

**MARYLAND DEPARTMENT OF HEALTH  
HUMAN SERVICE FUNDING AGREEMENT**

PCA AWARD # \_\_\_\_\_ MDH RECORD # \_\_\_\_\_ - \_\_\_\_\_ ADPICS# \_\_\_\_\_

Vendor \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Federal Employer Tax I.D. Number or  
Social Security Number, as appropriate \_\_\_\_\_

Type of Service(s) or Program(s) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If this is a Multi-year Agreement, specify the maximum amounts payable for each State Fiscal Year:

FY \_\_\_\_\_ Not to Exceed \$ \_\_\_\_\_

FY \_\_\_\_\_ Not to exceed \$ \_\_\_\_\_

FY \_\_\_\_\_ Not to exceed \$ \_\_\_\_\_

This Agreement, dated \_\_\_\_\_, is made by and between

\_\_\_\_\_

hereinafter called the "Contractor" or "Vendor", and the,

\_\_\_\_\_ a unit of the Maryland

Department of Health, hereinafter called the "Department", and shall commence

\_\_\_\_\_ and shall terminate \_\_\_\_\_,

except for any renewal(s) or extension(s) which is at the sole discretion of the Department and described as follows:

| Option Period  | Amount   |
|----------------|----------|
| _____ to _____ | \$ _____ |
| _____ to _____ | \$ _____ |

Whereas the Department desires that the vendor deliver certain human services to third party clients;  
and,

Whereas the Vendor has proposed to deliver such services;

Now, therefore, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. The Vendor shall perform those human services described in its proposal, dated \_\_\_\_\_, (*Enter "NA" for not applicable if there was no proposal*) which is hereby incorporated into this Agreement by reference.
2. The services to be delivered by the Vendor are further clarified or modified from those stated in the vendor's proposal by the specifications described in Addendum \_\_\_\_\_. (*If none, enter "None."*) In case of conflict, the addendum controls.
3. The Vendor shall adhere to the approved budget delineated on the form MDH 432B. A new budget must be submitted at the beginning of each fiscal year for multi-year awards. Subsequent budgets may not exceed the amount shown on page one of this agreement for the appropriate fiscal year plus any approved modifications to the agreement.)
4. The Department shall pay the Vendor for approved costs (for each fiscal year) up to the maximum stated as the Departmental award on form(s) MDH 432B.
5. All terms and conditions under a solicitation issued for these services are made a part of this contract except as modified by the foregoing provisions.
6. The provisions of the MDH document entitled "Human Services Agreements Manual" (promulgated September 5, 1988, and any subsequent amendments thereto), which is incorporated into this Agreement by reference shall bind the parties. The parties agree further that modifications to, or the selection of options from that document, are described in Addendum \_\_\_\_\_. (*If none, enter "None."*)
7. The Vendor and the Department affirm that the award of this contract is not the result of a deceptive show of competition and that no action has been taken in restraint of free and competitive bidding in connection with this contract.
8. The Vendor agrees to bill the Department in accordance with instructions in the MDH "Human Services Agreements Manual".
9. The vendor agrees to complete and submit with this contract both the Bid/Proposal Affidavit and the Contract Affidavit, attached hereto. It is understood that this contract cannot become effective until these affidavits have been signed and returned.

10. A. There (\_\_\_\_ are / \_\_\_\_ are not) programmatic conditions that apply to this contract, regardless of the type of funding. If applied, these conditions are contained in Federal Funds Attachment A.
- B. This contract (\_\_\_\_ does / \_\_\_\_ does not) contain federal funds.
- C. If contained, the source of these federal funds is: \_\_\_\_\_  
 \_\_\_\_\_  
 The CFDA number is \_\_\_\_\_. The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds Attachment B. Any additional conditions that apply to this federally funded contract are contained in Federal Funds Attachment C.
- D. The total amount of federal funds allocated for the \_\_\_\_\_  
 \_\_\_\_\_ is \$ \_\_\_\_\_ in Maryland State fiscal year \_\_\_\_\_. This represents \_\_\_\_\_% of all funds budgeted for this unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or Invitation for Bid.
- E. Acceptance of this agreement indicates your intent to comply with all conditions that are part of this agreement.

11. A. **MBE GOAL**  
 A minimum Minority Business Enterprise (MBE) subcontract participation goal of an amount not less than \_\_\_\_\_% of the total dollar value of the contract (\_\_\_\_\_% women owned business/\_\_\_\_\_% African American owned business) has been established for this procurement. By submitting a response to this solicitation, the offeror/bidder agrees that a Maryland Department of Transportation (MDOT) certified minority business enterprise(s) will perform this percentage of the dollar value of the Contract. In the event that two (2) or more offers are determined by the Procurement Officer to be equal, The Maryland Department of Health may award a Contract to the Bidder whose bid reflects the highest percentage of certified MBE participation.

- B. **MBE PARTICIPATION DOCUMENTATION**  
 (1) **The following documentation shall be considered as part of the Contract and shall be furnished by the Offeror/Bidder in its proposal/bid:**

A completed **MBE Utilization and Fair Solicitation Affidavit (MBE Attachment A)** whereby the Offeror/Bidder acknowledges the MBE participation goal and commits to make a good faith effort to achieve it and affirms that in the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount

of time to respond as were non-MBE subcontractors, and that the solicitation process was conducted in such a manner as to otherwise not place MBE subcontractors at a competitive disadvantage to non-MBE subcontractors.

