

## **Request for Proposals**

# **CLOUD MESSAGING AND COLLABORATION SERVICES**



## **DEPARTMENT OF INFORMATION TECHNOLOGY**

**Issue Date:**

**June 16, 2011**

### **NOTICE**

Prospective Offerors who have received this document from the Department of Information Technology's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

**Minority Business Enterprises are Encouraged to Respond to this Solicitation**

**STATE OF MARYLAND  
NOTICE TO OFFERORS/CONTRACTORS**

In order to help us improve the quality of State proposal solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposal. If you have chosen not to submit a proposal in response to this RFP, please email this completed form to: [ggoldberg@dhhm.state.md.us](mailto:ggoldberg@dhhm.state.md.us), attention: Gary Goldberg.

**Title: CLOUD MESSAGING AND COLLABORATION SERVICES  
ADPICS #060B2490001**

1. If you have responded with a "no bid", please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with Maryland Government is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the bid/proposals is insufficient.
- Start-up time is insufficient.
- Insurance requirements are restrictive. (Explain in REMARKS section.)
- Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- Prior State of Maryland Contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- Payment schedule too slow.
- Other: \_\_\_\_\_

2. If you have submitted a proposal, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

---

---

Offeror Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

**KEY INFORMATION SUMMARY SHEET**

**STATE OF MARYLAND**

**Request For Proposals**

**CLOUD MESSAGING AND COLLABORATION SERVICES**

**ADPICS #060B2490001**

**RFP Issue Date:** June 16, 2011

**RFP Issuing Office:** Maryland Department of Information Technology (DoIT)

**Procurement Officer:** Gary Goldberg  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street, Room 416B  
Baltimore, Maryland 21201  
Phone #: (410) 767-0974  
Fax: (410) 333-5958  
Email: [ggoldberg@dhmd.state.md.us](mailto:ggoldberg@dhmd.state.md.us)

**Proposals are to be sent to:** Department of Information Technology  
45 Calvert Street, Room 444  
Annapolis, MD 21401  
Attention: Gary Goldberg  
Procurement Officer

**Pre-Proposal Web Conference:** Tuesday, June 28, 2011  
10:00 am (local time)

*Directions for accessing the web conference will be provided upon registration (see Attachment A)*

**Closing Date and Time:** July 15, 2011  
12:00 pm (local time)

**NOTE**

Prospective Offerors who have received this document from the Department of Information Technology's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

## Table of Contents

<b>SECTION 1 - GENERAL INFORMATION.....</b>	<b>6</b>
1.1.    SUMMARY STATEMENT .....	6
1.2.    ABBREVIATIONS AND DEFINITIONS .....	6
1.3.    BACKGROUND .....	8
1.4.    CONTRACT TYPE .....	9
1.5.    CONTRACT DURATION .....	9
1.6.    PROCUREMENT OFFICER .....	9
1.7.    CONTRACT MANAGER.....	9
1.8.    PRE-PROPOSAL CONFERENCE.....	10
1.9.    USE OF E-MARYLAND MARKETPLACE .....	10
1.10.   QUESTIONS.....	10
1.11.   PROPOSALS DUE (CLOSING) DATE .....	11
1.12.   DURATION OF OFFER.....	11
1.13.   ORAL PRESENTATIONS/INTERVIEWS .....	11
1.14.   REVISIONS TO THE RFP .....	11
1.15.   CANCELLATIONS; DISCUSSIONS .....	12
1.16.   INCURRED EXPENSES .....	12
1.17.   ECONOMY OF PREPARATION .....	12
1.18.   PROTESTS/DISPUTES .....	12
1.19.   MULTIPLE OR ALTERNATIVE PROPOSALS.....	12
1.20.   ACCESS TO PUBLIC INFORMATION ACT NOTICE.....	12
1.21.   OFFEROR RESPONSIBILITIES.....	12
1.22.   STANDARD CONTRACT.....	12
1.23.   PROPOSAL AFFIDAVIT .....	13
1.24.   CONTRACT AFFIDAVIT .....	13
1.25.   LIVING WAGE REQUIREMENT .....	13
1.26.   ARREARAGES .....	13
1.27.   PROCUREMENT METHOD.....	13
1.28.   VERIFICATION OF REGISTRATION AND TAX PAYMENT.....	13
1.29.   FALSE STATEMENTS.....	14
1.30.   HIPAA - BUSINESS ASSOCIATE AGREEMENT.....	14
1.31.   CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE .....	14
1.32.   NON-VISUAL ACCESS.....	14
1.33.   PAYMENTS BY ELECTRONIC FUNDS TRANSFER .....	15
1.34.   ELECTRONIC PROCUREMENT AUTHORIZED .....	15
1.35.   CONTRACT EXTENDED TO INCLUDE OTHER NON-STATE GOVERNMENTS OR AGENCIES.....	16
1.36.   PROMPT PAY .....	16
<b>SECTION 2 – MINIMUM QUALIFICATIONS .....</b>	<b>17</b>
2.1.    VENDOR MINIMUM QUALIFICATIONS.....	17
<b>SECTION 3 – SCOPE OF WORK .....</b>	<b>18</b>
3.1.    SCOPE.....	18
3.2.    TECHNICAL REQUIREMENTS.....	18
3.3.    REPORTS .....	37
3.4.    INSURANCE REQUIREMENTS.....	39
3.5.    SERVICE CREDITS IN THE EVENT OF DEFICIENCIES IN SLAS .....	40
3.6.    INVOICING REQUIREMENTS .....	41
3.7.    END-OF-CONTRACT TRANSITION REQUIREMENTS .....	42
<b>SECTION 4 – PROPOSAL FORMAT .....</b>	<b>44</b>

4.1.	TWO PART SUBMISSION .....	44
4.2.	PROPOSALS .....	44
4.3.	SUBMISSION .....	44
4.4.	DELIVERY .....	44
4.5.	VOLUME I – TECHNICAL PROPOSAL .....	45
4.6.	VOLUME II - FINANCIAL PROPOSAL .....	49
<b>SECTION 5 – EVALUATION CRITERIA AND SELECTION PROCEDURE.....</b>		<b>50</b>
5.1.	EVALUATION CRITERIA .....	50
5.2.	TECHNICAL CRITERIA .....	50
5.3.	FINANCIAL CRITERIA .....	50
5.4.	RECIPROCAL PREFERENCE .....	50
5.5.	SELECTION PROCEDURES .....	50
<b>ATTACHMENTS.....</b>		<b>52</b>
	ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM .....	53
	ATTACHMENT B – CONTRACT .....	54
	ATTACHMENT C – BID/PROPOSAL AFFIDAVIT .....	64
	ATTACHMENT D - CONTRACT AFFIDAVIT .....	71
	ATTACHMENT E – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS .....	72
	ATTACHMENT E-1 - MARYLAND LIVING WAGE AFFIDAVIT OF AGREEMENT .....	74
	ATTACHMENT F – BUSINESS ASSOCIATE AGREEMENT.....	76
	ATTACHMENT F-1 - BREACH OF UNSECURED PROTECTED HEALTH INFORMATION .....	83
	ATTACHMENT G – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE .....	84
	ATTACHMENT H (1) - NON-DISCLOSURE AGREEMENT (SOLICITATION) .....	85
	ATTACHMENT H (2) – NON-DISCLOSURE AGREEMENT (AWARD) .....	91
	ATTACHMENT I – FINANCIAL PROPOSAL FORM AND INSTRUCTIONS.....	94
	ATTACHMENT J– DoIT RECEIPT OF DELIVERABLE FORM.....	97
	ATTACHMENT K– DoIT ACCEPTANCE OF DELIVERABLE FORM.....	98

## SECTION 1- GENERAL INFORMATION

### 1.1. Summary Statement

- 1.1.1 The Department of Information Technology (DoIT) is issuing this Request for Proposals (RFP) as part of an effort to procure cloud computing services and make them available to State agencies through a two-step process. The first step, reflected in this RFP, is to identify and procure the most advantageous technologies or platform to use in delivering messaging and collaboration services. The second step will be to solicit through a second RFP the assistance of one or more vendors in configuring the available services to meet each agency's needs.
- 1.1.2 The scope of this solicitation focuses on the selection of a single, per user subscription-based model to deliver cloud messaging and cloud collaborative services to State employees and authorized support staff, using a computing device and an Internet connection.
- 1.1.3 DoIT intends to award one contract to the Offeror that best meets the requirements found in Section 3 and offers cloud computing services at the best value for the State.

### 1.2. Abbreviations and Definitions

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

- 1.2.1 **Administrators** – Selected Representatives from state IT offices who are authorized to use Offeror automated tools and/or have access to Offeror's administrative support to control, maintain, and monitor state end users' access and privileges.
- 1.2.2 **Agency** – A unit of the Executive Branch of Maryland State government
- 1.2.3 **Cloud Messaging Availability** – Cloud Messaging Availability is defined as all Offeror's subscription services and applications are accessible and operational to authorized end users. Cloud Messaging Availability shall be measured as follows: (Total Minutes of the Month - Minutes of Downtime) / (Total Minutes of the Month - Minutes of Scheduled Service).
- 1.2.4 **COMAR** – Code of Maryland Regulations, available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us)
- 1.2.5 **Contract** - The Contract between DoIT and the Offeror awarded a contract as a result of this RFP.
- 1.2.6 **Contract Manager (CM)** – The State representative who serves as the manager for the resulting Contract. The CM monitors the daily activities of the Contract and provides guidance to the Contractor.
- 1.2.7 **COTS** – Commercial-off-the-Shelf software
- 1.2.8 **DGS** – Department of General Services
- 1.2.9 **Directory Synchronization** - The synchronization of a global address list from a primary directory source such as a Lightweight Directory Access Protocol (LDAP) source to a service provider's directory services. Group, user and contact synchronization includes the creation, updating, renaming, enabling, disabling and deleting of like objects at the service provider based upon changes to the source directory.
- 1.2.10 **Distribution List** - An email address that redirects inbound mail to a group of email addresses, analogous to a list serv.
- 1.2.11 **DoIT**- Department of Information Technology

- 1.2.12 **Downtime** - Shall mean that the Cloud Messaging and/or associated modules of the Cloud Messaging services are unavailable to the State of Maryland users. The downtime must be solely contributable to the Offeror or a third party associated with the Offeror.
- 1.2.13 **e-Discovery Service** - The capability for efficient querying, retrieval and exporting of email messages by an authorized group of end-users for an authorized group of messages. This service includes corresponding access logs providing a virtual paper trail for legal compliance or historical significance.
- 1.2.14 **Electronic Records Management** – Services that support records collection, organization, categorization, storage, metadata capture, physical record tracking, retrieval, use, and disposition.
- 1.2.15 **Email-as-a-Service** - The providing of email services by a cloud service provider with the essential characteristics of On-Demand Self Service, Broad Network Access, Resource Pooling, Rapid Elasticity and Measured Service.
- 1.2.16 **Email Archival** - A systematic approach to saving and protecting the data contained in email messages in a separate immutable data store, with both messages and metadata indexed based upon keywords and message attributes for a deterministic period of time so that it can be retrieved quickly at a later date by an e-Discovery Service.
- 1.2.17 **Fixed Price** – Type of payment for performing under a contract whereby the exclusive payment to the Contractor for product delivered or performance of services is at a firm price or a price that is subject to contractually specified adjustments.
- 1.2.18 **Global Address List** - A directory that contains entries for every group, user, and contact within an organization's implementation of email.
- 1.2.19 **Group Mailbox** - An account owned by one or more individuals that allows the owners to read email received in the inbox and send outbound mail from the account's email address.
- 1.2.20 **Identity Management** - The act of registering identities and issuing, maintaining, and revoking globally unambiguous, assured identifiers for human and non-human subjects (e.g., individuals, organizations, work roles, devices, and automated processes).
- 1.2.21 **Instant Messaging** - Real time text communication between two users exchanging text messages analogous to a telephone conversation.
- 1.2.22 **Local Time** - Time in the Eastern Time Zone as observed by the State
- 1.2.23 **Mobile Device Access** - The ability for wireless communication enabled hardware such as smart phones and personal digital assistants to access services such as email and instant messaging via wireless communication networks, independently of a wired trusted network.
- 1.2.24 **Notice To Proceed (NTP)** - A formal notification from the Contract Manager that the Offeror selected to perform under a Contract should immediately, or as of a date contained in the notice, begin performance under the Contract.
- 1.2.25 **Offeror** – An entity that submits a proposal in response to this RFP
- 1.2.26 **Presence** - Real time indicator of whether or not a person is online and their status to receive communications sent to them at a specific point in time.
- 1.2.27 **Procurement Officer** – The State representative, as identified in section 1.6, responsible for this RFP, for the determination of Contract scope issues, and the only State representative who can authorize changes to the Contract
- 1.2.28 **Recovery Point Objective (RPO)** - The amount of data loss measured in time.

- 1.2.29 **Recovery Time Objective (RTO)** - The amount of time that elapses between the commencement of an outage and recovery.
- 1.2.30 **Request for Proposals (RFP)** – This RFP, issued DoIT, ADPICS #060B2490001, dated June 16, 2011, including any and all amendments
- 1.2.31 **Service Credit** - Shall mean an amount equal to the daily pro-rata monthly recurring service fee. One Service Credit equals one (1) calendar day of service.
- 1.2.32 **Service Level Agreement (SLA)** - This is a contract between a service provider and a customer that specifies, usually in measurable terms, what services the service provider will furnish.
- 1.2.33 **State** – State of Maryland.
- 1.2.34 **UNICODE** - A computing industry standard for the consistent encoding, representation and handling of text expressed in most of the world's writing systems.

### **1.3. Background**

With few exceptions, State agencies select and manage their own electronic messaging solutions and end-user applications. This includes separate hardware, software, maintenance fees, and technical staff to provide support at each of the agencies. The messaging solutions at each of these agencies are comprised of a combination of some or all of the following types of products:

- messaging server
- electronic messaging client
- authentication
- virus protection/spam control
- server operating system
- encryption
- backup and recovery
- storage device
- web browser
- mobile device
- mobile device operating system
- storage area network (SAN)
- personal computer operating system
- SMTP services
- integration with Microsoft SharePoint
- integration with departmental or agency applications that issue notifications via email, such as secure messaging applications, alerts issued from devices such as temperature sensors, etc.

To add to this complexity, many agencies use different products within each of the product types, resulting in a large variety of solutions. There is some commonality in the messaging server and electronic messaging client product types within the State. The majority of State agencies utilize either Microsoft Exchange or Novell GroupWise and RIM Blackberry Enterprise Server or Motorola Good Mobile Messaging Server for their primary and mobile device messaging servers and clients. The maintenance of these independent messaging environments is considered inefficient and not conducive to statewide collaboration.



Cloud computing is a model for enabling available, convenient and on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services). The idea is that these resources can be rapidly provisioned and released with minimal management effort or service provider interaction. This approach has the capability to reduce the cost of IT infrastructure by utilizing commercially available technologies that is based on virtualization of servers, databases, and applications to allow for capital cost savings.

DoIT is issuing this RFP as part of an effort to procure cloud computing services and make them available to State agencies through a two-step process. The first step, reflected in this RFP, is to identify and procure the most advantageous technologies or platform to use in delivering messaging and collaboration services. The second step will be to solicit through a second RFP the assistance of one or more vendors in configuring the available services to meet each agency's needs.

