

**GARRETT COUNTY HEALTH DEPARTMENT
STANDARD PROCUREMENT CONTRACT
Solicitation #**

1. This Contract, is made this _____ day of _____, 20____ by and between the State of Maryland, acting through the Maryland Department of Health,

Garrett County Health Department (hereinafter called “Department”)

Address: 1025 Memorial Drive

Oakland, MD 21550

Phone: (240) 226-0022

and _____ (hereinafter called “Contractor”)

Address: _____

Phone: _____

is subject to the provisions, specifications, and conditions contained herein.

2. Procurement Officer and Contract Monitor

1. The Department designates Vickie Weeks, to serve as the Procurement Officer for this Contract. The Procurement Officer must review any changes to the Contract.
2. The Department designates _____, to serve as the Contract Monitor for this Contract. The Contract Monitor is primarily responsible for Contract administration functions, including written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, and achieving completion of the Contract on budget, on time and within the scope. All contact between the Department and the Contractor regarding all matters relative to this Contract shall be coordinated through the Contract Monitor.

3. Scope of Contract

1. The Contractor shall perform in accordance with this Contract and Exhibits A-C, 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 IFB/RFP

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

Exhibit C - The Bid/Proposal

2. The Contractor shall be obligated to provide the following services:
 - a. Attend a kick-off meeting with Department staff to review the conditions of this Contract, and deliver all signed documentation which is required within 10 (ten) days of award.
 - b. Network with the Contract Monitor, the grant program administrator, and/or coordinator, as appropriate.

c. Provide the following services for _____ (insert generic synopsis of SOW).

d. Complete the _____ (insert applicable data if this section is applicable) provided by the GCHD grant program administrator by the 15th (list appropriate timeline) of the following month.

3. 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 to the extent allowed by grant funding and timelines 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.

4. Without limiting the rights of the Procurement Officer under Section 3 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 departmental staff are obtained, indicating a certain dollar threshold requires such approval.

4. Period of Performance

1. The term of this Contract begins on _____ and shall continue until _____. (Initial Term)

2. In its sole discretion, the Department shall have the unilateral right to extend this Contract for the following period(s) of time: _____, at the prices established in the Contract.

3. This Contract is based on estimated levels of State/County and/or Federal funds. Should actual allocations differ from the current estimates, this Contract may need to be adjusted.

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 limitation of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

5. Consideration and Payment

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 Bid/Proposal. Unless properly modified, payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

2. The total payment under a fixed price Contract shall be the fixed price submitted by the Contractor in its Bid/Proposal. For Indefinite Quantity Contracts, total payments to the Contractor pursuant to this

Contract may not exceed \$ _____, for the initial term. This Contract begins on _____ and terminates on _____, this is the initial term.

3. Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the NTE (Not To Exceed) Amount. After notification by the Contractor, if the Department 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 Department-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. Unless a payment is unauthorized, deferred, delayed, or liability offset, payments to the Contractor shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor.

The Contractor agrees to include on the face of all invoices billed to the Department:

- Contractor's name,
- Remittance address,
- Federal Tax Identification Number (or if sole proprietorship, the individual's social security number),
- Invoice period,
- Invoice date,
- Invoice number,
- Assigned Contract number (if applicable),
- Goods or services provided, and
- Amount due.

5. If it is determined by the Contract Monitor, the Contractor fails to perform in a satisfactory and timely manner, the Contract Monitor 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 Contract Monitor.
6. Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

6. Rights to Records

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 Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
2. The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract, 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 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.

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.
4. The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the Department hereunder and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
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 Department to the place designated by the Procurement Officer.

7. Exclusive Use

1. The Department 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 Department shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the Department.
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 9. Confidential or Proprietary Information and Documentation.**

8. Patents, Copyrights, and Intellectual Property

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 Department to use such item or items pursuant to its rights granted under the Contract.
2. Except for
 - a. 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;
 - b. materials created by Contractor or its subcontractor(s) specifically for the Department under the Contract ("Deliverables"), except for any Contractor Pre-Existing Intellectual Property included therein; and
 - c. the license rights granted to the Department, 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 Contractor Pre-Existing Intellectual Property

embedded in any Deliverables, Contractor grants to the Department 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 Department 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 Department a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

3. Subject to the terms of **Section 11**, Contractor shall defend, indemnify and hold harmless the Department 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 Department or that adversely affects the Department's rights or interests, without the Department's prior written consent.
4. Without limiting Contractor's obligations under Section 6.3, if an infringement claim occurs, or if the Department or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the Department and at no cost to the Department
 - a. shall procure for the Department 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.
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 Department to the Contractor. Notwithstanding anything to the contrary herein, the Department 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 Department as well as all required Department approvals.
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 Department or any of its affiliates (or for which the Department 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 Department 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 Department 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 Department (or for which the Department has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.