- (2) **Within ten (10) working days from notification that it is the apparent successful Offeror/Bidder or within 10 working days following award, whichever is earlier, (COMAR 21.11.03.10.B),** the Offeror/Bidder must submit to the Maryland Department of Health's Procurement Officer, a completed **Outreach Efforts Compliance Statement (MBE Attachment B)** signed by the Offeror/Bidder, which shall be considered part of the contract. It shall include:
  - (a) A listing of specific work categories identified by the offeror/bidder in which there are subcontracting opportunities,
  - (b) Copies of written solicitations used to solicit certified MBEs for these subcontracting opportunities.
  - (c) Description of the offeror's/bidder's attempts to personally contact the solicited MBEs.
  - (d) Description of offeror's/bidder's efforts to fulfill or seek waiver of bonding requirements, if bonding required.
  
- (3) **Within ten (10) working days from notification that it is the apparent successful offeror/bidder or within 10 working days following award, whichever is earlier, (COMAR 21.11.03.10.B),** the offeror/bidder must submit to the Maryland Department of Health's Procurement Officer:
  - (a) A completed **MBE Participation Schedule (MBE Attachment C)** naming each proposed MBE who will participate in the project and describing the Contract items to be performed or furnished by the MBE.
  - (b) Any other documentation considered appropriate by the Maryland Department of Health to ascertain bidder responsibility in connection with the Contract MBE participation goal.
  - (c) The bidder, by submitting its bid, consents to provide the documentation required by this solicitation pursuant to COMAR 21.11.03.13, and to provide right of entry at any reasonable time for purposes of the State's representatives verifying compliance with the MBE subcontractor requirements.
  
- (4) **Within ten (10) working days from notification that it is the apparent successful offeror/bidder or within 10 working days following award, whichever is earlier, (COMAR 21.11.03.10.B),** the offeror/bidder must submit to the Maryland Department of Health's Procurement Officer a **Subcontractor Project Participation Statement (MBE Attachment D)**

signed by both the offeror/bidder and each MBE listed and shall include:

- (a) A statement of intent to enter into a Contract between the prime Contractor and each subcontractor if a Contract is executed between the Maryland Department of Health and the prime Contractor.
- (b) The amount and type of bonds required of MBE subcontractors, if any.

(5) If the Maryland Department of Health determines that the apparent successful offeror/bidder has not complied with the certified MBE subcontractor participation Contract goal, and has not obtained a waiver or if the offeror/bidder fails to submit the documentation required by this solicitation, the Procurement Officer, upon review by the Office of the Attorney General and approval of the Secretary, may terminate the Contract for default. The reasons for this action shall be specified in writing and mailed or delivered to the offeror/bidder.

(6) **MBE Participation Waiver**

If the apparent successful bidder is unable to achieve the Contract goal for certified MBE participation, the Offeror/Bidder must submit instead of or in conjunction with an MBE Subcontractor and Prime Contractor's Disclosure and Participation Statement, a request in writing for a waiver with justification, to include the following:

- (a) A detailed statement of the efforts made to select portions of the proposed work to be performed by the certified MBE's in order to increase the likelihood of achieving the stated goal;
- (b) A detailed statement of the efforts made to contact and negotiate with certified MBEs including the names, addresses, dates, and telephone numbers of the certified MBEs contacted and a description of the information provided to the certified MBEs regarding plans, specifications, and anticipated time schedules for portions of the work to be performed;
- (c) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful offeror/bidder considered not to be acceptable, a detailed statement of the reasons for this conclusion; and
- (d) In the event certified minority subcontractors are found to be unavailable, a signed and notarized **MBE Statement of Unavailability (MBE Attachment E)** must be prepared by the Offeror/Bidder, including the names, addresses, dates, and telephone numbers of the certified MBEs contacted, and the reason each MBE is unavailable.

A waiver of a certified MBE Contract goal shall be granted only upon reasonable demonstration by the apparent successful bidder that

certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the Secretary or designee determines that a waiver serves the public interest. The Code of Maryland Regulation citation (COMAR 21.11.03.11) governing the MBE waiver is included as **MBE Attachment F**.

(7) **MBE Participation Compliance**

To assure compliance with certified MBE subcontract requirements, the Department shall conduct periodic reviews and require periodic reports from both the prime contractor and the certified MBE subcontractor(s). The reviews and reports may consist of, but not be limited to:

- (a) The successful contractor must submit **monthly** to the Department as noted below a **Prime Contractor Unpaid MBE Invoice Report (MBE Attachment G)** listing any unpaid invoices, over 30 days old, received from any certified MBE contractor, the amount of each invoice and the reason payment has not been made.
- (b) The successful contractor must include in its agreement with certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department, a **Subcontractor Payment Report (MBE Attachment H)** that identifies the prime contract and lists all payments received from the Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. **One copy of each report noted above, is to be submitted monthly to the Department's Contract Monitor as listed on page 5 of this solicitation and to the Office of Community Relations, 5th floor, 201 West Preston Street, Baltimore MD 21201 (410) 767-6600.**
- (c) The successful contractor shall maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of the work performed.
- (d) The successful contractor shall consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for Department inspection for a period of three years after final completion of the contract.