The terms of the RFP shall be incorporated by reference into the contract unless explicitly modified. The Agency intends that all provisions be susceptible to substantive enforcement at that time, regardless of the terminology. Whether the substantive provision is conveyed as the requirement of a plan, acknowledgment of an obligation, or assumption of a responsibility, the Agency shall be entitled to substantive enforcement of the requirement.

#### **1.4. Contract Type**

The Contract shall be a fixed price Indefinite Quantity Contract as defined in COMAR 21.06.03.06.

#### **1.5. Contract Duration**

The base term of this Contract shall be for a period of five (5) years, beginning on or about October 1, 2011, and terminating on or about September 30, 2016. Two (2) five-year renewal options may be exercised at the sole discretion of the State.

#### **1.6. Procurement Officer**

The sole point of contact in the State for purposes of this RFP prior to the award of any Contract is the Procurement Officer at the address listed below:

Gary Goldberg  
Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street, Room 416B  
Baltimore, Maryland 21201  
Phone Number: 410-767-0974  
Fax Number: 410-333-5958  
Email: [ggoldberg@dhmh.state.md.us](mailto:ggoldberg@dhmh.state.md.us)

DoIT may change the Procurement Officer at any time by written notice to the Contractor.

#### **1.7. Contract Manager**

The Contract Manager monitors the daily activities of the Contract and provides technical guidance to the Contractor. The Contract Manager for this Contract is:

Bruce Eikenberg  
Department of Information Technology  
45 Calvert Street

Annapolis, Maryland 21401  
Phone Number: 410-260-7307  
Fax Number: 410-974-5615  
Email: [Bruce.Eikenberg@doit.state.md.us](mailto:Bruce.Eikenberg@doit.state.md.us)

DoIT may change the Contract Manager at any time by written notice to the Contractor.

### **1.8. Pre-Proposal Conference**

A pre-proposal web conference (Pre-Proposal Conference) will be held on Tuesday, June 28, 2011, beginning at 10:00 AM. Participation in the Pre-Proposal Conference via the Internet is not mandatory, but all interested Offerors are encouraged to participate in order to facilitate better preparation of their proposals.

Those wishing to participate in the Pre-Proposal Conference must email or fax a completed Pre-proposal Conference Response Form (Response Form: Attachment A) to the Contract Manager identified in Section 1.7 above, no later than 12:00 PM on Monday, June 27, 2011. A separate Response Form must be sent to the Contract Manager by each person wishing to participate. Upon receipt of a Response Form, the Contract Manager will reply with a registration email that includes a link that may be used to register for the Pre-Proposal Conference. Registration must be completed by 2:00 PM on Monday June 27, 2011.

As promptly as is feasible subsequent to the Pre-Proposal Conference, a written summary of the discussion during the Pre-Proposal Conference, the attendance record, and all questions and answers known at that time will be distributed via email to all prospective Offerors known to have received a copy of this RFP.

### **1.9. Use of e-Maryland Marketplace**

eMaryland Marketplace (eMM) is an electronic commerce system administered by DGS. In addition to using the DoIT web site ([www.DoIT.maryland.gov](http://www.DoIT.maryland.gov)) and other means for transmitting the RFP and associated materials, the solicitation and minutes of the pre-bid/proposal conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation related information will be provided via eMM.

This means that all such information is immediately available to subscribers to eMM. In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Register at: <https://edidmarketplace.com/>. Click on "Registration" to begin the process and follow the prompts.

### **1.10. Questions**

Questions from prospective Offerors should be emailed to the Procurement Officer, identified above in Section 1.6, prior to the Pre-Proposal Web Conference. If possible and appropriate, such questions will be answered at the Pre-Proposal Web Conference. No substantive question will be answered prior to the Pre-Proposal Web Conference. Questions will also be accepted during the Pre-Proposal Web Conference. Questions posed at the web conference will be submitted via the chat capability of the web conference tool; however, such transmission shall not be considered a written submission of a question. If questions posed during the web conference are answered verbally or via chat, such answers are non-binding on the State. Only written responses to the questions in the form of a written question and answer set to this RFP will be valid.

Questions will also be accepted subsequent to the Pre-Proposal Web Conference and should be submitted in a timely manner prior to the proposal due date to the Procurement Officer. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be emailed to all vendors who are known to have received a copy of the RFP. Questions and Answers will be posted on DoIT website.

### **1.11. Proposals Due (Closing) Date**

One unbound original and five (5) paper copies of each proposal (Technical and Financial) must be received by the Contract Manager identified above in Section 1.7, **no later than 12:00 PM (local time) on Friday, July 15, 2011** in order to be considered. The Technical Proposal and the Financial Proposal must be submitted in separate sealed envelopes. A CD of the Technical Proposal in MS Word format must be enclosed with the original Technical Proposal. A CD of the Financial Proposal in MS Excel format (NOT in .pdf format) must be enclosed with the original Financial Proposal. Label each CD with the RFP title, ADPICs number, and Offeror name, and enclose it with the original copy of the appropriate proposal (Technical or Financial).

Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the State. Except as provided in COMAR 21.05.03.02, proposals received by the Contract Manager after the **due date and time, July 15, 2011 at 12:00 PM (local time)** will not be considered.

**Proposals may not be submitted by email or facsimile.**

### **1.12. Duration of Offer**

Proposals submitted in response to this RFP are irrevocable for the later of: (1) 180 days following the closing date of proposals, or of Best and Final Offers (BAFO), if requested, or (2) the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

### **1.13. Oral Presentations/Interviews**

Offerors may be required to make oral presentations to State representatives. Significant representations made by an Offeror during the oral presentation must be reduced to writing. All such representations shall become part of the Offeror's proposal and are binding if the contract is awarded. The Procurement Officer shall notify Offerors of the time and place of oral presentations. Typically oral presentations occur approximately two (2) weeks after the proposal due date and may take up to several days. Offerors may be required to demonstrate how their product satisfies the State's technical requirements during oral presentations. Offerors should plan accordingly.

Oral presentations will follow a specified format and the Procurement Officer will issue a letter with details and instructions prior to the presentations.

### **1.14. Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, amendments to the RFP will be posted on the DoIT Procurement web page and through e-Maryland Marketplace. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal due date must accompany the Offeror's proposal in the Transmittal Letter accompanying the Technical Proposal submittal. Acknowledgement of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

### **1.15. Cancellations; Discussions**

The State reserves the right to cancel this RFP, accept or reject any and all proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written proposals received without prior discussions or negotiations.

### **1.16. Incurred Expenses**

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

### **1.17. Economy of Preparation**

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror's proposal to meet the requirements of this RFP and should not include marketing material.

### **1.18. Protests/Disputes**

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

### **1.19. Multiple or Alternative Proposals**

Neither multiple nor alternate proposals will be accepted.

### **1.20. Access to Public Information Act Notice**

An Offeror shall give specific attention to the clear identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information can be disclosed (see COMAR 21.05.08.01). Information which is claimed to be confidential is to be placed after the Title Page and before the Table of Contents in the Technical proposal and if applicable in the Financial proposal.

### **1.21. Offeror Responsibilities**

The selected Offeror shall be responsible for all products and services required by this RFP. If an Offeror that seeks to perform or provide the services required by this RFP is a subsidiary of another entity, all information submitted by the Offeror, such as, but not limited to, references, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

### **1.22. Standard Contract**

By submitting an offer in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms of this RFP and the Contract, attached as Attachment B. **Any exceptions to this RFP**

**or the Contract must be clearly identified in the Executive Summary of the Technical Proposal.** A proposal that takes exception to these terms may be rejected and, therefore determined to be not reasonably susceptible of being selected for award.

### **1.23. Proposal Affidavit**

A proposal submitted by an Offeror shall be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Attachment C of this RFP.

### **1.24. Contract Affidavit**

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment D of this RFP. This Affidavit shall be provided within five (5) business days of notification of proposed Contract award.

### **1.25. Living Wage Requirement**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to the Md. Code Ann., State Finance and Procurement Article, Title 18. Additional information regarding the State's Living Wage requirement is contained in Attachment E entitled *Living Wage Requirements for Service Contracts*. If the Offeror fails to complete and submit the required Living Wage documentation, the State may determine an Offeror to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least (see amounts at <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>) per hour. The contract resulting from this solicitation will be deemed to be a Tier 1 pursuant to §18-102 (d).

Information pertaining to reporting obligations may be found by going to the Department of Labor and Licensing Regulation (DLLR) Website <http://www.dllr.state.md.us/labor/> and clicking on Living Wage.

### **1.26. Arrearages**

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become in arrears during the term of the Contract if selected for Contract award.

### **1.27. Procurement Method**

Contracts will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

### **1.28. Verification of Registration and Tax Payment**

Before a corporation can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT), State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. Any potential Offeror should complete registration prior to the due date for receipt of proposals. An Offeror's failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

### **1.29. False Statements**

Offerors are advised that section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

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

### **1.30. HIPAA - Business Associate Agreement**

The functions to be performed in accordance with Section 3 of this RFP constitute Business Associate functions as defined in HIPAA, and the bidder shall execute a Business Associate Agreement as required by HIPAA regulations at 45 CFR §164.501 and set forth in Attachment F . The fully executed Business Associate Agreement must be submitted within 10 working days after notification of award or award of contract, whichever is earlier. Should the Business Associate Agreement not be submitted upon expiration of the ten-day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the next qualified Offeror.

### **1.31. Conflict of Interest Affidavit and Disclosure**

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel and each of the participating subcontractor personnel shall be required to complete agreements such as Attachment G Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

### **1.32. Non-Visual Access**

By submitting a proposal, the Contractor warrants that the information technology offered under the proposal (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access. The Contractor further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access will not increase the cost of the information technology by more than five percent. For purposes of this Contract, the phrase "equivalent access" means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Non-visual Access Clause noted in COMAR 21.05.08.05 and referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations, which can be found at: [www.DoIT.maryland.gov](http://www.DoIT.maryland.gov) – Search: nva

### **1.33. Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller’s Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption shall be submitted to the State Comptroller’s Office for approval at the address specified on the COT/GAD X-10 form and shall include the business identification information as stated on the form and include the reason for the exemption. The COT/GAC X-10 form can be downloaded at:

<http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>

### **1.34. Electronic Procurement Authorized**

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the DoIT may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the RFP or the Contract.
- C. —“Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g. §1.33 related to EFT) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
  1. The Procurement Officer may conduct this procurement using eMM, email or facsimile to issue:
    - a. the solicitation;
    - b. any amendments;
    - c. pre-proposal conference documents;
    - d. questions and responses;
    - e. communications regarding the solicitation or proposal to any Offeror or potential Offeror including requests for clarification, explanation, or removal of elements of an Offeror's proposal deemed not acceptable;
    - f. notice that a proposal is not reasonably susceptible for award or does not meet minimum qualifications and notices of award selection or non-selection; and
    - g. the Procurement Officer’s decision on any protest or Contract claim.
  2. An Offeror or potential Offeror may use email or facsimile to:
    - a. ask questions regarding the solicitation;

- b. reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by email or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
    - c. request a debriefing; or,
    - d. submit a "No Bid Response" to the solicitation.
  3. The Procurement Officer, the State's Contract Manager, and the Contractor may conduct day-to-day Contract administration, except as outlined in section E of this subsection utilizing email, facsimile or other electronic means if authorized by the Procurement Officer or Contract Manager.
- B. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. submission of initial bids or proposals;
  2. filing of protests;
  3. filing of Contract claims;
  4. submission of documents determined by DoIT to require original signatures (e.g. Contract execution, Contract modifications, etc.); or
  5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.
- C. Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the RFP, the Contract, or in the direction from the Procurement Officer or Contract Manager.

### **1.35. Contract Extended to Include Other Non-State Governments or Agencies**

For the purposes of IT or telecommunications procurements, county, municipal, and other non-State governments or agencies may purchase from the Contractor services covered by this Contract at the same maximum prices to which the State would be subject under the Contract. All such purchases by non-State governments or agencies:

- Shall constitute contracts between the Contractor and that government or agency;
- Shall not constitute purchases by the State or State agencies under this RFP;
- Shall not be binding or enforceable against the State, and
- May be subject to other terms and conditions agreed to by the Contractor and the purchaser.

Contractor bears the risk of determining whether or not a government or agency with which the Contractor is dealing is a State agency.

### **1.36. Prompt Pay**

This procurement and the contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs dated August 1, 2008. The Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror who is awarded a Contract under this RFP must comply with the prompt payment requirements outlined in the Contract, §32 (see Attachment B). Additional information is available on the GOMA website at <http://www.oma.state.md.us/>.



## SECTION 2– MINIMUM QUALIFICATIONS

### 2.1. Vendor Minimum Qualifications

- 2.1.1. Offerors shall clearly demonstrate and document within the Executive Summary of their Technical Proposal that, as of the proposal due date, the Offeror meets the following Minimum Qualifications. The Offeror’s Executive Summary shall include reference to the page number(s) in the proposal where such evidence can be found:
- 2.1.2. Offeror shall have three (3) years of continuous experience (as a business; not just individual employees) providing the following concurrently:
  - a. Provision of cloud messaging and collaboration services to 3 separate and non-affiliated entities each of which has at least 15,000 or more end-users.
  - b. Contracts must have been in force for at least 6 months prior to the closing date of this RFP, with the minimum number of active messaging subscribers, as described in 2.1.2.a, for the entirety of that 6-month period.
- 2.1.3. The Offeror shall provide all documentation and written explanation needed to assure the State that they meet or exceed the requirements of the Federal Information Security Management Act (FISMA) of 2002.

## SECTION 3 – SCOPE OF WORK

### 3.1. Scope

#### 3.1.1. Objective

The objective of this RFP is to select one provider of cloud messaging and collaboration services in order to improve the efficiency and effectiveness of electronic data communications throughout State agencies. Currently, there are over fifty State agencies. The intent of this project is to consolidate State users to a single platform for electronic messaging services, collaborative tools, and support. This project is consistent with the perpetual objectives of consolidation, interoperability, and standards as discussed in the FY2012 State of Maryland Information Technology Master Plan.

The State is embarking on a strategy of:

- Implementing the solution for all Executive Branch agencies;
- Utilizing a scalable and phased approach to transition agencies from their existing systems to the consolidated solution.

State priorities for cloud messaging and collaboration services include, but are not limited to:

- Ensuring messaging availability for end-users;
- Providing a centrally maintained address list with the names and contact information of all employees within participating State agencies;
- Consolidating State users to a Maryland.gov domain while ensuring that legacy State employee email addresses are a legitimate alias to their new Maryland.gov address;
- Enabling access to view and share employee calendars;
- Reducing Statewide Information Technology (IT) costs;
- Ensuring similar or improved messaging performance/response time for end-users;
- Providing a common integrated solution for each of the various aspects of cloud messaging and collaborative services;
- Ensuring Federal and State laws and regulations concerning electronically stored information as they relate to requirements to preserve and produce messaging documents for legal purposes are maintained.

### 3.2. Technical Requirements

The State shall retain ownership of any user created/loaded data hosted on vendor's infrastructure, and maintains the right to request full electronic copies of the data at any time.

The requirements identified below as ~~–shall~~ are mandatory requirements. Those identified with ~~–should~~ are desirable, optional capabilities to the offering. The services shall be available online, on-demand, and dynamically scalable up or down per request for service from the provisioning authority via Internet.

