Payment of Employee Healthcare Expenses Certification

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-O.-Payment-of-Employee-Healthcare-Expenses-Certification.pdf
	Q	Labor Resume Form <i>(See Specific Document Provided by Procurement Officer)</i>
	R	Corporate Diversity Addendum https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-R.-Corporate-Diversity-Addendum.pdf This addendum is required to be submitted with a PROPOSAL when the contract award is estimated to be <u>\$1,000,000 or more.</u> <i>Note: This document is for data collection only.</i>

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5.4 Volume II – Financial Proposal

TABLE A (Continued) - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
Financial Proposal submitted separately from Technical Proposal	B	The Price Form (as specified within eMMA) <u>Do not alter this Price Form</u> or leave blank any items on the Price Form or include additional clarifying or contingent language on or attached to the Price 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 State. The Price Form must be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Price Form. (See Appendix 2 for specific Price Form Instructions.)

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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 Department 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

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

6.2.2 Experience and Qualifications of Proposed Staff

6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors

6.2.4 Economic Benefit to the State of Maryland (See Appendix 8. Economic Benefit Factors)

6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see **Section 6.5.2.D**) will be ranked from the lowest price (most advantageous) to the highest price (least advantageous) based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on Attachment B - The Price 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 an 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 2.5 (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 RFP Attachments (Table B)

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 B - Documents Required upon Notice of Recommendation for Contract Award** below.

TABLE B - Documents Required upon Notice of Recommendation for Contract Award	
Attachment	Attachment Name
D	MBE Forms D-1B, D-1C, D-2, D-3A, D-3B https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf Important: Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.
E	VSBE Forms E-1B, E-2, E-3 http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf Important: Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award.
S	Non-Disclosure Agreement (Contractor) https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-S.-Non-Disclosure-Agreement-Contractor.pdf
T	HIPAA Business Associate Agreement https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-T.-HIPAA-Business-Associate-Agreement.pdf

U	Contract Affidavit https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-U.-Contract-Affidavit.pdf
V	DHS Hiring Agreement N/A
W	Performance Bond N/A
X	Payment Bond N/A
Y	Data Use Agreement https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/08/Attachment-Y.-Data-Usage-Agreement.pdf

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7 RFP Appendices and Exhibits

The Appendices and Exhibits listed below in Tables C and D are reference documents needed to assist the offerors in preparing their proposals in response to this solicitation. If a specific Appendix or Exhibit is not required for this solicitation, it is listed in the tables as “Not applicable” or “N/A”.

7.1 Appendices (Table C)

TABLE C - APPENDICES	
Appendix #	Appendix Name
1	Abbreviations and Definitions (See Attached)
2	Price Form Instructions (See Attached)
3	Labor Categories – N/A
4	<u>MBE Participation Goal</u>
5	<u>VSBE Participation Goal</u>
6	<u>Living Wage Requirements</u>
7	Bonds – N/A
8	<u>Economic Benefit Factors</u>

7.2 Exhibits (Table D)

TABLE D - Exhibits	
Exhibit #	Exhibit Name
1	<u>MBE, VSBE, and SBR Research Factors Template</u>
2	Contract (See Attached)
3	Deliverable Product Acceptance Form (DPAF)

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8 Exhibit 2 Contract

MARYLAND DEPARTMENT OF HEALTH (MDH)

“Medicaid Hospital Claims Audit Contractor
Recovery Audits Contract (RAC)”

OCMP 26-25113

THIS CONTRACT (the “Contract”) is made by and between _____ (the “Contractor”) 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) and Parental Guarantor, if applicable] and the STATE OF MARYLAND, acting through the MARYLAND DEPARTMENT OF HEALTH (“MDH” or the “Department”) as of the date as executed by the State below.

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 “Bid” means the Contractor’s Bid dated _____.
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “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).
- 1.4 “Financial Proposal” means the Contractor’s Best and Final Offer (BAFO)] dated _____.
- 1.5 “RFP” means the Request for Proposals for Medicaid Hospital Claims Audit Contractor Recovery Audits Contract (RAC), Solicitation # **OCMP 26-25113**, 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 _____, as modified and supplemented by the Contractor’s responses to requests, clarifications, and requests for cure, and by any Best and Final Offer.
- 1.8 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, including all applicable appendices and supplementals.