- (8) Upon determining the contractor's non-compliance, the Department shall notify the contractor in writing of its findings and shall specify what corrective actions are required. The contractor shall be required to initiate the corrective actions within ten (10) working days and complete them

within the time specified by the Department.

(9) If the Department determines that substantial noncompliance with MBE Contract provisions exists and that the prime Contractor or subcontractor refuses or fails to take corrective action required by the Department, then the following sanctions may be invoked:

- (a) Withholding payment;
- (b) Termination of the Contract;
- (c) Suspension of the right of the Contractor or subcontractor to participate in any future contracts;
- (d) Referral to the Office of the Attorney General for appropriate action;
- (e) Initiation of any other specific remedy identified by the Contract; and
- (f) The Department may use any other compliance mechanism authorized in COMAR 21.11.03. or available at law.

C. All questions related to MBE certification must be directed to:

Maryland Department of Transportation  
Office of Minority Business Enterprise/Equal Opportunity  
P.O. Box 8755  
BWI Airport  
Baltimore, Maryland 21240  
Telephone: (410) 865-1269

The CONTRACT ADMINISTRATOR for the Department is:

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Name (Typed)

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Title (Typed)

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Business Address (Typed)

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Business Telephone Number (Typed)

The Department's Contract Administrator is the primary point of contact for the Department for matters relating to this contract. The Contractor/Vendor shall contact this person immediately if the Contractor/Vendor is unable to fulfill any of the requirements of this contract or has any questions regarding the interpretation of the provisions of the contract.

The CONTRACT ADMINISTRATOR for the Contractor/Vendor is:

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Name (Typed)

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Title (Typed)

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Business Address (Typed)

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Business Telephone Number (Typed)

The Contract/Vendor's Contract Administrator is the primary point of contact for the Vendor for matters relating to this contract. The Contractor/Vendor's Contract Administrator shall contact the Department's Contract Administrator immediately if the Contractor/Vendor is unable to fulfill any of the requirements of the contract or if there are any questions regarding the interpretation of the provisions of the contract.

The Procurement Officer for the Department is:

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|      |             |
|------|-------------|
| Name | Telephone # |
|------|-------------|

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Street Address

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City, State and Zip Code

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Both parties agree that the following Mandatory Contract Provisions are hereby incorporated into and made an integral part of this contract.

1. FINANCIAL DISCLOSURE

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

2. PUBLIC INFORMATION ACT NOTICE

Bidders/Offerors/Contractors should give specific attention to those portions of their bid/proposal /contract which they deem to be confidential or proprietary information, or trade secrets and provide justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act of the Maryland Code Annotated, State Government Article, §§ 10-611 through 10-628. The justification in support of non-disclosure must accompany the PIA copy of the bid/proposal/contract. Upon request for information from a third party, the Procurement Officer is required to make an independent determination as to whether the information may or may not be disclosed. A blanket statement by a Bidder/Offeror/Contractor that its entire bid/proposal/contract is confidential or proprietary is unacceptable.

3. APPROVALS

This contract may be subject to approval by the Office of the Attorney General, the Maryland Department of Budget and Management, and the Board of Public Works.

4. MULTI YEAR CONTRACTS

If the General Assembly fails to appropriate funds, or if funds are not otherwise made available for continued performance of the contract for any fiscal period of the contract succeeding the first fiscal period, the contract shall be automatically cancelled as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, this will not affect either the Department's rights or the Contractor's rights under any other termination clause in the contract. The effect of termination of the contract hereunder will be to discharge both the Contractor and the Department from future performance of the contract, but not from their obligation existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring 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.

5. MODIFICATION OF CONTRACT - GENERAL

This contract may be amended as the Procurement Officer and the Contractor mutually agree in writing (subject to any necessary approvals of the Office of the Attorney General, Department of Budget and Management and, in certain cases, the Board of Public Works). No amendment may change significantly the scope of the original solicitation or, if none, the original contract. An amendment to this contract does not alter the other terms of the contract, except to the extent necessary to make them consistent with the amendment. This contract may not be amended to provide salary and wage increases for the Contractor's employees with the intention of making these increases consistent with salary and wage increases given to employees of the State except as provided in the Maryland Code Annotated, Health-General Article, § 10-905.

6. MODIFICATION OF CONTRACT - SALARY INCREASES AND EMERGENCIES

Subject to the approval of the Department of Budget and Management, the Department shall have the ability to supplement this contract for:

- A. Increases in salaries without consequent increases in deliverables if the increase in salaries results from increases in specific appropriations for that purpose, or
- B. Unanticipated emergencies impairing the ability of the provider, through no fault of its own, to perform as per this contract.

7. NON-HIRING OF STATE EMPLOYEES

No official or employee of the State of Maryland, as defined at Maryland Code Annotated, State Government Article, §15-102, 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.