#### General Cloud Computing Requirements

The Offeror shall provide a cloud computing solution that aligns to the following ~~–Essential~~ Characteristics” as defined in the National Institute of Standards and Technology (NIST) Working Definition and described in **Table 3.2.1** below.

**Table 3.2.1: General Cloud Computing Requirements**

Requirement ID	General Requirement
<p><b>On-demand self-service</b> – A State agency can provision computing capabilities automatically without requiring human interaction with the service provider.</p>	
3.2.1.1	<p>The Offeror shall provide the capability for State agencies to provision and de-provision mailboxes without vendor review or approval.</p>
<p><b>Broad network access</b> - Capabilities are available over the network and accessed through standard mechanisms that promote use by heterogeneous thin or thick client platforms (e.g., mobile phones, laptops, and PDAs).</p>	
3.2.1.2	<p>The Offeror shall utilize internet bandwidth of at least 1GB between the service and external connections.</p>
<p><b>Location independent resource pooling</b> - The provider’s computing resources are pooled to serve all government community cloud consumers using a multi-tenant model or a single-tenant private cloud with different physical and virtual resources dynamically assigned and reassigned according to consumer demand. The customer generally has no control or knowledge over the exact location of the provided resources but may be able to specify location at a higher level of abstraction (e.g., country, state, or datacenter). Examples of resources include storage, processing, memory, network bandwidth, and virtual machines.</p>	
3.2.1.3	<p>Provisioning, de-provisioning and operation of messaging and collaboration services shall be load balanced across data centers based on operational considerations to ensure maximum availability and end-user performance.</p>
<p><b>Rapid elasticity</b> - Capabilities can be rapidly and elastically provisioned to quickly scale up and rapidly released to quickly scale down. To the State agency, the capabilities available for provisioning often appear to be infinite and can be purchased in any quantity at any time.</p>	
3.2.1.4	<p>The Offeror shall support provisioning of unlimited mailboxes, computing capacity, and memory; represented by allowing each State agency to provision or de-provision a minimum of 2,500 mailboxes per day without degradation of service to any tenants within the cloud.</p>
<p><b>Measured Service</b> - Cloud systems automatically control and optimize resource use by leveraging a metering capability at some level of abstraction appropriate to the type of service (e.g., storage, processing, bandwidth, and active user accounts). Resource usage can be monitored, controlled, and reported providing transparency for both the provider and consumer of the utilized service.</p>	
3.2.1.5	<p>The Offeror shall offer visibility and control into service usage via dashboard or similar electronic means and the ability to scale usage up or down through appropriate management tools.</p>
<p><b>Additional Requirements</b></p>	
3.2.1.6	<p>The Offeror shall provide a public cloud with appropriate State issued domain names.</p>

**Table 3.2.1: General Cloud Computing Requirements**

Requirement ID	General Requirement
3.2.1.7	The Offeror shall document and demonstrate logical data isolation that shall be maintained within the multi-tenant environment throughout all aspects of the system’s functionality and system administration.
3.2.1.8	The Offeror shall implement and administer data security controls in accordance with State policy, allowing the State or its designated 3rd party to have read-only access to inspect the configurations and logs.

### 3.2.2 Service Management Requirements

Service Management Requirements address the technical requirements for supporting the Offeror’s management of the services offered. The requirements identified in **Table 3.2.2** are separated into the following service areas: Operational Management, Disaster Recovery (DR) and Continuity of Operations (COOP), Data Management, Billing & Invoice Tracking and Utilization Monitoring.

The Offeror shall use a modular, standards-based architecture in the design of their service Application Programming Interface. They shall identify key interfaces and define the system level (system-of-systems, system, subsystem, or component) at and above which these interfaces use various types of standards.

**Table 3.2.2: Service Management Requirements**

Requirement ID	Service Requirement
<b>Operational Management</b>	
3.2.2.1	The Offeror shall manage any Offeror-provided service delivery infrastructure, which may include network, storage, server, virtualization, operating system, platform and/middleware, or application software.
3.2.2.2	The Offeror shall support a secure, dual factor method of remote authentication and authorization to identified State Administrators that will allow State designated personnel the ability to perform management duties on the system.
3.2.2.3	The Offeror shall perform patch management appropriate to the scope of their control.
3.2.2.4	The Offeror shall provide the artifacts, security policies and procedures demonstrating its compliance with the security and privacy requirements detailed in Section 3.2.7.5.
3.2.2.5	The Offeror shall provide help desk services (including during system maintenance windows) to State Administrators for telephone and email support. The Offeror shall provide their response time objective and resolution windows based upon the severity of the incident as part of this solicitation.

*Table 3.2.2: Service Management Requirements*

<b>Requirement ID</b>	<b>Service Requirement</b>
<b><i>DR and COOP</i></b>	
3.2.2.6	The Offeror shall perform backup, recovery and refresh operations on a periodic basis. The Offeror shall provide their Recovery Point Objective, RPO (e.g. no more than 15 minutes of lost data and their Recovery Time Objective, RTO, (e.g. up within 1 hour of outage) as part of this solicitation.
3.2.2.7	The Offeror shall provide DR (Disaster Recovery) and COOP (Continuity of Operations) capabilities. The Offeror shall detail their COOP & DR methodology with sufficient detail that the provider is able to meet the RPO and RTO.
3.2.2.8	The Contractor shall ensure that appropriate personnel are available to provide services as required by this Contract during severe weather, natural disasters, pandemics, and other emergencies.
3.2.2.9	The Contractor shall develop and implement, as necessary, an emergency management plan consistent with the State and specific Agency Emergency Preparedness Plans and/or Continuity of Operations Plans (COOP).
3.2.2.10	The Contractor shall participate in all regional and statewide institutional emergency services plan rehearsals.
<b><i>Data Management</i></b>	
3.2.2.11	The Offeror shall transfer data on demand. Delivered data shall conform to an industry standard format capable of being transported to other systems such as mbox, pst, xml or other State required agreed to electronic formats. The Offeror shall specify the format(s) data will be provided in at the present time.
3.2.2.12	The Offeror shall manage data remnants throughout the data life cycle according to: <ul style="list-style-type: none"> <li>• NIST Special Publication 800-88: Guidelines for Media Sanitization, September 2006.</li> <li>• DoD 5220.22-M: National Industrial Security Program Operating Manual (NISPOM), February 2006</li> </ul>
3.2.2.13	The Offeror shall provide security mechanisms for handling data at rest and in transit in accordance with FIPS 140-2 encryption standards.
<b><i>Billing/Invoice Tracking</i></b>	
3.2.2.14	The Offeror shall provide an on-line billing website that will allow agencies / departments to see the status of their bills (updated no less than monthly).
3.2.2.15	The Offeror shall provide the ability for the State to track the status of their payments.

**Table 3.2.2: Service Management Requirements**

Requirement ID	Service Requirement
<b>Utilization Monitoring</b>	
3.2.2.16	The Offeror shall provide automatic monitoring of resource utilization and other events such as failure of service, degraded service, etc. via service dashboard or other electronic means. Appropriate control mechanisms and limiting of dashboard view shall be available.

### 3.2.3 Data Center Facilities Requirements

The Offeror shall comply with the Data Center Facility requirements in **Table 3.2.3**.

**Table 3.2.3: Data Center Facilities Requirements**

Requirement ID	Data Center Requirement
<b>Internet Access</b>	
3.2.3.1	<p>The Offeror shall identify Tier 1 Internet service providers it is peered with, and where this peering occurs. A Tier 1 network is an IP network that participates in the Internet solely via Settlement Free Interconnection, also known as settlement-free peering. The Offeror shall provide its Autonomous Number System.</p> <p>Offeror may offer the ability to directly peer at one or more locations between the Offeror’s network, and the State’s data network, networkMaryland™. The State is capable of directly peering at the following commercial peering locations:</p> <ul style="list-style-type: none"> <li>• Equinix – Ashburn, VA</li> <li>• Level3 – McLean, VA</li> <li>• Level3 – 300 West Lexington St, Baltimore, MD</li> </ul>
<b>LAN/WAN</b>	
3.2.3.2	The Offeror shall maintain a Wide Area Network (WAN), with a minimum of two widely separated data center facilities (at least 500 miles apart). Each data center must be connected to the Internet, and with each other, with a minimum rate of 1 Gb/second. The Offeror shall identify all data centers where the data at rest or data backup will reside.
3.2.3.3	<p>IP Addressing:</p> <ol style="list-style-type: none"> <li>a. The Offeror shall provide IP addresses and IP port assignments on external network interfaces.</li> <li>b. The Offeror shall allow mapping IP addresses to domains owned by the State, allowing mail services to be viewed externally as State URLs and services.</li> <li>c. The Offeror shall provide an infrastructure that is IPv4 and IPv6 capable.</li> </ol>

*Table 3.2.3: Data Center Facilities Requirements*

Requirement ID	Data Center Requirement
3.2.3.4	The Offeror’s infrastructure shall support DNSSEC in accordance with NIST Special Publication 800-81 rev. 1.
<b>Data Center Facilities</b>	
3.2.3.5	<p>The Offeror shall comply with the following security, operations, and environmental control standards or requirements and submit reports annually:</p> <ul style="list-style-type: none"> <li>a. SAS 70 type II Data Center checklist</li> <li>b. DCID 6/9 Manual Physical Security Standards for Sensitive Compartmentalized Information Facilities</li> <li>c. TIA-942, Data Center Standards (communications and environmental)</li> <li>d. Pertinent operational sections of ISO27002 for data center operations</li> </ul> <p>Upon request from the State, the hosting Offeror shall provide access to the hosting facility for inspection.</p>
3.2.3.6	All State data shall reside within the continental US and be in compliance with requirement 3.2.3.2.
3.2.3.7	The Offeror shall disclose the locations by (City, State) where data centers are located.

### 3.2.4 Messaging Services Requirements

Messaging services shall consist of the following REQUIRED Services, Service Options, Service Attributes and Service Units. The service requirements in **Table 3.2.4** have been categorized into the following sections:

1. General Provider Capabilities,
2. Service Management and Operations,
3. Mailbox Capabilities,
4. Collaboration Capabilities,
5. Mobile Device Capabilities,
6. Archive Capabilities,
7. E-Discovery Capabilities, and
8. User Administration, Authentication & Access

*Table 3.2.4: Messaging Service Requirements*

Requirement ID	Messaging Requirement
<b>General Provider Capabilities</b>	
3.2.4.1	<p>The Offeror shall provide Service Level Agreements (SLAs) that assure availability for 99.9% for each day of this contract and any extensions thereto excluding pre-scheduled maintenance. The Offeror shall document and provide their pre-scheduled maintenance policies and windows of operation as part of this solicitation. Pre-scheduled maintenance should not adversely impact end-users. The Offeror shall document and adhere to their SLAs to include:</p> <ul style="list-style-type: none"> <li>• Service Availability (Measured as total cloud messaging availability hours / Total hours within the month) displayed as a percentage of availability up to one-tenth of a percent (e.g. 99.9%).</li> <li>• Within 24 hours of a major outage occurrence resulting in greater than 1-hour of unscheduled downtime. The Offeror shall describe the outage including description of root-cause and fix.</li> <li>• Service provisioning and de-provisioning times (scale up and down) in near real-time.</li> <li>• A Recovery Point Objective (RPO) of &lt; 15 minutes per event.</li> <li>• A Recovery Time Objective (RTO) of &lt; one (1) hour per event.</li> <li>• The Offeror shall document and provide their maintenance policies that ensure the above RPO/RTO.</li> </ul> <p>The Offeror’s Service Level Agreements (SLAs) shall not be changed except by mutual consent by the Offeror and the State.</p>
3.2.4.2	<p>The Offeror shall demonstrate capability and separately price optional higher reliability services (higher than 99.9%) for selected state end-users.</p>
3.2.4.3	<p>The Offeror shall provide a soft copy and Uniform Resource Locator (URL) to a webpage for the State that describes the following:</p> <ul style="list-style-type: none"> <li>• Service Level Agreements (SLAs)</li> <li>• Help desk and technical support</li> <li>• Resources (documentation, articles/tutorials)</li> <li>• Data Rights, Sharing and Disclosure Policy</li> <li>• License Agreement/Terms of Service</li> </ul> <p>Note: The Offeror’s URL Links approved at the award shall not be changed except by mutual consent by the Contractor and State.</p>
3.2.4.4	<p>The Offeror should follow Information Technology Infrastructure Library (ITIL) best practices and have ISO 20001, and/or Capability Maturity Model (CMM) certification.</p>



*Table 3.2.4: Messaging Service Requirements*

Requirement ID	Messaging Requirement
<b>Service Management &amp; Operations</b>	
3.2.4.5	The Offeror shall provide a minimum individual mailbox size of 25 GB with options for larger capacity for individual users handled on a case-by-case basis. Archiving and e-discovery services shall be available for each end-user.
3.2.4.6	The Offeror shall allow State Administrators to disable agency IP traffic on ports as desired or required by agency policy and/or require all traffic over SSL/TLS session supporting FIPS 140-2 encryption at a minimum.
3.2.4.7	The Offeror shall support the latest versions of both MIME and S/MIME for messages and calendar invites/replies.
3.2.4.8	The Offeror shall support Sender Policy Framework (SPF) or Domain Keys Identified Mail (DKIM) lookups.
3.2.4.9	The Offeror shall support message threat filtering including inbound and outbound spam, anti-phishing, virus and email filtering capabilities.
3.2.4.10	The Offeror shall provide a capability to State Administrators to define and implement filtering, in order to strip unwanted/prohibited types of attachments, and restrict types of email, message content, or embedded code in addition to that normally administered by the Offeror.
3.2.4.11	The Offeror shall provide State Administrators access to a trouble ticketing system available to report, update, and check status of service incidents.
3.2.4.12	The Offeror should provide integration to trouble ticket system through web service supported Application Program Interface (API).
3.2.4.13	The Offeror shall provide a 24/7 help desk and technical support services (including during system maintenance windows) to State Administrators for telephone and email support.
3.2.4.14	The Offeror shall provide automatic alerting to pre-determined State Support Staff in the event of service failure or degraded service.
3.2.4.15	<p>The Offeror shall provide State Administrators with summary reporting and statistics periodically (i.e. real-time, monthly or quarterly) and on-demand including:</p> <ul style="list-style-type: none"> <li>• Dashboard reporting on system performance</li> <li>• Real-time and historical performance against SLAs</li> <li>• Account mailboxes and volumes</li> <li>• Reporting on utilization statistics</li> <li>• End-users approaching mailbox quota limits</li> </ul>