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.
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 Department, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

9. Confidential or Proprietary Information and Documentation

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 Department'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 Department'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..
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.

10. Loss of Data

1. In the event of loss of any Department 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.

11. Indemnification and Notification of Legal Requests

1. At its sole cost and expense, Contractor shall:
 - a. Indemnify and hold the Department, 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

b. Cooperate, assist and consult with the Department 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 Department or that adversely affects the Department's rights or interests, without the Department's prior written consent.

2. The Department has no obligation

a. 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 subcontractor as a result of or relating to the Contractor's obligations or performance under this Contract or

b. To pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Contract Monitor of any such claims, demands, actions or suits.

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 Department Pre-Existing Intellectual Property, of other information considered to be the property of the Department, including but not limited to Department 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 Department, unless prohibited by law from providing such notice. The Contractor shall promptly notify the Department of such receipt providing the Department 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.

12. Non-Hiring of Employees

1. No employee of the State of Maryland, county or any department, commission, agency or branch thereof, whose duties as such 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 of Maryland, county or any department, commission, agency or branch thereof, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

13. Disputes/Contract Claims

1. All disputes/claims by a Contractor against the Department relating to a contract shall be submitted in writing to the Procurement Officer. The Contractor may request a conference with the Procurement Officer and Administrator on the dispute/claim. Disputes/claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The Procurement Officer will review the claim, consult with the Health Officer (Assistant Attorney General if needed), and advise the granting administration of the dispute/claim as appropriate.

2. The decision of the Procurement Officer, Health Officer, and/or Assistant Attorney General shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under Subsection (3) of this Section.

3. The Procurement Officer, Health Officer's and /or Assistant Attorney General's decision shall be final and conclusive unless, within seven (7) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Procurement Officer or commences an action in a court of competent jurisdiction.

14. Maryland Law Prevails

1. This Contract shall be construed, interpreted and enforced according to the laws of the State of Maryland.
 - a. The Contractor shall keep fully informed and comply with all Federal, State and County laws, ordinances and regulations and all orders and decrees of legal bodies having any jurisdiction or authority, which in any manner affect those engaged or employed to carry out this Contract, or which in any way otherwise affect or are applicable to the service or performance of the contract for services. Contractor is aware of HIPAA regulations and agrees to comply with such regulations in performance of this contract.

15. Nondiscrimination in Employment

1. The Contractor agrees:
 - a. Not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, age, or physical or mental handicap which would not reasonably preclude the required performance. Except in subcontracts for standard commercial supplies or raw materials, the Contractor shall include a clause similar to this clause in all subcontracts. The Contractor and Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

16. Contingent Fee Prohibition

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

17. Non-Availability of Funding

1. 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 canceled as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, this shall not affect either the Department's rights or the Contractor's rights under any termination clause in the Contract. The effect of termination of the Contract shall be to discharge both the Contractor and the Department from future performance of the Contract, but not from their obligations 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 services delivered under the Contract. The Department shall notify the Contractor within 90 days prior to the commencement of each fiscal period succeeding the first fiscal period, or as soon thereafter as the Department has knowledge that the funds are not available for the continuation of the Contract for such succeeding fiscal period.

18. Termination for Default

1. If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provisions of the Contract, the Department may terminate the Contract by written notice to the Contractor. The notice shall specify the acts of omissions relied upon as cause for termination. All finished or unfinished services provided by the Contractor shall, at the Department's option, become the Department'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 shall remain liable after termination and the Department can affirmatively collect damages.

19. Termination for Convenience

1. The performance of work under this Contract may be terminated by the Department 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 Department. The Department shall 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 the termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits which have not been earned up to date of termination.

20. Delays and Extensions of Time

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

21. Suspension of Work

1. The Department 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 Department.

22. Pre-Existing Regulations

1. In accordance with the provisions and regulations of the Garrett County Government Purchasing and Asset Management Policy, Adopted by the Board of GC Commissioners in 2001, this Contract becomes effective on the date of execution and is applicable to this Contract.