8. DISPUTES

This contract shall be subject to the provisions of the Maryland Code Annotated, State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10. In accordance with the requirement of COMAR 21.10.04.02 the Contractor must file a written notice of a claim with the procurement officer within thirty days after the basis for the claim is known or should have been known, whichever is earlier, but no later than the date final payment is made under the contract. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

9. MARYLAND LAW PREVAILS

The laws of the State of Maryland shall govern the provisions of this contract.

10. NON-DISCRIMINATION IN EMPLOYMENT

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any 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 provisions of this non-discrimination clause.

11. 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 this agreement; and that he 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 other consideration contingent on the making of this agreement.

12. TERMINATION FOR DEFAULT

The rights and remedies of the State under the contract are cumulative. The enforcement of any right or election of any remedy by the State provided by the contract for any breach of the contract will not preclude the State from enforcing other rights and availing itself of other remedies available under the contract for the same breach or any other breach of the contract.

If the contractor fails to properly perform its obligations under the contract, the State may correct such deficiencies at the contractor's expense.

If the Contractor fails to fulfill its obligations under this contract properly and on time, or otherwise violates any provision of the Contract, the Department may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the Contractor shall, at the Department's option, become the State's property. The Department 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 Department can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

13. TERMINATION FOR CONVENIENCE

The Department may terminate the performance of work under this contract in accordance with this clause in whole, or from time to time in part, whenever the Procurement Officer shall determine that such termination is in the best interest of the State. The Department will pay all reasonable costs associated with this contract that the Contractor has incurred 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).

14. TAX EXEMPTION

The State is generally exempt from Federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland sales tax and the exemption does not apply.

15. ARREARAGES

By submitting a response to this solicitation, a vendor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified; and
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract if selected for contract award.

16. NON-ASSIGNMENT

The Contractor may not, during the term of this contract or any renewals or extensions of the contract, assign or sub-contract all or any part of the contract without the prior written consent of the Department's Procurement Officer. However, the contractor may assign monies receivable under a contract after due notice to the contract monitor.

17. DOCUMENTS RETENTION AND INSPECTION CLAUSE - OTHER THAN RESIDENTIAL HEALTH CARE FACILITIES CONTRACTS

The Contractor and sub-contractors will maintain and retain all records and other documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times.

18. DOCUMENTS RETENTION AND INSPECTION CLAUSE - RESIDENTIAL HEALTH CARE FACILITIES CONTRACTS

If the Contractor supplies services to a State residential health care facility under the Mental Hygiene Administration, the Family Health Administration, the Alcohol and Drug Abuse Administration, or the Developmental Disabilities Administration, the Contractor agrees, in addition to the requirements of Clause 18, above:

- A. That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly authorized representatives, shall be granted access to the Contractor's contract, books, documents and records necessary to verify the cost of the services provided under this contract, until the expiration of four years after the services are furnished under this contract;
- B. That similar access will be allowed to the books, documents and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. (420.301) if that organization is sub-contracting to provide services with a value of \$10,000 or more in a twelve-month period to be reimbursed through funds provided by this contract.

19. INDEMNITY (HOLD HARMLESS) CLAUSE

A. Definitions.

For the purpose of this clause only, the following terms have the meanings indicated:

- (1) "Contractor" means the Contractor, its officers, employees, agents, and representatives.
- (2) "State" means the State, its departments, agencies, officials, officers, and employees.
- (3) "Sub-contractor" means any sub-contractor of the Contractor, its officers, employees, agents, and representatives.

B. Indemnification by Contractors.

The contractor shall indemnify and hold the State of Maryland harmless for any cost, expense, loss, liability, fine, or penalty of any nature or character whatsoever that the State may incur as a result of a failure of the contractor, or its subcontractor(s), to comply with the terms of this agreement (or any part thereof), negligence of the contractor, injury or death to any person, damage to property, nuisance (public or private), or trespass arising out of or attributable to the performance of work by the contractor or its subcontractor(s), except to the extent caused by the negligent or willful act or omission of the State or its employees, agents, or independent contractors, other than the contractor, or its subcontractor(s).

The contractor further agrees to indemnify the State for damage, loss, or destruction of State property in the contractor's care, custody, and/or control during the term of this contract due to the action or inaction of the contractor or its subcontractor(s).

State law prohibits the State from incurring, by way of an indemnity agreement, a potentially unlimited liability when no funds have been appropriated to fund the liability, the risk is uninsured, and the indemnity agreement is not conditioned upon the future appropriation of funds to satisfy the liability. Notwithstanding any other provisions of the contract documents, the State shall have no liability to the contractor under the circumstances described in this paragraph.

The Contractor shall indemnify and hold harmless the State against liability for any suits, actions, or claims of any character arising from or relating to the performance under this contract of the Contractor or its sub-contractors.

C. Liability of State.

- (1) The State has no obligation to provide legal counsel or legal defense to the Contractor or its sub-contractors in the event that a suit, claim or action of any character is brought by any person or persons not party to the contract against the Contractor or its sub-contractors as a result of or relating to the Contractor's obligations under this contract.
- (2) The State has no obligation for the payment of any judgments or the settlement of any claims made against the Contractor or its sub-contractors as a result of or relating to the Contractor's obligations under this contract.