*Table 3.2.4: Messaging Service Requirements*

Requirement ID	Messaging Requirement
3.2.4.16	<p>The Offeror shall support platform-independent end-user access to support at least the functionality described in Mailbox capabilities utilizing the following web browsers:</p> <ul style="list-style-type: none"> <li>• Internet Explorer 7+</li> <li>• Mozilla Firefox 3+</li> <li>• Apple Safari 3++</li> <li>• Google Chrome</li> </ul>
3.2.4.17	<p>The Offeror shall provide reasonable system limitations on the end-users' messaging capabilities including:</p> <ul style="list-style-type: none"> <li>• Maximum message size of at least 25 MB,</li> <li>• Allows unlimited sending of email and instant messages.</li> <li>• Exception controls for users requiring messages/attachments exceeding 25MB</li> </ul>
3.2.4.18	<p>The Offeror shall provide State Administrators with the ability to send outbound emails to all email accounts in the event email is used for emergency notifications.</p>
3.2.4.19	<p>The Offeror shall provide end-users with account quota limitation notifications when mailbox reaches 90% of storage quota.</p>
3.2.4.20	<p>The Offeror shall support UNICODE.</p>
<b>Mailbox Capabilities</b>	
3.2.4.21	<p>The Offeror shall provide end-users with the ability to conduct email messaging supporting functionality as defined in IETF RFC 5322 and shall provide end-user capabilities for:</p> <ul style="list-style-type: none"> <li>• Creating, saving as draft, and sending messages including multiple attachments to recipients designated as —<b>D</b>”, —<b>CC</b>”, “<b>BCC</b>”.</li> <li>• Receiving messages and delineating between read and unread messages in an inbox.</li> <li>• Replying to a sender, replying to all recipients and forwarding messages to new recipients.</li> <li>• End-user indication as to the sender's transmitted importance level (high, normal, low) of a message.</li> <li>• Allow end-user to indicate the importance level (high, normal or low) of a message before sending the email.</li> <li>• Allow end-user to perform a spell check before sending the email.</li> </ul>
3.2.4.22	<p>The Offeror shall support an end-user's ability to request a read receipt upon sending an email message.</p>

*Table 3.2.4: Messaging Service Requirements*

<b>Requirement ID</b>	<b>Messaging Requirement</b>
3.2.4.23	The Offeror shall support the transmitting of a read receipt to the sender upon an end-user's reading of an email message.
3.2.4.24	The Offeror should provide integrated LISTSERV functionality.
3.2.4.25	The Offeror shall support an end-user's ability to send delayed email messages.
3.2.4.26	The Offeror shall allow State Administrators to designate alias addresses for an end-user mailbox.
3.2.4.27	The Offeror shall allow State Administrators to create group mailboxes and designate an end-user(s) as the group mailbox owner.
3.2.4.28	The Offeror should allow the end-user(s) designated as the group mailbox owner to manage the end-users with access to the group mailbox.
3.2.4.29	The Offeror shall allow State Administrators to create distribution lists and designate an end-user(s) as the distribution list owner.
3.2.4.30	The Offeror shall allow the end-user(s) designated as the distribution list owner to manage the email addresses in the distribution lists.
3.2.4.31	The Offeror shall retain messages identified as <del>spam</del> or <del>junk mail</del> for a State Administrator(s) review period of at least 14 days and allow for an end-user to review, and optionally identify as not junk mail to affect filters for future transmission by at least sender email address and/or sender domain name.
3.2.4.32	The Offeror shall allow the end-user to enable the system to automatically respond to email senders with an <del>out of office message</del> both for indefinite periods and for time-boxed designations.
3.2.4.33	The Offeror shall support end-user controlled email delegation capabilities (supervisor/personal assistant).
3.2.4.34	The Offeror shall provide State Administrators with the ability to provide access to a dormant user account to another active user account.
3.2.4.35	The Offeror should support time constrained email delegation capabilities. For instance, an end-user could appoint a personal assistant delegation privileges for a specific period of time.
3.2.4.36	The Offeror should provide the end-user with the option to create and edit email in a pop-up window.
3.2.4.37	The Offeror shall support the end-user's ability to specify an email address to forward all incoming mail.

*Table 3.2.4: Messaging Service Requirements*

<b>Requirement ID</b>	<b>Messaging Requirement</b>
3.2.4.38	The Offeror shall support Application Program Interface (API) integration for email, calendars and contact management.
3.2.4.39	The Offeror shall provide common Application Program Interface (APIs) allowing integration with third party tools such as email archiving solutions, E-Discovery solutions, and Electronic Records Management Software Applications.
<b>Collaboration and Calendar Management Capabilities</b>	
3.2.4.40	The Offeror shall provide end-users with instant messaging capabilities including presence indicator. An administrator should have the ability to enable or disable a user's instant messaging service.
3.2.4.41	The Offeror shall provide contact management capabilities allowing the end-user to: <ul style="list-style-type: none"> <li>• Create, edit, and delete personal contacts and information for the contacts.</li> <li>• Group or tag a collection of contacts</li> <li>• Send emails to a collection of contacts</li> </ul>
3.2.4.42	The Offeror shall allow the end-user to designate contacts as shared with other designated end-users.
3.2.4.43	The Offeror shall provide calendar management capabilities allowing the end-user to: <ul style="list-style-type: none"> <li>• Create, edit, and delete personal appointments and meeting requests.</li> <li>• Mark appointments and meeting requests as private.</li> <li>• Send calendar requests to other end-users with return notification of meeting acceptance or rejection and any comments thereto.</li> <li>• Create and edit shared calendars for use in resource schedule (i.e. conference rooms).</li> <li>• Designate owners and schedulers for shared calendars.</li> </ul>
3.2.4.44	The Offeror shall support end-user controlled calendar delegation capabilities (supervisor/personal assistant).
3.2.4.45	The Offeror should support time constrained calendar delegation capabilities. For instance, an end-user could appoint a personal assistant delegation privileges for a specific period of time.
<b>Mobile Device Capabilities</b>	
3.2.4.46	The Offeror shall support Email, Instant Messaging, Contact Sync, and Calendar Sync with various devices such as Android powered devices, iPhone, Microsoft's Windows Mobile, and Blackberry (RIM-BES).

*Table 3.2.4: Messaging Service Requirements*

<b>Requirement ID</b>	<b>Messaging Requirement</b>
3.2.4.47	The Offeror should provide additional support for other mobile device integration through dedicated mobile web site.
<b>Archival Capabilities</b>	
3.2.4.48	The Offeror shall employ an approach to saving and protecting the data contained in email messages, calendars, and instant messages in a separate immutable electronic data store, with both messages and metadata (inclusive of date, user, draft vs. final) so that messages can be retrieved quickly at a later date by an e-Discovery Service for the State Administrator.
3.2.4.49	The Offeror shall provide the ability to archive data based on content, sender, recipient, and/or other metadata with different archival periods per State policy or legal requirements.
3.2.4.50	The Offeror shall provide common APIs allowing integration with third party tools such as email archiving solutions, E-Discovery solutions, and Electronic Records Management Software Applications.
3.2.4.51	The Offeror shall retain records in their archive in accordance with State Administrators defined role based retention periods as defined by agencies.
<b>e-Discovery Capabilities</b>	
3.2.4.52	The Offeror shall include an e-Discovery service inclusive of forensic analysis, audit ability, and other similar governance requirements and save these searches for recall and execution at a later date.
3.2.4.53	The Offeror shall allow authorized end-users to query online and archived messages on demand and provide audit logs of end-user query and access to archive records. End-Users shall at a minimum have the following query capabilities: <ul style="list-style-type: none"> <li>• Keyword search across all content fields</li> <li>• Date/Time search</li> <li>• Sender, Recipient by email address</li> <li>• Boolean</li> </ul>
3.2.4.54	The Offeror shall allow the State authorized end-users to export data from the archive on demand in Bates Stamped PDF, mbox, pst, xml or other mutually agreed to format. Please confirm the format(s) available.

**Table 3.2.4: Messaging Service Requirements**

Requirement ID	Messaging Requirement
3.2.4.55	The Offeror shall include the ability to create a litigation hold or other similar hold capability as a special repository for all data and files without affecting the ability of the individual user to manage their data or files. A litigation hold effectively creates an immutable copy (retains records in their authentic state regardless of disposition date) of the account maintained while the end-user continues to function normally and may be established and used by authorized agency representatives to monitor a user’s files and communications for purposes such as evidence in legal proceedings, investigating insider threat suspicions, or investigating cyber security incidents.
3.2.4.56	The Offeror shall include the ability to permanently delete copies of data in accord with existing State and federal law and record retention schedules and policies, as well as to delete back-up versions of data maintained as part of the overall SaaS, in accordance with standard industry procedures for recycling backup media.
<b>User Administration, Authentication &amp; Access</b>	
3.2.4.57	The Offeror shall allow State Administrators to provide remote administration of end-user account provisioning, de-provisioning and access privileges through a web browser interface.
3.2.4.58	The Offeror shall provide configurable synchronization tools for integration with State LDAP sources for provisioning, de-provisioning, account disablement and enablement. Synchronization communication shall be conducted over Secure Sockets Layer (SSL)/Transport Layer Security (TLS) session supporting FIPS 140-2 encryption.
3.2.4.59	The Offeror shall comply with Media Protection standards as described in NIST Special Publication 800-88: <i>Guidelines for Media Sanitization</i> .
3.2.4.60	The Offeror shall support integration with agency directory services supporting an integrated authentication and authorization model (single sign on) utilizing the e-Government profile for Security Assertion Markup Language 2.0 (SAML 2.0).
3.2.4.61	The Offeror shall allow State Administrators to allow end-user access through the use of username and password if an administrator determines that the end-user cannot utilize the agency’s multi-factor identification.
3.2.4.62	The Offeror shall provide end-users the ability to reset their own passwords.
3.2.4.63	The Offeror’s shall provide end-users with a local client application allowing offline access to cached email. If a separate local client application is provided by the Offeror, the local client shall only perform all or a subset of all of the solution’s functionality available through the web interface. The local client application shall not be necessary to perform any function offered by the solution.

*Table 3.2.4: Messaging Service Requirements*

<b>Requirement ID</b>	<b>Messaging Requirement</b>
3.2.4.64	The Offeror shall provide administrative tools via a web browser for conducting all administrative activities that cannot be conducted through the LDAP synchronization process.
3.2.4.65	The Offeror shall provide management of multiple email domains (i.e. abc.dept.gov, xyz.dept.gov, 123.gov, abc.us, 123.mil, xyz.org, etc.) from a single administration and global directory perspective.
3.2.4.66	The Offeror shall support dual factor authentication including support for PKI certificates from a smartcard/CAC.

### 3.2.5 Collaboration Services Requirements

*Table 3.2.5: Collaboration Services Requirements*

Requirement ID	Collaboration Requirement
<b>Office Automation Service Capabilities</b>	
3.2.5.1	The Offeror shall provide the ability to provide collaborative document-authoring capabilities for end-users and authorized external audiences. These capabilities should include document versioning and presence. Authoring capabilities should include: <ul style="list-style-type: none"> <li>• Word Processing Documents</li> <li>• Spreadsheets</li> <li>• Presentations</li> </ul>
3.2.5.2	The Offeror shall provide common APIs allowing integration with third party tools such as E-Discovery solutions, and Electronic Records Management Software Applications.
3.2.5.3	The Offeror should provide web conference capabilities allowing end-user(s) to collaborate or share content or desktops online with a web audience.
3.2.5.4	The Offeror should provide video chat capabilities allowing end-user(s) to communicate through a web-cam and headset with other system users.
3.2.5.5	The Offeror shall include a Unified Communication offering that allows the office automation SaaS offering to integrate with Voice-Over-Internet-Protocol (VOIP) telephone systems.
3.2.5.6	The Offeror should provide the ability for the end-user to transmit SMS (Short Messaging Service).
3.2.5.7	The Offeror should provide the ability for the end-user to transmit or receive faxes from the messaging system.

### 3.2.6 Electronic Records Management (ERM) Requirements

#### **Email-as-a-Service Records Management Requirements**

Electronic Records Management (ERM) supports records collection, organization, categorization, storage, metadata capture, physical record tracking, retrieval, use, and disposition. This definition is consistent with NARA's definition, but elaborates further on the functionality generally offered in ERM systems.



*Table 3.2.6: Records Management Technical Requirements*

Requirement ID	Records Management Requirement
<b>Records Management Capabilities</b>	
3.2.6.1	<p>The Offeror shall support an immutable email management solution integrated with the messaging system in accordance with the requirement for Federal agencies to manage their email messages and attachments as electronic records in accordance with 36 CFR § 1236.20 &amp; 1236.22 (ref. a), including capabilities such as those identified in:</p> <ul style="list-style-type: none"> <li>• DoD STD-5015.2 V3 (ref. b), Electronic Records Management Software Applications Design Criteria Standard,</li> <li>• NARA Bulletin 2008-05, July 31, 2008, Guidance concerning the use of email archiving applications to store email (ref. c),</li> <li>• NARA Bulletin 2010-05 September 08, 2010, Guidance on Managing Records in Cloud Computing Environments (ref 8).</li> </ul> <p>These provide requirements for maintaining records to retain functionality and integrity throughout the records' full lifecycle including:</p> <ul style="list-style-type: none"> <li>• Maintenance of links between records and metadata, and</li> <li>• Categorization of records to manage retention and disposal, either through transfer of permanent records to NARA or deletion of temporary records in accordance with NARA-approved retention schedules.</li> </ul>
3.2.6.2	<p>The Offeror shall provide common Application Programming Interfaces (APIs) based upon open standards (ref: OMB Circular A-119) allowing integration with third party tools such as email archiving solutions, E-Discovery solutions, and Electronic Records Management Software Applications, including those that meet the requirements of 36 C.F.R. 1236.20 &amp; 22, and that also allow for the transfer of permanent records to NARA per 36 CFR Part 1235.</p>
3.2.6.3	<p>If certified, the Offeror shall provide DoD 5015.02-STD baseline requirements compliance test configuration ID number demonstrating they have passed DoD 5015.02-STD. Ref: <a href="http://jitic.fhu.disa.mil/recmgt/register.html">http://jitic.fhu.disa.mil/recmgt/register.html</a></p>
3.2.6.4	<p>The Offeror should provide a solution compliant with the following standards:</p> <ul style="list-style-type: none"> <li>• ISO 15489-1 (<a href="http://www.iso.org">http://www.iso.org</a>)</li> <li>• Federal Enterprise Architecture Records Management Profile (<a href="http://www.archives.gov/records-mgmt/pdf/rm-profile.pdf">http://www.archives.gov/records-mgmt/pdf/rm-profile.pdf</a>)</li> <li>• National Archives &amp; Records Administration RM Profile checklists (<a href="http://www.archives.gov/records-mgmt/initiatives/erm-guidance.html">http://www.archives.gov/records-mgmt/initiatives/erm-guidance.html</a>)</li> </ul>