23. Retention of Records

1. The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for:
 - a. a period of six (6) years after final payment by the Department, and
 - b. 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 Department, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the Department, 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

1. The Department 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.
2. Upon three (3) Business Days' notice, the Department 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 Department, including, by way of example only, making records and employees available as, where, and to the extent requested by the Department and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
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).
4. Vendors and private practitioners, with contracts for less than \$100,001 do not need to be audited. This does not exempt the vendor from submitting the required MDH reporting forms.

25. Compliances with Laws

1. By signing this Contract, the Contractor hereby represents and warrants that:
 - a. It is qualified to do business in the State of Maryland and or County and that it shall 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 of Maryland and or County, or any department or unit thereof, including but not limited to the insurance requirements, payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
 - 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

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 Bid/Proposal.
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 Bid/Proposal, was inaccurate, incomplete, or not current.

27. Subcontracting Assignment

1. The Contractor may not, during the term of this Contract or any renewals or extensions of the Contract, assign or subcontract all or any part of its obligations under this Contract without obtaining the prior

written approval of the Procurement Officer or Contract Monitor, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer or Contract Monitor, each at the Department's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a Contract after written notice to the Department. 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 Department shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

28. **Limitations of Liability**

1. Contractor shall be liable for any loss or damage to the Department 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 8 "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.
2. Contractor's indemnification obligations for Third party claims arising under **Section 11 ("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 11 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 11.
3. In no event shall the existence of a subcontractor operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors are agents of the Contractor and Contractor is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

29. **Commercial Nondiscrimination**

1. As a condition of entering into this Contract, 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 Department contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
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, the 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 Department or County, 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 Department, and to provide

any documents relevant to any investigation that are requested by the Department. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the Department from participating in Department contracts, and other sanctions.

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

30. Prompt Pay Requirements

1. If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
 - a. Not process further payments to the Contractor until payment to the subcontractor is verified;
 - b. Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
 - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
 - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - e. Take other or further actions as appropriate to resolve the withheld payment.
2. An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation:
 - a. retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
 - b. an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
3. 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 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.

31. Living Wage (required for procurements exceeding \$100,000.00)

1. If a Contractor subject to the Living Wage law fails to submit all records required 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

1. Unless specifically indicated otherwise in the Department’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

1. Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the Department hereunder shall remain with the Contractor until such supplies, equipment, materials

and Deliverables are received and accepted by the Department, following which, title shall pass to the Department.

34. Effect of Contractor Bankruptcy

1. 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 Department 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 Department’s rights of election, all rights and licenses granted to the Department under this Contract shall continue subject to the respective terms and conditions of this Contract; and
 - b. the Department 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 Department’s possession, shall be promptly delivered to the Department, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

35. Miscellaneous

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.
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.
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.
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. Notices

1. 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 Department:

Name: _____ Contract Monitor

Address: 1025 Memorial Drive
Oakland, MD 21550

Phone: _____

Email: _____

With a copy to:

Name: Vickie Weeks Procurement Officer

Address: 1025 Memorial Drive

Oakland, MD 21550

Phone: 240-226-0022

Email: vickie.weeks@maryland.gov

If to the Contractor:

Name: _____ Contractor's Name

Address: _____ Contractor's Address

Attn: _____

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

1. 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.

38. Compliance with Federal HIPAA and State Confidentiality Law (if applicable):

1. The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the Federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §1320d et seq. and implementing regulations including 45 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:
 - a. 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;
 - 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.
2. Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the selected bidder/offeror shall execute a Business Associate Agreement as required by HIPAA regulations

at 45 CFR §164.501 and in the form as required by the Department. The fully executed Business Associate Agreement must be submitted within ten (10) working days after notification of selection, or within ten (10) days after award, whichever is earlier. Upon expiration of the ten-day submission period, if the Department determines that the selected vendor has not provided the Business Associates Agreement required by this solicitation, the Grants Manager or Procurement Officer may withdraw the recommendation for award and make the award to the next qualified offeror.

3. 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.

39. Limited English Proficiency

1. 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.

40. Contractor Proof of Liability

1. Prior to commencing services under this Contract, and unless waived by the Procurement Officer or the Health Officer, the Contractor must furnish the Department certification from insurer(s) proof of the following insurances _____. The coverage shall be maintained in full force and effect during the term of this Contract. The insurance certificate is not valid unless countersigned by an authorized representative of the insurance company.

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

Robert Stephens, MS
Garrett County Health Department

Date

Name
Agency Name goes here

Date