D. Notice of and Cooperation in Litigation.

The Contractor will immediately give notice to the Procurement Officer of any claim or suit made or filed against the Contractor or its sub-contractors regarding any matter resulting from or relating to the Contractor's obligations under this contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's obligations under this contract.

20. COST AND PRICE CERTIFICATION

- A. The Contractor shall submit cost or price information and shall certify that, to the best of his/its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the date the price of any:
- (1) Negotiated contract is determined which is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer; or
  - (2) A change order or contract modification is determined which is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.
- B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increase occurring because of the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

21. PAYMENT OF STATE OBLIGATIONS AND INTEREST

- A. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by the Maryland Code Annotated, State Finance and Procurement Article, § 15-104 et seq., or by the Public Services Commission of Maryland, with respect to regulated public utilities, as applicable, are prohibited.
- B. The Maryland Code Annotated, State Finance and Procurement Article, § 15-104 et seq. provides that, with certain exceptions set forth at State Finance and Procurement Article, § 15-105, the interest shall accrue at the rate specified on any amount that:
- (1) Is due and payable by law and under this procurement contract; and
  - (2) Remains unpaid more than 45 days after the Department receives a proper invoice.

Interest shall accrue beginning on the 31st day after the day on which payment becomes due under this contract or, if later, the day on which the Department receives a proper invoice. The amount, if paid, shall be in lieu of payment, by the State, of any other late charge(s) assessed by the Contractor.

- C. A proper invoice shall include a description of items or services provided; the date the goods were received by the Department, or the inclusive dates the services were rendered; the price agreed upon pursuant to the contract; the basis for the billing; the purchase order or contract control number; the Contractor's Federal Employers' Identification Number or Social Security Number; and the name and address of the proper invoice recipient, as specified in the contract.
- D. For purposes of this contract, an amount will not be deemed "due and payable" and interest payments will not be authorized for late payments unless the following conditions have been met:
  - (1) The amount invoiced is consistent with the amount agreed upon by the parties to the contract.
  - (2) The goods or services have been received by the State and the quantity received agrees with the quantity ordered.
  - (3) The goods or services meet the qualitative requirements of the contract and have been accepted by the State.
  - (4) The proper invoice has been received by the party or unit of government specified in the contract.
  - (5) The invoice is not in dispute.
  - (6) If the contract provides for progress payments, the proper invoice for the progress payment has been submitted pursuant to the schedule contained in the contract.
  - (7) If the contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have been met.
- E. In order to receive payment of interest, the Contractor must submit a proper invoice for accrued interest within 30 calendar days after the payment date (i.e., the date of the check from the State Treasurer that pays the Contractor for the goods supplied or the service rendered) of the amount on which the interest accrued. Interest may not be claimed:
  - (1) If a claim has been filed under the Maryland Code Annotated, State Finance and Procurement Article, Title 15,
  - (2) For more than one year following the 31st calendar day after the date that a proper invoice is received by a State agency,
  - (3) On an amount representing unpaid interest, or
  - (4) On an amount due under a contract remaining unpaid for any period prior to July 1, 1983.

22. INSPECTION OF PREMISES

The Contractor agrees to permit authorized officials of the State to inspect, at reasonable times, its plant, place of business, job site, or any other location that is related to the performance of the contract.

23. INCORPORATION BY REFERENCE

All terms and conditions under the solicitation, and any amendments thereto, are made a part of this Contract. In the event of contract award, the contract shall consist of the solicitation document, including all addenda, exhibits, and attachments, and the entire bid/proposal submitted by the successful bidder/offeree except for any portions specifically excluded by contract. This shall constitute the entire agreement between the contracting parties, superseding all

representations, commitments, conditions, or agreements that may have been made orally or in writing prior to the execution of the contract.

24. SPECIFICATIONS

All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in the solicitation.

25. DELIVERY

Delivery shall be made in accordance with the solicitation specifications. The State, at its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The State unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The State reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation specifications shall be rejected. Rejected materials shall be promptly replaced. The State reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

26. CIVIL RIGHTS ACT OF 1964

Vendors and Contractors providing materials, equipment, supplies or services to the State under this Contract herewith assure the State that they are conforming to the provisions of the Maryland Code Annotated, State Finance and Procurement Article, § 13-219, the Civil Rights Act of 1964, and Section 202 of Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.

27. ANTI-BRIBERY

Vendors and Contractors are required to be aware of the Annotated Code of Maryland, State Finance and Procurement Article, § 16-202, that requires that any person convicted of bribery, attempted bribery, or conspiracy to bribe committed in the obtaining of a contract from the State or any of its subdivisions, shall be subject to disqualification pursuant to the Annotated Code of Maryland, State Finance and Procurement Article, § 16-202, from entering into a contract with the State, or any county or other subdivision of the State.

28. REGISTRATION

Pursuant to the Annotated Code of Maryland, Corporations and Associations Article, § 7-201 et seq., corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

29. EPA COMPLIANCE

Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

30. OCCUPATIONAL SAFETY AND HEALTH ACT (O.S.H.A.)

All materials, supplies, equipment, or services supplied as a result of this Contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

31. PATENTS, COPYRIGHTS, TRADE SECRETS & INDEMNIFICATION

If the contractor, or any subcontractor, furnishes any design, device, material, process, supplies, equipment, text, instructional material, services or other work that is covered by a patent or

copyright, or that is proprietary to or a trade secret of another; it is the sole responsibility of the contractor to obtain the necessary permission or license to use such items. The contractor hereby grants to the Department a royalty-free, nonexclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all data now and hereafter covered by copyright, and warrants that it has the authority to do this.