### 3.2.7 Compliance Requirements

<i>Table 3.2.7: Compliance Requirements</i>	
<b>Requirement ID</b>	<b>Compliance Requirement</b>
3.2.7.1	The Contractor shall provide accessibility based on Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d)
3.2.7.2	All electronic and information technology (EIT) procured through this contract must meet the applicable accessibility standards at 36 CFR 1194, unless an agency exception to this requirement exists. The 36 CFR 1194 implements Section 508 of the Rehabilitation Act of 1973 as amended. All deliverables will be Section 508 compliant. Complete technical descriptions are provided on the following website: <a href="http://www.section508.gov">http://www.section508.gov</a>
3.2.7.3	The Contractor shall indicate whether each product or service is compliant or non-compliant with the accessibility standards at 36 CFR 1194. Further, the proposal must indicate where full details of compliance can be found (e.g., vendor’s website or other exact location).
3.2.7.4	Contractor shall address the issue of Non-Visual Access as discussed in 1.32.
3.2.7.5	<p>Offerors must, at a minimum, comply with the following security and privacy requirements and standards, and future derivatives that may evolve over time:</p> <ul style="list-style-type: none"> <li>• Federal Information Security Management Act (FISMA) of 2002.</li> <li>• Clinger-Cohen Act of 1996 also known as the <del>Information</del> Technology Management Reform Act of 1996.”</li> <li>• Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L.104-191): 45 CFR Part 160, 45 CFR Part 162 , and 45 CFR Part 164;</li> <li>• Health Information Technology for Economic and Clinical Health Act (HITECH Act); Enacted under ARA (Pub.L. 111-5)</li> <li>• Privacy Act of 1974 (5 U.S.C. § 552a).</li> <li>• Homeland Security Presidential Directive (HSPD-12), <del>Policy</del> for a Common Identification Standard for Federal Employees and Quoters”, August 27, 2004.</li> <li>• Office of Management and Budget (OMB) Circular A-130, <del>Management</del> of Federal Information Resources”, and Appendix III, <del>Security</del> of Federal Automated Information Systems”, as amended.</li> <li>• OMB Memorandum M-04-04, <del>E</del>Authentication Guidance for Federal Agencies.”</li> <li>• FIPS PUB 199, <del>Standards</del> for Security Categorization of Federal Information and Information Systems.”</li> <li>• FIPS PUB 200, <del>Minimum</del> Security Requirements for Federal Information and Information Systems.”</li> <li>• FIPS PUB 140-2, <del>Security</del> Requirements for Cryptographic Modules.”</li> <li>• NIST Special Publication 800-45 Rev 2, <del>Guidelines</del> on Electronic Mail</li> </ul>

**Table 3.2.7: Compliance Requirements**

Requirement ID	Compliance Requirement
	<p>Security.”</p> <ul style="list-style-type: none"> <li>• NIST Special Publication 800-18 Rev 1, —Guide for Developing Security Plans for Federal Information Systems.”</li> <li>• NIST Special Publication 800-30, —Risk Management Guide for Information Technology Security Risk Assessment Procedures for Information Technology Systems.”</li> <li>• NIST Special Publication 800-34, —Contingency Planning Guide for Information Technology Systems.”</li> <li>• NIST SP 800-37, Revision 1, —Guid for Applying the Risk Management Framework to Federal Information Systems: A Security Life Cycle Approach”</li> <li>• NIST Special Publication 800-47, —Security Guide for Interconnecting Information Technology Systems.”</li> <li>• NIST Special Publication 800-53 Revision 3, —Recommended Security Controls for Federal Information Systems.”</li> <li>• NIST Special Publication 800-53A, —Guid for Assessing the Security Controls in Federal Information Systems.”</li> <li>• Gramm-Leach-Bliley Act</li> </ul>

**3.2.8 Privacy Requirements**

**Table 3.2.8: Privacy Requirements**

Requirement ID	Privacy Requirement
<p>In accordance with the Federal Acquisitions Regulations (FAR) clause 52.239-1, the Contractor shall be responsible for the following privacy and security safeguards:</p>	
3.2.8.1	<p>The Contractor shall not publish or disclose in any manner, without the Contract Manager’s written consent, the details of any safeguards either designed or developed by the Contractor under this award or otherwise provided by the State.</p>
3.2.8.2	<p>To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of any non-public data collected and stored by the Contractor, the Contractor shall afford the State access to the Contractor’s facilities, installations, technical capabilities, operations, documentation, records, and databases.</p>
3.2.8.3	<p>If new or unanticipated threats or hazards are discovered by either the State or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.</p>

*Table 3.2.8: Privacy Requirements*

Requirement ID	Privacy Requirement
3.2.8.4	<p>The Contractor shall safeguard any Personally Identifiable Information (PII) stored in the information system in accordance with NIST SP 800-122, —Guideto Protecting the Confidentiality of Personally Identifiable Information (PII)” and in accordance with</p> <ul style="list-style-type: none"> <li>• M-06-16: Protection of Sensitive Agency Information: <a href="http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m06-16.pdf">http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m06-16.pdf</a> , and</li> <li>• M-07-16: Safeguarding Against and Responding to the Breach of Personally Identifiable Information: <a href="http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf">http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf</a>.</li> </ul>
3.2.8.5	<p>The Contractor shall provide the ability to analyze and quarantine outbound messages and attachments containing PII. Notification of the quarantine shall be sent to administrators.</p>
3.2.8.6	<p>The Contractor shall not display advertisements of any type or format to end-users of the Information System.</p>
3.2.8.7	<p>The Contractor shall not collect or disclose to any third party information regarding usage, content, or operational behaviors of end-users without Contract Monitor’s written authorization.</p>

### 3.3. Reports

#### 3.3.1 Management Reporting Deliverables

Deliverables listed below should be accessible via online interface not later than 10 days after the end of each calendar month and available for up to one year after creation. The information shall be available in comma separated values (CSV) file format. The Offeror shall provide non-cumulative monthly reports for the items described in the table below for:

- all State Government customers in aggregate total
- all State Government customers in aggregate total broken down by organization indicating the Agency /Department using a unique code as the identifier of the Agency/Department.

*Table 3.3.1: Reporting Deliverables*

Report / Deliverable	Description	Delivered To	Frequency
<b>Service Level Agreement (SLA)</b>	<ul style="list-style-type: none"> <li>• Service Availability (Measured as Total Cloud messaging availability Hours / Total Hours within the month) displayed as a percentage of availability up to one-one hundredth of a percent (e.g. 99.9%)</li> </ul>	Contract Manager	Monthly
	<ul style="list-style-type: none"> <li>• Number of individual instances in the calendar month where Service Availability was not available for 120 or more continuous minutes.</li> <li>• Provide text description of major outages (including description of root-cause and proposed fix) resulting in greater than 1-hour of unscheduled downtime within a month</li> </ul>	Contract Manager and others identified by the State	Within 24 hours of the start of the outage
<b>Help Desk / Trouble Tickets</b>	<ul style="list-style-type: none"> <li>• Number of Trouble Tickets Opened</li> <li>• Number of trouble tickets closed</li> <li>• Average mean time to respond to Trouble Tickets (time between trouble ticket opened and the first contact with customer)</li> <li>• Average mean time to resolve trouble ticket</li> </ul>	Contract Manager	Monthly
<b>Invoicing/Billing</b>	<ul style="list-style-type: none"> <li>• Provide invoicing consistent with and in the format requested by the Contract Manager (see Section 3.6).</li> </ul>	Contract Manager or Agency Designee	Monthly

#### 3.3.2 Specialized Reports

Additional reports may be requested from time to time.

#### 3.3.3 Deliverable Description/Acceptance Criteria

The Offeror shall provide one (1) hard copy and one (1) electronic version of each deliverable submitted to the Contract Manager. Attachment J and Attachment K will be used to submit and accept deliverables. The State will have ten (10) business days, to review, accept or reject all deliverables. Any comments made by the State shall be addressed and a revised deliverable submitted within five (5) business days after the receipt of the comments/rejection, unless a further time extension for incorporating the comments is approved by the Contract Manager.

<b>ID #</b>	<b>Deliverable Description</b>	<b>Acceptance Criteria</b>
3.3.3.1	Service Availability (Measured as Total Cloud messaging availability Hours / Total Hours within the month) displayed as a percentage of availability up to one-hundredth of a percent (e.g. 99.9%)	Delivered monthly (within 30 days of the end of the calendar month) and accurately covering the previous calendar month of Service Availability
3.3.3.2	Number of individual instances in the calendar month where Service Availability was not available for 120 or more continuous minutes.	Delivered monthly (within 30 days of the end of the calendar month) and accurately reflecting the individual instances in the calendar month where Service Availability was not available for 120 or more continuous minutes.
3.3.3.3	Text description of major outages (including description of root-cause and proposed fix) resulting in greater than 1-hour of unscheduled downtime within a month	Delivered to the RFP Contract Manager within 24 hours of major outage. The text will include the time/date of the outage, the duration of the outage, the cause of the outage, and the fix/proposed fix for the outage.
3.3.3.4	Help Desk Ticket Report for State	Delivered monthly (within 30 days of the end of the calendar month) and accurately reflecting: <ul style="list-style-type: none"> <li>• Number of Trouble Tickets Opened</li> <li>• Number of trouble tickets closed</li> <li>• Average mean time to respond to Trouble Tickets (time between trouble ticket opened and the first contact with customer)</li> <li>• Average mean time to resolve trouble ticket</li> </ul>
3.3.3.5	Invoicing/Billing	Delivered monthly (within 30 days of the end of the calendar month) and accurately reflecting billing activity (see Section 3.6).

### 3.4. Insurance Requirements

*Table 3.4.1: Insurance Requirements*

Requirement ID	Insurance Requirement
3.4.1.1	<p>The Contractor shall provide a copy of the Contractor’s current certificate of insurance that, at a minimum, shall contain the following:</p> <ul style="list-style-type: none"> <li>• Worker’s Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Worker’s Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employee’s Liability Act.</li> <li>• Errors and Omissions – The Contractor shall purchase and maintain Errors and Omissions liability coverage in the minimum amount of: \$1,000,000.</li> <li>• Commercial General Liability – The Contractor shall purchase and maintain at least the following insurance protection for liability claims arising as a result of the Contractor’s operations under this Contract: <ul style="list-style-type: none"> <li>➤ \$10,000,000: General Aggregate Limit</li> <li>➤ \$2,000,000: Products/completed operations aggregate limit</li> <li>➤ \$1,000,000: Each Occurrence Limit</li> <li>➤ \$1,000,000: Personal and Advertising Injury Limits</li> <li>➤ \$50,000: Fire Damage Limit</li> <li>➤ \$5,000: Medical Expense</li> </ul> </li> </ul> <p>In addition to the above, Contractor shall provide evidence of insurance coverage and business interruption insurance in the event that their data facility(s) are totally or partially unusable with the result that service to the State is affected. The State shall be a named insured on the business interruption policy to the full extent necessary to recover operational capabilities.</p>
3.4.1.2	<p>Upon execution of a Contract with the State, Contractor shall:</p> <ol style="list-style-type: none"> <li>(i) provide the State with current certificates of insurance that identify the State as an additional insured, and</li> <li>(ii) maintain and report such insurance annually to the Procurement Officer.</li> </ol> <p>All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Procurement Officer, by certified mail, not less than thirty (30) days advance notice of any non-renewal, the Contractor must provide the State with an insurance policy from another carrier at least thirty (30) days prior to the expiration of the insurance policy then in effect. All insurance policies must be with a company licensed to do business in Maryland.</p>
3.4.1.3	<p>The Contractor shall require that any subcontractors that are utilized to fulfill the obligations of the RFP obtain and maintain similar levels of insurance and shall provide the State with the same documentation as is required of the Contractor in any given RFP.</p>

### 3.5. Service Credits in the Event of Deficiencies in SLAs

3.5.1 It is critical to the success of this Contract that services be maintained in a timely manner and that the Offeror operate in an extremely reliable manner. It would be impracticable and extremely difficult to fix the actual damage sustained by the State in the event of certain delays or failures in administration and provision of services under this Contract. In the event that SLAs discussed in Section 3.3.1 are not achieved and that the failure is attributable to the Offeror or third parties working on behalf of the Offeror, service credits will be issued to the State.

#### 3.5.2 Remedies

- **System Availability.** The State of Maryland shall receive a Service Credit if it experiences performance issues in which System Availability (measured in a calendar month) is less than 99.9% and the source of the performance issue is within the sole control of the Offeror.
- **Continuous Downtime in Excess of 120 Minutes.** The State of Maryland shall receive a Service Credit if it experiences performance issues in which System Availability is unavailable for a continuous period that exceeds three hours and the source of the performance issue is within the sole control of the Offeror.
- **Failure to Report Root-Cause and Proposed Fix of Downtimes in Excess of ONE (1) Hour.** The State of Maryland shall receive a Service Credit if the Offeror fails to provide a report of the root cause and proposed fix of the downtime within the time periods described.

3.5.3 **Service Request Must be Initiated by the State.** In order to receive any of the Service Credits described, the State must notify the Offeror in writing within ninety (90) days from the occurrence of any event for which Service Credit is the remedy.

3.5.4 **Maximum Service Credits.** In the event that the State of Maryland experiences downtime, in other than a catastrophic event, it shall be eligible to receive from the Offeror a service credit. The aggregate maximum number of Service Credits to be issued by the Offeror in a single calendar month shall not exceed fifteen (15) Service Credits.



### 3.6. Invoicing Requirements

3.6.1 The Contractor shall provide invoicing consistent with and in the format provided by the Contract Manager.

*Table 3.6.1: Invoicing Requirements*

Requirement ID	Invoicing Requirement
3.6.1.1	<p>All invoices shall be submitted monthly no later than 15 calendar days after the end of the invoice period, unless specified differently in the RFP, and include the following information:</p> <ul style="list-style-type: none"><li>• Name and address of the State agency being billed,</li><li>• Vendor name,</li><li>• Remittance address,</li><li>• Federal taxpayer identification or (if owned by an individual) his/her social security number,</li><li>• Invoice Period,</li><li>• Invoice Date,</li><li>• Invoice Number,</li><li>• Amount Due,</li><li>• Purchase Order Number(s) being billed.</li></ul> <p>Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information.</p>
3.6.1.2	<p>The Contractor shall submit the invoices to the agency(s) who order under the contract resulting from this RFP. The State is generally exempt from Federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor, however, is not exempt from such sales and use taxes and may be liable for the same.</p>
3.6.1.3	<p>Additional invoicing requirements may be established.</p>

### 3.7. End-of-Contract Transition Requirements

3.7.1 The Contractor shall ensure that all necessary knowledge and materials for the tasks completed is transferred to the custody of State personnel.

*Table 3.7.1: End of Contract Transition Requirements*

Requirement ID	End-of-Contract Transition Requirement
3.7.1.1	<p>The Contractor is required to support requested activities for technical, business and administrative support to ensure effective and efficient end-of-contract transition to the State or another State agent. Examples of these activities include:</p> <ul style="list-style-type: none"> <li>• a final project debriefing meeting</li> <li>• organization and hand-off of project materials</li> <li>• documentation, electronic media</li> <li>• any final reports, updated work plans, and</li> <li>• final invoices</li> <li>• Certificate of Destruction of all data in accordance with Department of Defense standards</li> </ul>
3.7.1.2	<p>An End of Contract Transition Plan shall be due from the Contractor within 30 days of being notified by the State CM of a final contract end date. The transition plan shall include:</p> <ul style="list-style-type: none"> <li>• Any staffing concerns/issues;</li> <li>• Communications between the Contractor and the State CM;</li> <li>• Security and system access: review and closeout as needed;</li> <li>• Any hardware/software and telecommunications requirements and setup, other general office needs;</li> <li>• Any final training/orientation of State staff or another State agent’s staff;</li> <li>• Knowledge transfer to include: <ul style="list-style-type: none"> <li>➤ A working knowledge of the system environment as well as the general business practices of the State;</li> <li>➤ Review with DoIT the procedures and practices that support the business process and system;</li> <li>➤ Working knowledge of all technical and functional matters associated with the system, its system architecture, data file structure, system interfaces, any batch programs, and any hardware or software tools utilized in the performance of this Contract;</li> <li>➤ Documentation that lists and describes all hardware and software tools utilized in the performance of this Contract;</li> <li>➤ A working knowledge of various utilities and corollary software products used in support and operation of the system;</li> <li>➤ A working knowledge of all processes and procedures, both functional and technical, concerning all the system’s interfaces.</li> </ul> </li> </ul>

*Table 3.7.1: End of Contract Transition Requirements*

Requirement ID	End-of-Contract Transition Requirement
	<ul style="list-style-type: none"><li>• Completion of tasks and any unfinished work plan items;</li><li>• A working knowledge of any and all ongoing operational and maintenance readiness;</li><li>• Provision of the development and content of a checklist to document the State’s readiness;</li><li>• Demonstration and documentation of the Contractor’s team readiness, allowing them to move into any follow-on phase such as maintenance;</li><li>• Documentation of any risk factors and suggested solutions;</li><li>• Methodology for status reporting and meetings;</li><li>• Timing of transition;</li><li>• All documentation and data is current and complete with a hard and soft copy in a format prescribed by the State CM</li></ul>

## SECTION 4– PROPOSAL FORMAT

### 4.1. Two Part Submission

Offerors shall submit proposals in two separate volumes:

- Volume I - TECHNICAL PROPOSAL
- Volume II - FINANCIAL PROPOSAL

### 4.2. Proposals

Volume I - Technical Proposal shall be sealed separately from Volume II - Financial Proposal, but submitted simultaneously to the Procurement Officer. One unbound original, so identified, and five copies of each volume are to be submitted. An electronic version of both the Volume I- Technical Proposal in MS Word format and the Volume II - Financial Proposal in MS Excel format shall also be submitted with the unbound originals technical or financial volumes, as appropriate. CDs shall be labeled on the outside containing the RFP number and name, the name of the Offeror, and the volume number.