If more than one supplemental applies to this contract, they are considered in the following order:

- Professional Services Supplemental

Exhibit B – The Contract Affidavit, executed by the Contractor and dated

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 approximately on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue approximately until _____ ("Initial Term").
- 3.2 In its sole discretion, the Department shall have the unilateral right to extend the Contract for two (2) , successive one (1) year(s) renewal options (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).
- 3.3. The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.
- 3.5 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. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the 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 Proposal.

For time and materials Contracts, IDIQ Contracts, or Contracts which include either or both a time and materials or IDIQ element(s), total payments to the Contractor pursuant to this Contract for the time and materials and IDIQ portion(s) may not exceed \$ _____ (the “NTE Amount”), which includes \$ _____ for the Initial Term[[If one or more option periods exist, then include:]] and \$ _____ for the Renewal Term(s).

Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the NTE Amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult and work in good faith with the Department to establish a plan of action to assure that every reasonable effort is undertaken by the Contractor to complete State-defined critical work in progress prior to the date the NTE Amount will be reached; and (b) when applicable secure databases, systems, platforms, and applications on which the Contractor is working in an industry standard manner so as to prevent damage or vulnerabilities to any of the same due to the existence of any such unfinished work.

- 4.2 The Contractor shall send OR mail the original of each invoice and signed authorization to invoice to the Contract Monitor and Linda Rittlemann at e-mail address: Linda.Rittelmann@maryland.gov. 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, or within 15 days for an SBR contract, after the Department’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 Department 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 Department 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 Department or licensed by the Department from third parties, including all information provided by the Department 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 Department 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 Department, 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 Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

8. Confidential or Proprietary Information and Documentation

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the

Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor 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.

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 Time is an essential element of the Contract.

19.2 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.

- 19.3 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. Political Contribution Disclosure

- 22.1 The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a single contract with the State, a unit of the State, a county, a municipal corporation, or other political subdivision of the State, in which the cumulative consideration is at least \$200,000, shall file the following reports and statements:
- 22.2 Within 15 business days after the award of the contract a Registration Statement shall be filed with the State Board of Elections that includes (a) the person's name and address; (b) any resident agent of the Contractor business located in the State; (c) if known, each person who has a beneficial ownership of the Contractor business entity; and (d) any other information required by the State Board of Elections. Beneficial ownership means (i) any ownership interest of 5% or more in a business; (ii) any ownership interest of 5% or more in one or more entities in a chain of parent and subsidiary entities, any one of which participates in at least 5% of the capital or profits of a business; or (iii) possession of an interest that exists under a contract, a relationship, an understanding, or any other arrangement and entitles a person to benefits substantially equivalent to an ownership interest of 5% or more of a business.
- 22.3 Within 15 business days after filing the Registration Statement, the Contractor shall file with the State Board of Elections an Initial Contribution Statement covering the preceding 24 months disclosing (a) the name of each candidate, if any, to whom one or more applicable contributions in a cumulative amount of \$500 or more were made during the reporting period; (b) the office sought by each candidate named in item (a) of this paragraph; (c) the amount of aggregate contributions made to each candidate named in item (a) of this paragraph; (d) the name of each unit of a governmental entity with which the person had a single contract involving cumulative consideration of at least \$200,000 during the reporting period; (e) the nature and amount of public business done with each unit of a governmental entity in item (d) of this paragraph; and (f) if the public business was done or the contribution was made by another person but is attributed to the person filing the statement, the name of the person who did the public business or made the contribution and the relationship of that person to the person filing the statement.

- 22.4 Throughout the contract term the Contractor shall file a Semi-annual Statement with the State Board of Elections containing the information required for the Initial Contribution Statement on or before (a) May 31, to cover the six (6) month period ending April 30; and (b) November 30, to cover the six (6) month period ending October 31.
- 22.5 Additional information is available on the State Board of Elections Website:
http://www.elections.state.md.us/campaign_finance/index.html.

23. 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.

24. Right to Audit

- 24.1 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.
- 24.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The Department 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 Department's election. The Department 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.
- 24.3 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 Department has the right to audit such subcontractor(s).