If any products furnished by the contractor become, or in the contractor's opinion are likely to become, the subject of a claim of infringement, the contractor will, at its option: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

If the contractor, or any subcontractor, obtains or uses for purposes of the contract any design, device, material, process, supplies, equipment, text, instructional material, services or other work, the contractor shall indemnify, protect and save harmless the State, the Maryland Department of Health, its officers, agents and employees with respect to any claim, action, cost or judgment for patent, trademark or copyright infringement, arising out of the purchase, possession or use of any design, device, material, process, supplies, equipment, text, instructional material, services or other work covered by this Contract.

32. AFFIDAVITS

It is understood that this Contract may not become effective until the Contractor has signed and returned to the Procurement Officer all required affidavits including but not necessarily limited to the Bid/Proposal Affidavit and the Contract Affidavit.

33. STATE CONTRACT PREVAILS

Whenever a Vendor/Contractor's Standard Contract is used along with this State's Standard Service Contract, this State's Standard Service Contract shall prevail in the event of conflict between any provision(s) of the two contracts when the State determines it to be in its best interest.

34. SUSPENSION OF WORK

The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State.

35. SCOPE OF CONTRACT

The State retains the unilateral right to order in writing changes in the work within the scope of the contract.

36. DELAYS AND EXTENSIONS OF TIME

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.

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.

37. OWNERSHIP AND RIGHTS IN DATA

Work produced as a result of this solicitation/contract is and shall remain the sole property of the



Maryland Department of Health (MDH).

- A. The Department may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others do so, all data delivered under the contract resulting from this solicitation, except where such use may contravene Federal or State guidelines or Regulations. The Contractor hereby grants to the Department a royalty free, nonexclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all data now or hereafter covered by copyright; provided that with respect to data originated in the performance of this contract, such license shall be only to the extent that the Vendor has the right to grant such license without becoming liable to pay compensation to others because of such grant.

The Contractor shall exert all reasonable effort to advise the Department, at the time of delivery of data furnished under this agreement, of all invasions of the right of privacy contained therein and of all portions of such data copied from work not composed or produced in the performance of this agreement and not licensed under this clause. 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 data delivered under this agreement.

- B. The Contractor agrees that at all times during the term of this contract and thereafter, the works created and services performed shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created under this contract are not works for hire for the Department, the Contractor hereby relinquishes, transfers, and assigns to the Department 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 Department in effectuating and registering any necessary assignments.

The Department shall have the right to use such works for hire without restriction and without compensation to the Contractor other than that specifically provided by the contract. The Contractor shall not affix any restrictive markings to such works and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such markings.

38. PRE-EXISTING REGULATIONS

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

39. POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with the Maryland Code Annotated, Election Law Article, §§14-101—14-108, which requires that every person that enters into contracts, leases or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

40. COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. 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.

41. **PROHIBITION OF SEXUAL HARASSMENT**

The Contractor shall operate under this agreement so that no employee or client is subjected to sexual harassment in the workplace or in locations and situations otherwise associated with the performance of duties per the terms of this contract. Further, except in sub-contracts for standard commercial supplies or raw materials, the Contractor shall include this clause, or a similar clause approved by MDH, in all sub-contracts. The Contractor has primary responsibility for enforcement of these provisions and for securing and maintaining the sub-contractor's full compliance with both the letter and spirit of this clause.

42. **RECIPROCAL PREFERENCE**

Although Maryland law does not authorize procuring agencies to favor resident Bidders in awarding procurement contracts, many other states do grant their resident businesses preference over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference will be given if: a responsible Bidder whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this contract is in another state submits the most advantageous bid; the other state gives a preference to its residents through law, policy, or practice; and, the preference to be applied to the contract award herein does not conflict with a Federal law or grant affecting the procurement contract. The preference given shall be identical to the preference that the other state, through law, policy or practice gives to its residents.

43. **SUBSTITUTION OF PERSONNEL**

All personnel described in the contractor's proposal shall perform continuously for the duration of the contract, and for so long as performance is satisfactory to the Department's Contract Monitor. The Contract Monitor will give written notice of performance issues to the contractor, clearly describing the problem and delineating remediation requirement(s). The contractor shall respond with a written remediation plan within three (3) business days and implement the plan immediately upon written acceptance of the Contract Monitor. If performance issues persist, the Department's Contract Monitor may give written notice or request the immediate removal of person(s) whose performance is at issue, including the Director of Operations, and determine whether a substitution is required.

The contractor may not substitute personnel, other than by reason of an individual's death, sudden illness or termination of employment, without the prior written approval of the Contract Monitor. To replace any personnel specified in the contractor's proposal, the contractor shall submit the resumes of the proposed substitute personnel to the Contract Monitor for approval at least two weeks prior to the effective date of substitution. All proposed substitute personnel shall have qualifications at least equal to those of the replaced personnel, and shall be approved by the Contract Monitor.