NOTE: Representations made by the Offeror in their proposal and in any subsequent Best and Final Offer (BAFO) process become contractual obligations that must be met during the contract term. Offeror Financial Proposals will be evaluated using a model based on assumptions about the State's usage of services. This model is not a guarantee or projection of actual utilization by the State.

### 4.3. Submission

Each Offeror is required to submit a separate sealed package for each Volume, which is to be labeled Volume I - Technical Proposal and Volume II - Financial Proposal respectively. Each sealed package shall bear the RFP title and number, name and address of the Offeror, the Volume number (I or II) and closing date and time for receipt of the proposals on the outside of the package. Offerors shall submit only one Technical Proposal and one Financial Proposal. Offerors shall include a section in the Technical Proposal providing general information about the Offeror. All pages of both proposal Volumes shall be consecutively numbered from beginning (Page 1) to end (Page ~~x~~”).

### 4.4. Delivery

Offerors may either mail or hand-deliver proposals.

- 4.4.1 For U.S. Postal Service deliveries, any proposal that has been received at the DoIT mailroom at 45 Calvert Street, Annapolis, MD for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If a vendor chooses to use the United States Postal Service for delivery, DoIT recommends that it use Express Mail, Priority Mail, or Certified Mail only, as these are the only forms for which both the date and time of receipt can be verified by DoIT. A vendor using first class mail will not be able to prove a timely delivery at the mailroom and it could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit.

- 4.4.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 4.4.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The register of proposals will be open to inspection only after the procurement officer makes a determination recommending the award of the contract.

## **4.5. Volume I – Technical Proposal**

### **4.5.1 Transmittal Letter**

A transmittal letter must accompany the technical proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. Only one transmittal letter is needed and it does not need to be bound with the technical proposal. The letters should contain:

1. Name & Address of Contractor
2. Name, Title and Telephone Number of Contact for Offeror
3. Statement that proposal is in response to this Solicitation
4. Signature, Typed Name and Title of individual authorized to commit Offeror to proposal
5. Federal Employer Identification Number of the Offeror, or, if a single individual, a social Security Number
6. Statement accepting all State contract terms or that exceptions are taken (to be listed in the Executive Summary; see below).
7. Acknowledgement of all Addenda to this RFP.

### **4.5.2 Format of Technical Proposal**

Inside a sealed package described in Section 4.3, above, one unbound original, so labeled, five (5) copies and the electronic version shall be provided. Section 3 of this RFP provides requirements and Section 4 provides reply instructions. The paragraphs in these RFP sections are numbered for ease of reference. In addition to the instructions below, the Offeror's Technical Proposal shall be organized and numbered in the same order as this RFP. This proposal organization will allow State officials and the Evaluation Committee to "map" Offeror responses directly to RFP requirements by paragraph number.

### **4.5.3 The Technical Proposal shall include the following in this order:**

#### **4.5.3.1 Title and Table of Contents**

The technical proposal should begin with a title page bearing the name and address of the Offeror and the name and number of this RFP. A table of contents for the technical proposal shall follow the title page. **Information that is claimed to be confidential is to be placed after the Title Page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in its Financial Proposal.** Unless there is a compelling case, an entire proposal should not be labeled confidential but just those portions that can reasonably be shown to be proprietary or confidential.

#### **4.5.3.2 Claim of Confidentiality**

Information which is claimed to be confidential is to be noted by reference and included after the Title page and before the Table of Contents, and if applicable, also in the Offeror's

Financial Proposal. An explanation for each claim of confidentiality shall be included (see sub-section 1.20).

#### **4.5.3.3 Executive Summary**

Offerors shall condense and highlight the contents of the technical proposal in a separate section titled “Executive Summary”. Offerors shall clearly demonstrate an understanding of the objectives and goals of DoIT as well as an understanding of the Scope of Work. This section should also include an analysis of the effort and resources, which will be needed to realize DoIT’s objectives.

The summary shall also identify any exceptions Offerors have taken to the requirements of this RFP, the Contract (Attachment B), or any other attachments. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. If no exceptions to terms and conditions are made, the summary shall so state.

#### **4.5.3.4 Verification of Offeror Minimum Qualifications**

Offerors shall give a definitive description of how they meet the vendor minimum qualifications discussed in Section 2.1.

#### **4.5.3.5 Offeror Technical Response to RFP Requirements**

If the State is seeking Offeror agreement to a requirement(s), Offerors shall state agreement or disagreement. Offerors shall address each major section in their technical proposals and describe how their proposed services will meet the requirement(s). Any paragraph in the technical proposal that responds to a work requirement shall include an explanation of how the work will be done. Offerors must bear in mind that any exception to a requirement, term or condition may result in having their proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

#### **4.5.3.6 Offeror System Security Plan**

Offeror shall submit a detailed system security plan describing how Offeror will manage State data and otherwise satisfy the security requirements of this RFP.

#### **4.5.3.7 Corporate Qualifications and Capabilities**

Offerors shall include information on past corporate experience with similar projects and/or services. Offerors shall describe how their organization can meet the requirements of this RFP and shall include the following:

- a. An overview of the Offeror’s experience and capabilities providing similar services. This description shall include:
  - i) The number of years the Offeror has provided these services;
  - ii) The number of clients and geographic locations that the Offeror currently serves.
- b. At least three references from non-affiliated customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. Each reference shall be from a client for whom the Offeror provided service within the past five years and shall include the following information:
  - i) Name of client organization
  - ii) Name, title, telephone number and email address, if available, of point of contact for client organization

- iii) Value, type, duration, and services provided

**The State of Maryland reserves the right to request additional references or use references not provided by an Offeror.**

- c. Offerors must include in their proposal a commonly accepted method to prove its fiscal integrity. Some acceptable methods include but are not limited to one or more of the following:
  - i) Dunn and Bradstreet Rating
  - ii) Standard and Poor's Rating
  - iii) Recently audited (or best available) financial statements
  - iv) Lines of credit
  - v) Evidence of a successful financial track record, and
  - vi) Evidence of adequate working capital
- d. The Offeror's process for resolving billing errors.
- e. Corporate organizational chart that identifies the complete structure of the company including any parent company, headquarters, regional offices or subsidiaries of the Offeror.
- f. Complete list of any subcontractors other than those used to meet a Minority Business Enterprise subcontracting goal. This list shall include a full description of the duties each subcontractor will perform and why/how they were deemed the most qualified for this project.
- g. Legal Action Summary. This summary shall include:
  - i) Statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action.
  - ii) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years.
  - iii) A description of any judgments against the Offeror within the past five (5) years, including the case name, number court, and what the final ruling or determination was from the court.
  - iv) In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.
  - v) Describe how the Offeror is configured managerially, financially, and individually so as to afford the assurance that it can execute a contract successfully.
- h. Complete list of any publically-disclosed security-related breaches by the Offeror or proposed subcontractors within the past five (5) years, including the substance of the breach, date, location(s), date of notification, recipients of notification, and other pertinent information that would enable the State to assess the quality and efficacy of the Offeror's response to security-related incidents.
- i. Past State Experience

As part of its offer, each Offeror is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or that have been completed within the last 5 years. For each identified contract the Offeror is to provide:

- i) The State contracting entity
- ii) A brief description of the services/goods provided
- iii) The dollar value of the contract
- iv) The term of the contract
- v) The State employee contact person (name, title, telephone number and if possible email address)
- vi) Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

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

#### **4.5.3.8 Criminal Justice Information System (CJIS) Compliance**

Offeror shall discuss their current progress and timeline to obtain a CJIS compliant cloud messaging system.

#### **4.5.3.9 Economic Benefit Factors**

The Offeror shall describe the benefits that will accrue to the State economy as a direct or indirect result of the Offeror's performance of the Contract resulting from this RFP. The Offeror will take into consideration the following elements: (do not include any detail of the Financial Proposals with this technical information)

- a. The estimated percentage of Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Offerors should be as specific as possible and provide a percentage breakdown of expenditures in this category.
- b. The estimated number and types of jobs for Maryland residents resulting from this Contract. Indicate job classifications, number of employees in each classification, and the aggregate Maryland payroll percentages to which the Contractor has committed at both prime and, if applicable, subcontract levels.
- c. Tax revenues to be generated for Maryland and its political subdivisions as a result of this Contract. Indicate tax category (sales tax, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract.
- d. The estimated percentage of subcontract dollars committed to Maryland small businesses and MBEs.

#### **4.5.3.10 Certificate of Insurance**

The Offeror shall provide a copy of the Offeror's current certificate(s) of insurance with the prescribed limits set forth in Section 3.4

#### **4.5.3.11 Forms to be returned with the original Technical Proposal**



- BID/PROPOSAL AFFIDAVIT (Attachment C)
- LIVING WAGE AFFIDAVIT (Attachment E-1)
- CONFLICT OF INTEREST AFFIDAVIT (Attachment G)
- NON-DISCLOSURE FORMS FOR SOLICITATION (Attachment H-1)

#### **4.6. Volume II - Financial Proposal**

Under separate sealed cover from the Technical Proposal and clearly identified in the format requirements identified in Section 4.3, the Contractor shall submit one unbound original, five (5) copies, and an electronic version in MS Excel of the Financial Proposal. The Financial Proposal shall contain all cost information in the format specified in Attachment I. Complete the cost sheets only as provided in the Price Proposal Instructions.

## SECTION 5– EVALUATION CRITERIA AND SELECTION PROCEDURE

### 5.1. Evaluation Criteria

Evaluation of proposals will be based on the criteria set forth below. The Contract resulting from this RFP will be awarded to the Offeror that is most advantageous to the State considering price and the technical factors set forth herein. In making this determination, technical factors will receive greater weight than price factors.

### 5.2. Technical Criteria

The criteria to be applied to each Technical Proposal are listed in descending order of importance.

- 5.2.1 Verification of Offeror’s minimum qualifications (Ref. Section 4.5.3.4)
- 5.2.2 Offeror’s technical response to RFP Requirements (Ref. Section 4.5.3.5)
- 5.2.3 Corporate Qualifications (Ref. Section 4.5.3.7)
- 5.2.4 Executive Summary (Ref. Section 4.5.3.3)
- 5.2.5 CJIS Compliance (Ref. Section 4.5.3.8)
- 5.2.6 Economic Benefit to State of Maryland (Ref. Section 4.5.3.9)

### 5.3. Financial Criteria

All qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on their total price proposed within the stated guidelines (as submitted on Attachment I—Financial Proposal Form).

### 5.4. Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference will be given if a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this RFP that is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and, the preference 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.

### 5.5. Selection Procedures

#### 5.5.1 General Selection Process

This Contract will be awarded in accordance with the Competitive Sealed Proposals process under Code of Maryland Regulations 21.05.03. The Competitive Sealed Proposals method is based on discussions and potential revision of proposals based on such discussions.

Accordingly, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without holding discussions. In either case of holding discussions or not doing so, the State may determine an Offeror to be not responsible and/or an Offeror's proposal to be not reasonably susceptible of being selected for award, at any time after the initial closing date for receipt of proposals and the review of those proposals. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, an Offeror's financial proposal will be returned unopened.

#### 5.5.2 Selection Process Sequence

- 5.5.2.1 The first level of review will be an evaluation for technical merit. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform, and to facilitate arrival at a Contract that will be most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions approximately two weeks after delivery of proposals to the State. The Procurement Officer will contact Offerors when the schedule is set by the State.
- 5.5.2.2 Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal.
- 5.5.2.3 The financial proposal of each Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of Offerors, the Procurement Officer may again conduct discussions.
- 5.5.2.4 When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs).

#### 5.5.3 Award Determination

Upon completion of all discussions and negotiations, reference checks and site visits, if any, the Procurement Officer will recommend award of the contract to the responsible Offeror whose proposal is determined to be the most advantageous to the State considering technical evaluation and price factors as set forth in this RFP. In making the most advantageous Offeror determination, technical factors will be given greater weight than financial factors.

The final award approval will be made by the Board of Public Works.

## **ATTACHMENTS**

### **ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM**

### **ATTACHMENT B – STATE (DoIT) CONTRACT**

### **ATTACHMENT C – BID/PROPOSAL AFFIDAVIT**

This form must be completed and submitted with the Offeror's technical proposal.

### **ATTACHMENT D – CONTRACT AFFIDAVIT**

This form is not required at proposals submission time. It must be submitted by the selected Offeror to the Procurement Officer with the Standard Contract (see Attachment B).

### **ATTACHMENT E – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS**

### **ATTACHMENT E-1 – MARYLAND LIVING WAGE AFFIDAVIT OF AGREEMENT**

This form must be completed and submitted with the Technical Proposal.

### **ATTACHMENT F – BUSINESS ASSOCIATE AGREEMENT FORM (HIPAA)**

This form must be completed and submitted with the Technical Proposal, if applicable.

### **ATTACHMENT F1 – BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This form must be completed and submitted only in the event of a breach.

### **ATTACHMENT G – CONFLICT OF INTEREST AFFIDAVIT**

This form must be completed and submitted with the Technical Proposal.

### **ATTACHMENT H-1 – NON-DISCLOSURE FORMS FOR SOLICITATION**

This document must be completed and submitted with the Technical Proposal.

### **ATTACHMENT H-2 - NON-DISCLOSURE FORMS FOR AWARD**

This form is to be submitted after receiving notification of award.

### **ATTACHMENT I – FINANCIAL PROPOSAL INSTRUCTIONS AND FORMS**

Financial Proposal forms must be completed and submitted as the Financial Proposal.

**ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM**

**PRE-PROPOSAL CONFERENCE RESPONSE FORM  
ADPICS NO. 060B2490001**

**CLOUD MESSAGING AND COLLABORATION SERVICES**

A Pre-Proposal Web Conference will be held at 10:00 AM on Tuesday, June 28, 2011. Please return this form by 12:00 PM on June 27, 2011, advising whether or not you plan to attend. A separate form must be completed for each participant.

