

HARFORD COUNTY HEALTH DEPARTMENT

**TEEN DIVERSION PROGRAM
AUTOMATED TEXT MESSAGE REMINDER SERVICE
HCHD 13-004**

THIS CONTRACT, made and entered into this _____ day of _____, 2012 by and between **Harford County Health Department**, an agency of the State of Maryland, hereinafter referred to as the “Health Department” and **Name of Contractor** hereinafter referred to as the “Contractor”.

WHEREAS, the Contractor and the Health Department recognize and agree that there is a need to provide Automated Text Message Reminder Services for the clients and families of the Teen Diversion Program and the possibility to expand the service to other Departments of the Health Department;

WHEREAS, the Contractor has indicated its interest and capability to provide Automated Text Message Reminder Services; and

NOW THEREFORE, in consideration of the recitals, which are incorporated by mutual promises and covenants herein contained, the parties intending to be legally bound, agree as follows:

SECTION I: SCOPE OF SERVICES

The Contractor hereby agrees to provide Automated Text Message Reminder Services for the Teen Diversion Program, which are described in Exhibit A, and is attached and incorporated by reference herein.

SECTION II: TYPE OF CONTRACT

This is a Requirements Contract under which the Health Department is obligated during the term of the Contract to obtain its requirements of Automated Text Message Reminder Services from the Contractor and the Contractor is obligated to provide those Automated Text Message Reminder Services which the Health Department requires in its operation.

SECTION III: PAYMENT PROVISIONS

A. The Health Department agrees to pay the Contractor, as the consideration for the full and faithful performance of the services requested at a total cost of _____ for the completion of the project and _____ for the cost of a yearly maintenance fee.

B. The Health Department agrees to reimburse the Contractor only for allowable costs incurred by the Contractor, as provided for in COMAR 21.09.01.03, not to exceed the total amount of the approved Contract.

C. The Contractor agrees to invoice the Health Department on a monthly basis certifying thereto that the work and services have been performed, that payment for said work has not been received, and that the amount specified is due and owing. The Contractor shall submit the invoice no later than October 31, 2012 for the delivered services.

D. All invoices must (at a minimum) be signed and dated, and include the following:

- (a) The Contractor's name and mailing address;
- (b) The Contractor's Federal Tax Identification or Social Security Number;
- (c) The services provided;
- (d) The time period covered by the invoice;
- (e) The amount of requested payment; and
- (f) The Contract No. HCHD 13-004

E. All invoices are to be addressed to:

Harford County Health Department
Accounts Payable
P.O. Box 797
Bel Air, Maryland 21014

F. Electronic funds transfer is available. If the Contractor prefers payment via electronic funds transfer rather than via check, the Contractor shall register using form COT/GAD X-10 Vendor Electronics Funds Transfer (EFT) Registration Request Form.

G. Funding for this Contract is contingent upon annual appropriations from the Maryland General Assembly.

H. Reduction/Withholding of Payment

The Health Department reserves the right to reduce or withhold contract payment in the event the Contractor does not provide the Health Department with all required services requested within the time frame specified in the Contract or in the event the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the contract. Any such action on the part of the Health Department, or dispute of such action by the Contractor, shall be in accordance with the provisions of State Finance Procurement, Annotated Code §15-215 through 15-223 and with COMAR 21.10.02.

SECTION IV: TERMS

The Contract will be for one (1) year with the Health Department having the exclusive option to renew the Contract for three (3), one (1) year terms with all pricing, terms and conditions remaining the same.

SECTION V: STANDARD CONTRACT PROVISIONS

1. Financial Disclosure:

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

2. Public Information Act Notice:

Contractors should give specific attention to the identification of information furnished to the Department under this contract which they deem confidential or proprietary information, or trade secrets and provide justification why this information should not be disclosed under the Maryland Access to Public Records Act of the Maryland Code Annotated, State Government Article, §§ 10-611 through 10-628. Upon request from a third party, the Health Department is required to make an independent determination as to whether the information may or must be divulged to that party in accordance with the Public Information Act (PIA).

3. Approvals:

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

4. Multi-Year Contracts:

If the General Assembly fails to appropriate funds, or if funds are not otherwise made available for continued performance of the contract for any fiscal period of the Contract succeeding the first fiscal period, the contract shall be automatically cancelled as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; however, this will not affect either the Department's rights or the Contractor's rights under any termination clause in the Contract. The effect of termination of the Contract will be to discharge both the Contractor and

the Department from future performance of the Contract, but not from their obligation existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred, but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

5. Modification of Contract – General:

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

6. Modification of Contract – Salary Increases and Emergencies:

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

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

7. Non-Hiring of State Employees:

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

8. Conflict of Interest Law:

It is unlawful for any State officer, employee, or agent to participate personally in his

official capacity through decision, approval or disapproval, recommendation, advice, or investigation in any Contract or other matter in which he, his spouse, parent, minor child, brother, or sister has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of the Maryland Code Annotated, State Government Article, §15-501 *et seq.*

9. Disputes:

This Contract shall be subject to the provisions of the Maryland Code Annotated, State Finance and Procurement Article, §15-101 through 15-226, and COMAR 21.10. In accordance with the requirements of COMAR 21.10.04.02 the Contractor must file a written notice of a claim with the Health Department's Contract Administrator within 30 days after the basis for the claim is known or should have been known, whichever is earlier, but no later than the date final payment is made under the Contract. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Health Department's Contract Administrator's instructions.