44. **INSURANCE REQUIREMENTS**

Worker's Compensation – The contractor shall maintain such insurance as necessary and/or required under Worker's Compensation Acts, U.S. Longshoremen's and Harbor Workers'

Compensation Act, and the Federal Employers' Liability Act, as well as any other applicable statute.

The Contractor will name the State of Maryland as an Additional Named Insured on all liability policies (Workers' Compensation excepted) and provide certificates of insurance evidencing this coverage prior to the commencement of any activities.

The Contractor shall be required to maintain professional insurance to the extent required to cover losses to the State that are a direct result of the contractor's actions.

45. USE OF FUNDS

All funds received by the Vendor in connection with this award will be utilized for the purpose of the approved project. All expenditures not in accordance with the award, or its modifications, are the responsibility of the Vendor.

46. ELIGIBILITY DETERMINATIONS

It shall be the sole responsibility of the Department to determine the criteria for the initial and continuing eligibility of clients for the services provided under this agreement; provided, however that the Vendor, for cause shown and subject to the HEARING & GRIEVANCE PROCEDURES set forth below, may deny further service to any eligible person.

47. HEARING AND GRIEVANCE PROCEDURES

The Department shall make available to any client aggrieved by any decisions, actions or inaction of either of the Parties the usual fair hearing procedures of the Department as clarified in the appropriate provisions of COMAR and the Vendor shall comply with and abide by decisions rendered pursuant thereto in:

- A. Denial or termination of a service;
- B. Failure to act upon a request for service with reasonable promptness;
- C. Determining technical eligibility for participation in the program or services rendered under this agreement;
- D. Negating the individual's right of choice with respect to any of the said services;
- E. Forcing involuntary participation in the said program;
- F. Discriminating conditions or practices.

At the discretion of the Department, a grievance procedure conducted by the Vendor may be utilized and considered to meet the requirements of this provision.

48. SAFEGUARDING CLIENT INFORMATION

Neither Party shall use or disclose any information concerning a client of the services provided under this agreement for any purpose not directly connected with administration of such services, except upon written consent of the other Party and the client or, if he be a minor, his responsible parent or guardian. The provisions of Health General Article 20-103 to 20-107 supersede and control, where applicable.

49. DOCUMENTATION AND RECORDS

Fiscal Responsibility, Records, Reports and Monitoring Procedures:

The Vendor shall maintain books, records, documents and other evidence and adopt accounting

procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature, expended in the performance of this agreement; such books, records, documents and other evidence to be subject, at all reasonable times and upon receipt of reasonable notice for inspection, review or audit, and by such other persons as are authorized by the Department; and shall collect statistical data of a fiscal nature on a regular basis and make fiscal, statistical reports at times prescribed by, and on forms furnished by the Department. The Vendor and its independent contractors will make available its program records for inspections and audits by the Maryland Department of Health at any reasonable time.

The Vendor will complete such reports and statements concerning the projects in the manner and form prescribed by the Maryland Department of Health and shall be submitted in accordance with such schedules as stated in the contract or documents incorporated into the contract by reference. Failure on the part of the contractor to submit a report when due may result in suspension of funding until the report is received.

Program Records, Controls, Reports and Monitoring Procedures:

The Vendor shall maintain program records required by the Department and agrees that a program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services may be conducted upon reasonable notice at any reasonable time by Federal and/or State personnel whose official duties require such review or meetings, and such other persons as authorized by the Department: and shall maintain such program statistical records as are required by the Department and produce program narrative and statistical data at times prescribed by, and on forms, or within formats furnished by the Department.

For each day that any work shall remain uncompleted beyond the time(s) specified, elsewhere in the contract, the Contractor shall be liable for liquidated damages if an amount(s) is provided for in the specifications; provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.

*Note to CFT: See Standard Clause Menu" following contract signature page for additional clauses to be added as appropriate for this particular solicitation/contract.*

The Remainder of this Page Is Blank

In Witness Whereof, the parties hereto have set their hands and seals:

SIGNATORY OF THE CONTRACTOR

SIGNATORY FOR THE DEPARTMENT  
SHALL BE THE SECRETARY OR  
DESIGNEE

By:

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

\_\_\_\_\_  
(Name Type or Print)

\_\_\_\_\_  
Title (Type or Print)

\_\_\_\_\_  
Date of Signing by Contractor

By:

\_\_\_\_\_  
Nelson J. Sabatini, Secretary (Signature)

\_\_\_\_\_  
or Designee (Signature)

\_\_\_\_\_  
Name (Typed)

\_\_\_\_\_  
Title (Typed)

\_\_\_\_\_  
Date of Signing by Secretary or Designee

Approved as to form and Legal Sufficiency

This \_\_\_\_\_ day of \_\_\_\_\_

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

Assistant Attorney General

\_\_\_\_\_  
Name (Type or Print)

The Office of the Attorney General has approved this standard Human Service Funding Agreement for legal sufficiency. The original approved contract is on file in the Division of Contracts. Minor and non-substantive modifications to this contract do not necessarily require additional legal approval.

OCPMP No. \_\_\_\_\_

# Standard Contract Clause Menu

The following is a selection of standard contract clauses that may or may not apply to your solicitation/contract. Include them when and where appropriate.