25. 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.

26. Cost and Price Certification

- 26.1 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.
- 26.2 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.

27. 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.

28. Limitations of Liability

- 28.1 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.
- 28.2 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.

28.3. 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 all subcontractors are agents of Contractor and Contractor is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

29. Commercial Nondiscrimination

29.1 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.

29.2 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.

29.3 The Contractor shall include the language from 29.1, or similar clause approved in writing by the Department, in all subcontracts.

30. Prompt Pay Requirements

- 30.1 This contract and all subcontracts issued under this contract at any tier are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§30.2 – 30.4, the terms “undisputed amount,” “prime contractor,” “contractor,” “subcontractor,” and “supplier” have the meanings stated in COMAR 21.10.08.01.
- 30.2 A contractor shall promptly pay its subcontractors or suppliers an undisputed amount to which a subcontractor or supplier is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or final payment for work under this contract.

- 30.3 If a contractor fails to make payment within the period prescribed in §30.2, a subcontractor or supplier may request a remedy in accordance with COMAR 21.10.08.
- 30.4 A contractor shall include in its subcontracts at any tier for work under this contract wording that incorporates the provisions, duties, and obligations of §§ 30.2 – 30.4 State Finance and Procurement Article §15-226, Annotated Code of Maryland, and COMAR 21.10.08.
- 30.5 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor or supplier under this **Section 30**, 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 Department and the Contractor in any other proceeding; or
 - (c) Result in liability against or prejudice the rights of the Department.
- 30.6 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors or suppliers that have contracted pursuant to the MBE program.
- 30.7 To ensure compliance with certified MBE subcontracting participation goals, the Department 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 Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department 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 Department determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department 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.

31. 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 Department may withhold payment of any invoice or retainage. The Department may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

32. Use of Estimated Quantities

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

33. 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.

34. 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 statements 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.

35. Miscellaneous

- 35.1 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.

- 35.2 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.
- 35.3 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.
- 35.4 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.

36. Contract Monitor and Procurement Officer

- 36.1 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 Department may change the Contract Monitor at any time by written notice to the Contractor.
- 36.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

37. 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:

Linda Rittelmann
Maryland Department of Health (MDH)
201 W. Preston Street, Baltimore MD, 21201
Phone Number: 410-598-4794
E-Mail: linda.rittelmann@maryland.gov

With a copy to:

Richard McCray
Maryland Department of Health (MDH)
201 W. Preston Street, Baltimore MD 21201
Phone Number: 410-767-5097
E-Mail: richard.mccray1@maryland.gov

If to the Contractor:

(Contractor's Name)

(Contractor's primary address)

Attn: _____

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

Parent Company Guarantor

Contact: _____

Attn: _____

38. Liquidated Damages for MBE

- 38.1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- 38.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$31.00 per day until the monthly report is submitted as required.
 - (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$ 31.00 per MBE subcontractor.
 - (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
 - (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
 - (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$<<insert

appropriate rate following calculation instructions from GOSBA>> per day until the undisputed amount due to the MBE subcontractor is paid.

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

40. Parent Company Guarantee (If applicable)

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

41. Federal Department of Health and Human Services (DHHS) Exclusion Requirements

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this Contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this Contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

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

- 42.1 The Contractor acknowledges its duty to become familiar and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

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

- 42.2 If in connection with the procurement or at any time during the Term, the Department determines that functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form required by the Department.
- 42.3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is: individually identifiable; created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and related to the past, present, or future physical or mental health or condition of an individual, the provision of healthcare to an individual, or the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

44. Limited English Proficiency

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

SIGNATURES ON NEXT PAGE

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

Contractor: <<ContractorName>>	State of Maryland MARYLAND DEPARTMENT OF HEALTH (MDH)
By: <<Contractor Signer>>	By: <<agencyContractSigner>>, <<agencyContractSignerTitle>>
Date:	Date:
PARENT COMPANY (GUARANTOR) (if applicable)	
By:	
Date:	
Witness/Attest:	

Approved for form and legal sufficiency this ____ day of _____, 20__. _____ Assistant Attorney General	
APPROVED BY BPW: _____ (Date) (BPW Item #)	