10. Maryland Law Prevail:

The laws of Maryland shall govern the provisions of this Contract.

11. Non-Discrimination in Employment:

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

12. Contingent Fee Prohibition:

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity (other than a bona fide employee or agent) to solicit this agreement; and that he has not paid or agreed to pay any person; partnership; corporation; or other entity (other than a bona fide employee or agent) any fee or other consideration contingent on the making of this Contract.

13. Termination for Default:

The rights and remedies of the State under the Contract are cumulative. The enforcement

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

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

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

14. Termination for Convenience:

The Health Department may terminate the performance of work under this Contract in accordance with this clause in whole, or from time to time in part, whenever the Health Department's Contract Administrator shall determine that such termination is in the best interest of the State. The Health Department will pay all reasonable costs associated with this Contract that the Contractor has incurred to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

15. Tax Exemption:

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

16. Arrearages:

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

- A.) It is qualified to do business in the State of Maryland and that it will take such

action as, from time to time hereafter, may be necessary to remain so qualified; and

B.) It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract if selected for contract award.

17. Non-Assignment:

The Contractor may not, during the term of this Contract or any renewals or extensions of the Contract, assign or sub-contract all or any part of the Contract without the prior written consent of the Health Department's Contract Administrator, whose judgment is sole and absolute. However, the Contractor may assign monies receivable under a contract after due notice to the Health Department's Contract Administrator.

18. Documents Retention and Inspection Clause – Other Than Residential Health Care Facilities Contracts:

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

19. Documents Retention and Inspection Clause – Residential Health Care Facilities Contracts:

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

A.) That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly authorized representatives, shall be granted access to the Contractor's Contract, books, documents and records necessary to verify the cost of the services provided under this Contract, until the expiration of four years after the services are furnished under this Contract;

B.) That similar access will be allowed to the books, documents and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. (420.301) if that organization is sub-contracting to provide services with a value of \$10,000 or more in a twelve-month period to be reimbursed through funds provided by this Contract.

20. Indemnity (Hold Harmless) Clause:

A.) Definitions

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

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

B.) Indemnification by Contractors

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

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

C.) Liability of the State

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

The State has no obligation to provide legal counsel or legal defense to the Contractor or its sub-contractors in the event that a suit, claim or action of any character is brought by any person or persons not party to the Contract against the Contractor or its sub-contractors as a result of or relating to the Contractor's

obligations under this Contract.

The State has no obligation for the payment of any judgments or the settlement of any claims made against the Contractor or its sub-contractors as a result of or relating to the Contractor's obligations under this Contract.

D.) Notice of and Cooperation in Litigation.

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

21. Cost and Price Certification:

A.) The Contractor shall submit cost or price information and shall certify that, to the best of his/its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the date the conclusion of any price discussions or negotiations for:

(1) A negotiated Contract if the total Contract price is expected to exceed \$100,000, or a smaller amount set by the Contract Administrator; or

(2) A change order or Contract modification is expected to exceed \$100,000, or a smaller amount set by the Contract Administrator.

B.) The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increase occurring because of the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

22. Payment of Interest Clause:

A.) Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by the Maryland Code Annotated, State Finance and Procurement Article, § 15-104 *et seq.* or by the Public Service Commission of Maryland, with respect to regulated public utilities, as applicable, are prohibited.

B.) The Maryland Code Annotated, State Finance and Procurement Article, §15-104 *et seq.* provides that the State shall remit payment to the Contractor within forty-five (45) days after receipt of a proper invoice pursuant to any authorized, written procurement Contract. Except as provided in State Finance and Procurement Article, §15-105, the State's failure to remit payment within this period may entitle the Contractor to interest at the rate specified in State Finance and Procurement Article, §15-104, for the period that begins thirty one (31) calendar days after the receipt date. This amount, if paid, shall be in lieu of payment of any other late charge(s) by the State.

C.) For purposes of this Contract, an amount will not be deemed "due and payable" and interest payments will not be authorized for late payments unless the following conditions have been met:

- (1) The amount invoiced is consistent with the amount agreed upon by the parties to the Contract.
- (2) The goods or services have been received by the State and the quantity received agrees with the quantity ordered.
- (3) The goods or services meet the qualitative requirements of the Contract and have been accepted by the State.
- (4) The proper invoice has been received by the party or unit of government specified in the Contract.
- (5) The invoice is not in dispute.
- (6) If the Contract provides for progress payments, the proper invoice for the progress payment has been submitted pursuant to the schedule contained in the Contract.
- (7) If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have been met.