**[This clause should be added if there are Federal funds supporting the contract. Federal funds Attachment B should also be included as an appendix item.]**

## FEDERAL LOBBYING PROHIBITION

From time to time the Department may be the recipient of grants, cooperative agreements, loans, or contracts from the Federal government. In accordance with Section 1352 of Title 31 of the United States Code, this Department and all sub-grantees, subcontractors, etc., of this Department are prohibited from using any Federal funds so received for the purpose of lobbying Congress or any Federal agency in connection with the awarding of a particular contract, grant, cooperative agreement, or loan.

Further, any recipient of such Federal funds including sub-grantees, subcontractors, etc., which receives over \$100,000 in Federal monies must also file a "Disclosure of Lobbying Activities" form (Federal Form SF-LLL), which requires the disclosure of any and all such lobbying activities, even those funded with non-Federal monies.

By entering into a contract with the Department the Contractor/Vendor hereby specifically agrees to abide by all applicable requirements of 31 United States Code, Section 1352.

**[This clause applies only to cost reimbursement contracts in which quantities in the budget have been estimated.]**

## VARIATIONS IN ESTIMATED QUANTITIES

If this contract contains estimated quantity items, the following provision applies:

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.

**[This is a mandatory clause for contracts involving healthcare entities or individuals, the employment of healthcare entities or individuals, or subcontracting with healthcare entities or individuals that may be named on the DHHS List of Excluded Individuals/Entities.]**

## 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 CFR 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 such 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 OOE 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.

**[This clause may be added to contracts when damage to the State due to contractor non-performance can be calculated and stated in terms of dollars per day.]**

#### LIQUIDATED DAMAGES

Time is an essential element of the contract and it is important that the work be vigorously performed until completion. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the contract, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the solicitation; provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.

**[This clause may apply in one of the two forms below or may not apply at all. In circumstances where it does not apply, the general Confidentiality of Client Information clause from the Human Services clauses suffices. If the Unit within the Department and the contractor are covered entities and a business associate agreement must be created, the first clause applies. If however, the Unit within the Department is not a covered entity, but the contractor will function as such in the performance of the contract, the second clause is to be used.]**

#### **[Clause requiring a Business Associate Agreement]**

#### COMPLIANCE WITH FEDERAL HIPAA AND STATE CONFIDENTIALITY LAW

- A. The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq. and implementing regulations including 45 CFR Parts 160 and 164. The contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 et seq., MCMRA). This obligation includes:
- 1.) As necessary, adhering to the privacy and security requirements for protected health information and medical records under federal HIPAA and State MCMRA and making the transmission of all electronic information compatible with the federal HIPAA requirements; and
  - 2.) Otherwise providing good information management practices regarding all health information and medical records.
- B. Based on the determination by the Department that the functions to be performed in accordance with the Services to Be Performed set forth in Part I constitute business associate functions as defined in HIPAA, the selected offeror shall execute a business associate agreement as required by HIPAA regulations at 45 CFR §164.501 and set forth in Appendix \_\_\_\_\_. The fully executed business associate agreement must be submitted within 10 working days after notification of selection, or within 10 days after award, whichever is earlier. Upon expiration of the ten-day submission period, if the Department determines that the selected offeror has not provided the HIPAA agreement required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the next qualified offeror.

- C. Protected Health Information as defined in the HIPAA regulations at 45 CFR 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

**[Clause not requiring a Business Associate Agreement]**

**COMPLIANCE WITH FEDERAL HIPAA AND STATE CONFIDENTIALITY LAW**

- A. The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq. and implementing regulations including 45 CFR Parts 160 and 164. The contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 et seq., MCMRA). This obligation includes:
- 1.) As necessary, adhering to the privacy and security requirements for protected health information and medical records under federal HIPAA and State MCMRA and making the transmission of all electronic information compatible with the federal HIPAA requirements; and
  - 2.) Otherwise providing good information management practices regarding all health information and medical records.
- B. If in connection with the procurement or at any time during the term of the contract, the Department determines that functions to be performed in accordance with the Services to Be Performed set forth in Part I 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 CFR §164.501.
- C. Protected Health Information as defined in the HIPAA regulations at 45 CFR 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

**[This clause should be added to contracts were there is a strong possibility of unskilled or entry level employment. The actual DHR Agreement must be included in the solicitation as an Appendix item]**

**HIRING AGREEMENT**

By submitting a bid or proposal in response to this solicitation, the Bidder/Offeror agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) Hiring Agreement (Attachment \_\_\_\_). The Hiring Agreement is to be executed by the Bidder/Offeror and delivered to the procurement officer within ten days following receipt of Notice by the Bidder/Offeror that it is being recommended for contract award. The Hiring Agreement will become effective concurrently with the award of the contract.

The Hiring Agreement provides that the contractor and DHR will work cooperatively to promote hiring by the contractor of qualified entry-level Maryland Temporary Case Assistance customers to fill entry-level job openings resulting from this procurement, in accordance with §13-224, State Finance and Procurement Article.



**[This clause should be added to contracts when there is the probability of customers with limited ability in speaking English.]**

**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 Gov't 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.