Email or fax this form to the Contract Manager:

**Bruce Eikenberg**  
**Maryland Department of Information Technology**  
**45 Calvert Street**  
**Annapolis, Maryland 21401**  
**Phone Number: 410-260-7307**  
**Fax Number: 410-974-5615**  
**Email: [Bruce.Eikenberg@doit.state.md.us](mailto:Bruce.Eikenberg@doit.state.md.us)**

Name \_\_\_\_\_

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

Phone \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

## ATTACHMENT B – CONTRACT

### CLOUD MESSAGING AND COLLABORATION SERVICES

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between \_\_\_\_\_ and the STATE OF MARYLAND, acting through the DEPARTMENT OF INFORMATION TECHNOLOGY.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

#### 1. Definitions

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

- 1.1. “Contract Manager” means the DoIT representative and first point of contact for contract procedures and any discrepancies.
- 1.2. “Contractor” means \_\_\_\_\_ whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_.
- 1.3. “Department” means the Maryland Department of Information Technology.
- 1.4. “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_.
- 1.5. “Procurement Officer” means the individual listed in RFP Section 1.5, or designee.
- 1.6. “RFP” means the Request for Proposals for Cloud Messaging and Collaboration Services, ADPICS # 060B2490001, and any amendments thereto issued in writing by the State.
- 1.7. “State” means the State of Maryland.
- 1.8. “Technical Proposal” means the Contractor’s Technical Proposal, dated \_\_\_\_\_.

#### 2. Scope of Work

- 2.1. The Contractor shall provide all services and deliverables as may be defined in the RFP. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:  
  
Exhibit A – The RFP  
  
Exhibit B – The Technical Proposal  
  
Exhibit C – The Financial Proposal  
  
Exhibit D - State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_
- 2.2. The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Section 12, Disputes. The Contractor

may not delay or refuse performance under a change order for any reason, but will proceed immediately and diligently with performance of the Contract in accordance with the change.

- 2.3. Modifications to this Contract may be made by the State provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

### 3. Time for Performance.

The Contract resulting from this RFP shall be for a period of five years beginning on the Contract execution date and ending five years thereafter. All price rates and terms offered in Attachment I. are binding on the Contractor for the term of the Contract.

The subscription duration shall begin only after the State has executed a contract for implementation services and such services are installed in a production environment. The Contractor will receive a "Notice to Proceed" which then starts the subscriptions.

### 4. Consideration and Payment

- 4.1. In consideration of the satisfactory performance of the Services, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates specified in \_\_\_\_\_. Except with the express written consent of the Procurement Officer, total payments to the Contractor pursuant to this Contract may not exceed \$\_\_\_\_\_ (the "NTE Amount").

- 4.2. Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is \_\_\_\_\_. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Invoices shall be submitted to the Contract Manager. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3. In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

- 4.4. Contractor's eMaryland Marketplace vendor ID number is \_\_\_\_\_.

### 5. Rights to Records

- 5.1. The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

- 5.2. The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, 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 for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3. The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4. The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **6. Exclusive Use**

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

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

7.1. If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2. The Contractor shall hold and save harmless, defend or settle, at its own expense, any claim or suit against the State, including but not limited to the Department and its agents, officers, and employees, for or on account of the use of any copyrighted or uncopyrighted composition, trademark, services mark, secure process, patented or unpatented invention, article or appliance furnished or used in the performance of any Contract resulting from this RFP. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

7.3. 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 and expense: 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.

7.4. In connection with the services provided under the Contract, the Contractor may create, require or otherwise have rights in, and may, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models templates and general purpose consulting and software tools, utilities and routines (collectively, the "Contractor Technology"). To the extent any Contractor Technology is contained in any of the Contract deliverables including any derivative works, the Contractor grants the State a royalty-free, full paid, worldwide, perpetual, non-exclusive license to use such Contractor Technology in connection with the Contract deliverables for the State's purposes.

7.5. The Contractor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to the Contractor. The State may, in its sole discretion, elect to grant the Contractor a worldwide, perpetual, non-exclusive license, for which the State may require compensation, perhaps in the form of a royalty, for the Contractor's internal use of non-confidential Contract deliverables first originated and prepared by the Contractor for delivery to the State.

## **8. Confidentiality**



Subject to the Maryland Public Information Act and any other applicable laws, 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) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. 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 in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

**9. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

**10. Indemnification**

- 10.1. The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2. The State has no obligation 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 by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.3. The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.4. The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the 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 performance under this Contract. In the event that a claim, suit or action is made or filed against the State as a result of or relating to the Contractor's performance under this Contract, the Contractor agrees to assume the defense of any all such suits and pay the costs and expenses incidental hereto, subject to the right of the State to provide additional legal counsel at the State's own expense. This section shall survive the expiration of this Contract.

**11. Non-Hiring of Employees**

No official or employee of the State, as defined under State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

**12. Disputes**

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

**13. Maryland Law**

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

13.2. The Maryland Uniform Computer Information Transactions Act, Maryland Code Annotated, Commercial Law Article, Title 22, does not apply to this Contract, or to any PO, or Notice to Proceed, issued under this Contract.

13.3. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

**14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, 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 underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**15. Contingent Fee Prohibition**

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

**16. Non-availability of Funding**

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

**17. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**18. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, 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 21.07.01.12 (A) (2).

**19. Delays and Extensions of Time**

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under 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.

**20. Suspension of Work**

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

**21. Pre-Existing Regulations**

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

**22. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$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 the State certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

The Contractor shall comply with Election Law Article, Sections 14-101 through 14-108, Annotated Code of Maryland, 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.

**24. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after Contract closeout and final payment by the State under this Contract 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 the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance. This section shall survive expiration of this Contract.

**25. Compliance with Laws**

The Contractor hereby represents and warrants that:

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

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid or offer.

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 or offer, was inaccurate, incomplete, or not current.

**27. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 11 and 13 through 26 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

**28. Prompt Pay Requirements**

- 28.1. If a contractor withholds payment of an undisputed amount to its subcontractor, the Agency, at its option and in its sole discretion, may take one or more of the following actions:
  - 28.1.1. Not process further payments to the contractor until payment to the subcontractor is verified
  - 28.1.2. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - 28.1.3. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - 28.1.4. Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - 28.1.5. Take other or further actions as appropriate to resolve the withheld payment.
- 28.2. An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include (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.
- 28.3. An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:
  - 28.3.1. Affect the rights of the contracting parties under any other provision of law;
  - 28.3.2. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
  - 28.3.3. Result in liability against or prejudice the rights of the Department.

**29. Limitation of Liability**

- 29.1. For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:
  - A. For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 7 of this Contract;
  - B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;
  - C. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor’s liability shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims arising under Section 10, “Indemnification”, of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor’s liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

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

- 30.1. Risk of loss for conforming supplies, equipment and materials specified as deliverables to the State hereunder shall remain with the Contractor until the supplies, equipment, materials and other deliverables are received by the State. Title of all such deliverables passes to the State upon receipt by the State, subject to the State’s acceptance and payment for the same in accordance with the terms of this Contract.

**31. Parent Company Guarantee (If Applicable)**

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

**32. Commercial Non-Discrimination**

- 32.1. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 32.2. The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by DOIT, in all subcontracts.
- 32.3. As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

**33. Administrative**

- 33.1. **Procurement Officer.** All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination. The work to be accomplished under this Contract shall be performed under the direction of the Contract Manager.
- 33.2. **Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:

Maryland Department of Information Technology  
45 Calvert St., Room 447  
Annapolis, MD 21401

Attention: Gary Goldberg - Procurement Officer

If to the Contractor:

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

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

CONTRACTOR

STATE OF MARYLAND  
DEPARTMENT OF INFORMATION TECHNOLOGY

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

\_\_\_\_\_  
By: Elliot Schlanger, Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Approved for form and legal sufficiency this \_\_\_\_\_ day \_\_\_\_\_, 2011.

\_\_\_\_\_  
Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(BPW Item #)

## ATTACHMENT C – BID/PROPOSAL AFFIDAVIT

### A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) \_\_\_\_\_ and the duly authorized representative of (business) \_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in Maryland Code Annotated, State Finance and Procurement Article, § 19-103. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### B.1 CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES

The undersigned bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, Md. Code Ann., State Finance and Procurement Article, §14-308(a)(2), which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.



C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, as is defined in Maryland Code Annotated, State Finance and Procurement Article, § 16-101(b), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Maryland Code Annotated, Criminal Procedure Article, §6-220, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

---

---

---

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, Maryland Code Annotated, State Finance and Procurement Article, §14-308;
- (5) Been convicted of a violation of Maryland Code Annotated, State Finance and Procurement Article, §11-205.1;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Maryland Code Annotated, State Finance and Procurement Article, Title 19 with regard to a public or private contract; or

- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

---

---

---

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

---

---

---

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Maryland Code Annotated, State Finance and Procurement Article, §§16-101, et seq.; and
- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

---

---

---

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor, to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Maryland Code Annotated, State Finance and Procurement Article, Title 16 will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Maryland Code Annotated, State Finance and Procurement Article, §13-221, which require 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 the 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.

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Maryland Code Annotated, Election Law Article, §§14-101 through 14-108, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, 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.

K. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business' policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K (2) (b), above;
  - (h) Notify its employees in the statement required by §K (2) (b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under §K (2) (h) (ii), above, or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under §K (2) (h) (ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K (2) (a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K (4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

- (1) The business named above is a  domestic  foreign (check one) corporation registered in accordance with the Maryland Code Annotated, Corporations and Associations Article, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

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

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

\_\_\_\_\_

(If not applicable, so state)

- (2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

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

By: \_\_\_\_\_  
(Authorized Representative and Affiant)

Revised June, 2011

**ATTACHMENT D - CONTRACT AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

I am the \_\_\_\_\_ (enter title), and the duly authorized representative of \_\_\_\_\_ (enter business name) and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT**

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic ) (foreign ) corporation registered in accordance with the Maryland Code Annotated, Corporations and Associations Article, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

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

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

\_\_\_\_\_

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

**C. CERTAIN AFFIRMATIONS VALID**

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 20\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

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

(Authorized Representative and Affiant)

**ATTACHMENT E – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS**

**Living Wage Requirements for Service Contracts**

- A. This contract is subject to the Living Wage requirements in the Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee’s time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
    - (a) Has a State contract for services valued at less than \$100,000, or
    - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
  - (2) A Subcontractor who:
    - (a) Performs work on a State contract for services valued at less than \$100,000,
    - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
    - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B (1) (b) above, or B (3) or C below.
  - (3) Service contracts for the following:
    - (a) Services with a Public Service Company;
    - (b) Services with a nonprofit organization;
    - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement (~~Unit~~);  
or
    - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to



employees to avoid the imposition of any of the requirements of the Md. Code Ann., State Finance and Procurement Article, Title 18.

- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in the Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage set at Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State and Finance Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry Website at <http://www.dllr.state.md.us/labor/> and clicking on Living Wage.

**ATTACHMENT E-1 - MARYLAND LIVING WAGE AFFIDAVIT OF AGREEMENT**

Contract No. \_\_\_\_\_ Tier \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Code \_\_\_\_\_

**If the Contract is Exempt from the Living Wage Law**

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland’s Living Wage Law for the following reasons (check all that apply):

- Bidder/Offeror is a nonprofit organization
- Bidder/Offeror is a public service company
- Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

**If the Contract is a Living Wage Contract**

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with the Md. Code Ann., State Finance and Procurement Article, Title 18 and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. \_\_\_\_\_ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract
- The employee(s) proposed to work on the contract is/are 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature Date

**Submit This Affidavit with Bid/Proposal**

## ATTACHMENT F – BUSINESS ASSOCIATE AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the ~~–Agreement~~) is made by and among the State of Maryland (herein referred to as ~~–Covered Entity~~) and \_\_\_\_\_ (hereinafter known as ~~–Business Associate~~). Covered Entity and Business Associate shall collectively be known herein as the ~~–Parties~~".

WHEREAS, Covered Entity have a business relationship with Business Associate that is memorialized in a separate agreement (the ~~–Underlying Agreement~~) pursuant to which Business Associate may be considered a ~~–business associate~~ of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent regulations (45 CFR Parts 160 and 64), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the ~~–HITECH Act~~), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, ~~–HIPAA~~); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (~~–PHI~~) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§4-301 *et seq.*) (~~–MCMRA~~); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

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

#### I. DEFINITIONS.

- A. Individual. ~~–Individual~~ shall have the same meaning as the term ~~–individual~~ in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- B. Breach. ~~–Breach~~ shall have the same meaning as the term ~~–breach~~ in 45 CFR § 164.402.

- C. Designated Record Set. ~~Designated Record Set~~ shall have the same meaning as the term ~~designated record set~~ in 45 CFR §164.501.
- D. Privacy Rule. ~~Privacy Rule~~ shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- E. Protected Health Information. ~~Protected Health Information~~ or ~~PHI~~ shall have the same meaning as the term ~~protected health information~~ in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- F. Required By Law. ~~Required By Law~~ shall have the same meaning as the term ~~required by law~~ in 45 CFR §164.501.
- G. Secretary. ~~Secretary~~ shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.
- H. Unsecured Protected Health Information. ~~Unsecured Protected Health Information~~ or ~~Unsecured PHI~~ shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

## II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE.

- A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule.
- B. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e).
- C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

## III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

- A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement, the MCMRA, or as Required By Law.
- B. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- C. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI in violation of this Agreement
- D. In addition to its obligations in Section III.C, Business Associate shall document and notify Covered Entity of a Breach of Unsecured PHI. Business Associate's notification to Covered Entity hereunder shall:
  1. Be made to Covered Entity without unreasonable delay and in no case later than 50 calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a

criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 CFR Part E within 50 calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;

2. Include the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
  3. Be in substantially the same form as Exhibit A hereto; and
  4. Include a draft letter for the Covered Entity to utilize to notify the Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
    - a) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - b) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
    - c) Any steps the Individuals should take to protect themselves from potential harm resulting from the Breach;
    - d) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
    - e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, Web site, or postal address.
- E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.
- F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- G. To the extent applicable, Business Associate shall provide access to Protected Health Information in a Designated Record Set at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.
- H. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual.

- I. Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.
- J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond to the individual's request.
- K. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.
- L. Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate.
- M. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j) (1).
- N. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### **IV. TERM AND TERMINATION.**

- A. Term. The Term of this Agreement shall be effective as of \_\_\_\_\_, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section IV.

- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement;
  2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  3. If neither termination nor cure is feasible, report the violation to the Secretary.
- C. Effect of Termination.
1. Except as provided in paragraph C (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the Protected Health Information.
  2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.
  3. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

## V. **CONSIDERATION**

Business associate recognizes that the promises it has made in this agreement shall, henceforth, be detrimentally relied upon by covered entity in choosing to continue or commence a business relationship with business associate.

## VI. **REMEDIES IN EVENT OF BREACH**

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any



of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

## **VII. MODIFICATION; AMENDMENT**

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

## **VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES**

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

## **IX. COMPLIANCE WITH STATE LAW**

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for protected health information, Business Associate shall comply with the more restrictive protection requirement.

## **X. MISCELLANEOUS.**

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- B. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Ramiak James  
Privacy Officer  
Department of Health & Mental Hygiene  
Division of Corporate Compliance & Integrity  
201 W. Preston Street  
Room 522  
Baltimore, MD 21201-2301  
Phone: (410) 767-5411

and/or any other person designated by the Contract Manager.

- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY:

BUSINESS ASSOCIATE:

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

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

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

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

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

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

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

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

**ATTACHMENT F-1 - BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

**NOTIFICATION TO THE STATE OF MARYLAND  
ABOUT A**

**BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section IIID (3) of the Business Associate Agreement between:

- The State of Maryland
- and
- \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies DoIT that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_  
\_\_\_\_\_

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

Does the breach involve 500 or more individuals? Yes / No      If yes, do the people live in multiple states? Yes / No

Number of individuals affected by the breach:  
\_\_\_\_\_

Names of individuals affected by the breach: \_\_\_\_\_ (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):  
\_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

**ATTACHMENT G – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

**Reference COMAR 21.05.08.08**

- A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- B. "Person" has the meaning stated in COMAR 21.01.02.01B (64) and includes an Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.
- C. The Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):
- E. The Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

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

By:

\_\_\_\_\_ (Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH THE TECHNICAL RESPONSE

**ATTACHMENT H (1) - NON-DISCLOSURE AGREEMENT (SOLICITATION)**

**THIS AGREEMENT** (~~Agreement~~"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the State of Maryland (hereinafter "the State"), acting by and through its Department of Information Technology (hereinafter the ~~Department~~"), and \_\_\_\_\_, a corporation with its principal business offices located at \_\_\_\_\_ (hereinafter the ~~Offeror~~").

**RECITALS**

**WHEREAS**, Offeror intends to submit a proposal in response to a Request for Proposals numbered **ADPICS #060B2490001** and titled **CLOUD MESSAGING AND COLLABORATION SERVICES** (the ~~RFP~~"), and

**WHEREAS**, in order for the Offeror to submit such a proposal, it will be necessary for the State to provide the Offeror with access to certain Confidential Information.

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the Offeror's proposal to the RFP (hereinafter referred to as the ~~Proposal~~"), and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Recitals. The Recitals are not merely prefatory but are an integral part hereof.
2. Offeror's qualifications. Offeror represents and warrants that:
  - A. It is qualified to do business in the State and that it will take such actions, from time to time hereafter, as may be necessary to remain so qualified during the period covered by this Agreement;
  - B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the period covered by this Agreement;
  - C. It is in compliance with all federal, State and local laws, regulations, and ordinances applicable to its business and it is not aware of any actual or threatened actions, claims, suits, orders, or other matters that would prevent or limit its ability to satisfactorily and fully perform its obligations under this Agreement or under any subsequent agreement that it may enter into with the State in connection with its Proposal; and
  - D. It is the correctly named and identified entity that intends to submit the Proposal and it is not controlling, controlled by, or under common control with the entity that intends to submit the Proposal. If the Proposal will be submitted by a joint venture or any other

group of separate business entities, each entity comprising such group has been clearly identified in and has executed this Agreement.

3. Term of Agreement. The term of this Agreement shall commence on the date it is fully signed by both parties and shall continue thereafter until the earlier to occur of: (i) three (3) years following the return of the Confidential Information in accordance with Section 6 of this Agreement; (ii) receipt of written notice given by the State to Offeror terminating this Agreement; or (iii) the date upon which the terms of this Agreement are expressly superseded by the confidentiality provisions of any subsequent agreement which the parties may enter into in connection with the Proposal. If all Confidential Information is not returned to the State in accordance with Section 6 of this Agreement, then this Agreement shall continue in full force and effect until such time as all Confidential Information is returned to the State and the State acknowledges its receipt in writing.
4. What constitutes —Confidential Information? Confidential Information means any and all information provided by or made available by the State to Offeror in connection with the Proposal, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that Offeror views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State for Offeror to prepare and submit its Proposal.
5. Use of Confidential Information. In consideration of the State's allowing Offeror access to the Confidential Information:
  - A. Offeror hereby agrees to hold the Confidential Information in trust and in strictest confidence, and to take all measures necessary to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
  - B. Offeror shall not, without the State's prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of preparing its Proposal. Offeror shall limit access to Confidential Information to its employees and agents (~~Offeror's Personnel~~) who have a demonstrable need to know such Confidential Information in order to prepare the Proposal and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of Offeror's Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute and date Exhibit A next to their name and by doing so agrees to be subject to the terms and conditions of this Agreement to the same extent as Offeror. If Offeror intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the preparation of the Proposal or who will otherwise have a role in performing any aspect of the Proposal, Offeror shall first obtain the written consent of the State to any such

dissemination. The State may grant, deny, or condition any such consent as it may deem appropriate in its sole and absolute subjective discretion.

6. Return of Confidential Information. Offeror shall return all Confidential Information to the Department within five (5) business days of the State's acceptance of Offeror's Proposal. If Offeror does not submit a Proposal, Offeror shall return the Confidential Information to the Department within 30 days of receiving the material. All Confidential Information returned to the State shall be accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of Offeror authorized to bind the Offeror.
7. Liability for Confidential Information. Offeror acknowledges that any failure by Offeror or Offeror's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, Offeror and each of Offeror's Personnel agree that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Offeror and each of Offeror's Personnel consent to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages from Offeror and/or each of Offeror's Personnel, as applicable, for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by Offeror or any of Offeror's Personnel to comply with the requirements of this Agreement, Offeror and such Offeror's Personnel shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.
8. Unauthorized Use. Offeror shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of Confidential Information by any of Offeror's Personnel or Offeror's former Personnel. Offeror shall, at Offeror's expense, cooperate with the State in seeking injunctive or other equitable relief against any such person.
9. Governing law. This Agreement shall be governed by the laws of the State of Maryland.
10. False and fraudulent statements. Offeror acknowledges that pursuant to the Md. Code Ann., State Finance and Procurement Article, § 11-205.1, a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than \$20,000 and/or imprisonment not exceeding 5 years or both. Offeror further acknowledges that this Agreement is a statement made in connection with a procurement contract.
11. Signing authority for Offeror. The individual signing below on behalf of Offeror warrants and represents that s/he is fully authorized to bind Offeror to the terms and conditions

specified in this Agreement. The individual signing below acknowledges that a breach of this warranty and representation may result in personal liability.

12. Other obligations. The parties further agree that, unless otherwise agreed in writing: (a) this Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be amended or modified except by a written instrument signed by both parties; (b) the State may waive any rights under this Agreement only by written waiver duly signed by the State, and no failure by the State to exercise or delay in exercising a right under this Agreement shall constitute a waiver of such right; (c) the rights and obligations of Offeror may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State; (d) the State makes no representations or warranties as to the accuracy or completeness of any Confidential Information; (e) the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement; (f) all notices under this Agreement must be in writing and shall be deemed to have been delivered to and received by a party, and will otherwise become effective, on the date of actual delivery thereof (by personal delivery, express delivery service or certified mail) to the Notice Address of such party set forth below; and (g) signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures.

14. Notices. All notices hereunder shall be in writing and either delivered personally, by express delivery, or sent by certified or registered mail, postage prepaid as follows:

If to the State: Bruce Eikenberg  
Maryland Department of Information Technology  
45 Calvert Street  
Annapolis, Maryland 21401

If to the Offeror: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

STATE OF MARYLAND  
By: DEPARTMENT OF INFORMATION  
TECHNOLOGY

OFFEROR

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



**EXHIBIT A**

**LIST OF OFFEROR’S EMPLOYEES, SUBCONTRACTORS, AND AGENTS WHO WILL BE GIVEN  
ACCESS TO THE CONFIDENTIAL INFORMATION**

Printed Name and Address of Individual or Agent	Employee (E) or Agent (A)	Affiliation	Signature/Date

**EXHIBIT B**

**CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL AND /OR  
STORED INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that:  
(i) all Confidential and/or Stored Information which is the subject matter of that certain Agreement  
by and between the State of Maryland and \_\_\_\_\_  
(-Offeror”) dated \_\_\_\_\_, 20\_\_\_\_ (-Agreement”) is attached hereto and is hereby  
returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am  
legally authorized to bind the Offeror to this affirmation.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT  
THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY  
KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.**

DATE: \_\_\_\_\_

NAME OF OFFEROR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

**ATTACHMENT H (2) – NON-DISCLOSURE AGREEMENT (AWARD)**

**THIS NON-DISCLOSURE AGREEMENT** (the ~~—Agreement~~) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the State of Maryland (the ~~—State~~), acting by and through its Department of Information Technology (the ~~—Department~~) and \_\_\_\_\_ (the ~~—Contractor~~).

**RECITALS**

**WHEREAS**, the Contractor has been awarded a contract (the ~~—Contract~~) for Cloud Messaging and Collaborative Services Contract No. \_\_\_\_\_ - \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_\_, (the ~~—Contract~~); and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the ~~—Contractor’s Personnel~~) with access to certain information the State deems confidential information (the ~~—Confidential Information~~).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the RFP and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, whether through Contractor action or inaction, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. This specifically includes Confidential Information transmitted through, or stored within, Contractor-provided equipment or facilities. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel that are required to have access to the Confidential Information in order to complete the services required by the Contract are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the RFP or who will otherwise have a role in performing any aspect of the RFP, the Contractor shall first obtain the written consent of the

State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.

4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall immediately advise the State, by telephone and in writing, if it learns of any actual or potential unauthorized use, misappropriation, disclosure or breach of the Confidential Information by the Contractor, including the Contractor's Personnel, Contractor's former Personnel, or its agents. Notification must be made in person as well as through written communication, immediately if discovered during business hours and as soon as possible if the State's Offices are closed. The Contractor agrees to contact any and all persons listed by the State as contacts for this Contract until personal notification is received - as such, leaving a message is not acceptable. The Contractor shall be liable for any damage that results from the breach or potential breach of Confidential Information, including the release of Confidential Information that results in the Contractor's negligence or failure to follow security processes required by the industry. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s) responsible for the breach of Confidential Information and shall cooperate fully and promptly in the investigation of any such actual or potential incident.
6. Contractor shall, at its own expense, return to the Department all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract. Confidential Information returned to the State shall be accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of the Contractor authorized to bind the Contractor.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement and the Contractor shall provide originals of such executed Agreements to the State.

10. The parties further agree that:
- a. This Agreement shall be governed by the laws of the State of Maryland;
  - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
  - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
  - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
  - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures; and
  - f. The Recitals are not merely prefatory but are an integral part hereof.

Contractor: <INSERT NAME>

Maryland Department of Information Technology:

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **FINANCIAL INSTRUCTION FORM**

### **Instructions**

#### **Pricing for Cloud Messaging and Collaboration Services**

In order to assist Offerors in the preparation of their financial proposal and to comply with the requirements of this solicitation, Financial Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their financial proposal on the form in accordance with the instructions on the form and as specified herein. Do not alter the forms or the financial proposal may be rejected. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to all proposed prices.

The financial proposal form is used to calculate the Offeror's TOTAL PRICE PROPOSED.

- A) All Unit/Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15
- B) All Unit Prices must be the actual unit price the State shall pay for the proposed item per this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e. .344 shall be 34 and .345 shall be 35.
- D) All goods or services required or requested by the State and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in the financial proposal form shall be filled in.
- F) Except as instructed on the form, nothing shall be entered on the financial proposal form that alters or proposes conditions or contingencies on the prices.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the vendor and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the vendor will be treated as provided in COMAR 21.05.03.03.E.

### **Application of Future Reduced Pricing**

The Contractor shall afford the State of Maryland "Most Favored Customer" (MFC) status as it is commonly defined. Thus the Contractor agrees that, in the event they are awarded a contract by another State for deliverables identical to those provided for in this contract but at lower prices, the Contractor shall notify the State of Maryland and reduce the prices under Maryland's contract to match those of the other State. This action shall be limited to two occurrences during the base term and at the beginning and mid-way points of any option renewals of the base contract. In no event shall reduced pricing be retroactive beyond the beginning date of the vendor's new or renewal of another State contract.

# Attachment I - Financial Proposal Form

## Base Period (5 Years) Pricing for Public Cloud Services

Description	Unit of Measure	Price	Estimated Number of Users	Total Cost per Service per day	Total Cost per Service per year	Total Cost per Service per 5 years
A. Mailbox (storage up to 25GB) with e-discovery and archiving	per Mailbox per day		60,000			
B. Additional Mailbox Storage	per GB per day		3,000*			
C. Blackberry Enterprise Server	per Mailbox per day		5,000			
D. High Reliability Mail Box (above 99.9%)	per Mailbox per day		500			
E. Collaborative Services	per User per day		50,000			
F. TOTAL						

## Option #1 Period (5 Years) Pricing for Public Cloud Services

Description	Unit of Measure	Price	Estimated Number of Users	Total Cost per Service per day	Total Cost per Service per year	Total Cost per Service per 5 years
G. Mailbox (storage up to 25GB) with e-discovery and archiving	per Mailbox per day		60,000			
H. Additional Mailbox Storage	per GB per day		3,000*			
I. Blackberry Enterprise Server	per Mailbox per day		5,000			
J. High Reliability Mail Box (above 99.9%)	per Mailbox per day		500			
K. Collaborative Services	per User per day		50,000			
L. TOTAL						

## Option #2 Period (5 Years) Pricing for Public Cloud Services

Description	Unit of Measure	Price	Estimated Number of Users	Total Cost per Service per day	Total Cost per Service per year	Total Cost per Service per 5 years
M. Mailbox (storage up to 25GB) with e-discovery and archiving	per Mailbox per day		60,000			
N. Additional Mailbox Storage	per GB per day		3,000*			
O. Blackberry Enterprise Server	per Mailbox per day		5,000			
P. High Reliability Mail Box (above 99.9%)	per Mailbox per day		500			
Q. Collaborative Services	per User per day		50,000			
R. TOTAL						

\* Assume that 3,000 users will each have a need for an extra **5 GB** per day.

Basis of comparison shall consist of the TOTAL of prices listed under TOTAL COST PER SERVICE FOR FIVE YEARS. This means that lines F, L, and R will be added together and the total will be used to establish a ranking of pricing offers. It shall be explicitly noted that the State makes no guarantee as to the estimated or actual number of users for any service.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

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

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

FEIN: \_\_\_\_\_

eMM #: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_





## Attachment K – DoIT Acceptance of Deliverable Form

Agency Name: Department of Information Technology

RFP Title: Cloud Messaging and Collaborative Services

Contract Manager: Bruce Eikenberg 410 260-7307

To: \_\_\_\_\_

**The following deliverable, as required by RFP ADPICS #060B2490001, has been received and reviewed in accordance with the RFP.**

Title of deliverable: \_\_\_\_\_

RFP Contract Reference Number: Section # \_\_\_\_\_

Deliverable Reference ID # \_\_\_\_\_

This deliverable:

Is accepted as delivered.

Is rejected for the reason(s) indicated below.

REASON(S) FOR REJECTING DELIVERABLE:

OTHER COMMENTS:

Name of Contract Manager: Bruce Eikenberg

\_\_\_\_\_

\_\_\_\_\_

RFP Contract Manager Signature

Date Signed

ISSUED BY THE RFP CONTRACT MANAGER AS REQUIRED IN SECTION 3.3.3 OF THE RFP.