D.) In order to receive payment of interest, the Contractor must submit a proper invoice for accrued interest within 30 calendar days after the payment date (i.e., the date of the check from the State Treasurer that pays the Contractor for the goods supplied or the service rendered) of the amount on which the interest accrued. Interest may not be claimed (1) if a claim has been filed under the Maryland Code Annotated, State Finance and Procurement Article, §15-201 through 223, (2) if the accrual period is more than one year following the 31st calendar day after the date that a proper invoice is received by a State agency, or (3) on an amount representing unpaid interest.

23. Inspection of Premises:

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

24. Incorporation by Reference:

All terms and conditions under the solicitation, and any amendments thereto, are made a part of this Contract. The Contract shall consist of this document HCHD 13-004 including all addenda, exhibits, and attachments. This shall constitute the entire agreement between the contracting parties, superseding all representations, commitments, conditions, or agreements that may have been made orally or in writing prior to the execution of the Contract.

25. Specifications:

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

26. Delivery and Acceptance:

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

27. Anti-Bribery:

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

28. Registration:

In accordance with the Maryland Code Annotated, Corporations and Associations Article, §7-201 *et seq.*, corporations doing business in the State shall be registered with the Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201. Before doing any intrastate business in Maryland, a foreign corporation shall qualify with the Department of Assessments and Taxation. The Contractor shall be responsible for ensuring that all subcontractors meet these requirements and further that the contractor and all subcontractors meet these requirements for the duration of the contract. Potential contractors who have questions concerning this requirement are advised to contact the Department of Assessments and Taxation at (410) 767-1330. Potential contractors must be completely registered prior to the execution of this Contract.

29. EPA Compliance:

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

30. Occupational Safety and Health Act (O.S.H.A):

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

31. Patent, Copyrights, Trade Secrets & Indemnification:

If the Contractor furnishes any design, device, material process, or other item that is covered by a patent or copyright, or which is proprietary to, or a trade secret of another, it is solely the responsibility of the Contractor to obtain the necessary permission or license to use such item or items. The Contractor hereby grants to the Department a royalty-free, nonexclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all data now and hereafter covered by copyright, and warrants that it has the authority to do this.

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

If the Contractor obtains or uses for purposes of the Contract (or any subcontracts) any design, device, material, process, supplies, equipment, text, instructional material, services or other work, the contractor shall indemnify the State, DHMH, their officials, agents, and employees with respect to any claim, action, cost, or judgment for patent, trademark, or copyright infringement, arising out of the possession or use of any design, device, material, process, supplies, equipment, text, instructional material, services or other work covered by this contract.

32. State Contract Prevails:

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

33. Change Orders and Suspension of Work:

Both parties agree that pursuant to the Maryland Code Annotated, State Finance and Procurement Article, §13-218, 1) the State has the unilateral right to order in writing changes in the work within the scope of the Contract; and 2) the Contract Administrator unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Contract Administrator may determine to be appropriate for the convenience of the State.

34. Rights in Data:

Work produced as a result of this solicitation is and shall remain the sole property of the Department of Health & Mental Hygiene (DHMH).

The Contractor agrees that all documents, equipment, and materials, including but not limited to, reports, drawings, studies, specifications, estimates, texts, computer software including software documentation and related materials, maps, photographs, designs, graphics, mechanicals, art work, computations and data prepared by or for, or purchased by or for, the Contractor because of this contract shall, at any time during the term of the Contract, be available to DHMH and shall become and remain the exclusive property of DHMH during and upon termination or completion of the services required to be performed under this Contract.

DHMH shall have the right to use same without restriction and without compensation to the Contractor other than that provided in this Contract.

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

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

The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Health Department shall have the right at any time to modify, remove, obliterate, or ignore such markings.

35. Delays and Extensions of Time:

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a Contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

36. Pre-Existing Regulations:

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

37. Political Contribution Disclosure:

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

38. Compliance with Laws:

The Contractor hereby represents and warrants that:

- A.) It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B.) It shall comply with all Federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- C.) 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.

39. Prohibition of Sexual Harassment:

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

40. Commercial Non-Discrimination:

A. 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.

B. 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 is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

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

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

42. Limited English Proficiency:

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Gov't Article, §§10-1101 *et seq.*, and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and DHMH Policy 02.06.07.

43. Compliance with HIPAA and State Confidentiality Law:

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

1. As necessary, adhering to the privacy and security requirements for protected health information and medical records under federal HIPAA and State MCMRA and making the transmission of all electronic information compatible with the federal HIPAA requirements;
2. Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these

- obligations from employees to be involved in the contract; and
3. Otherwise providing good information management practices regarding all health information and medical records.

B. If in connection with the procurement or at any time during the term of the Contract, the Health Department determines that functions to be performed in accordance with the Requirements set forth in Part I constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 CFR §164.501.

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

SECTION VI: NON-COLLUSION

The Contractor, its agents, servants and/or employees, to the best of its knowledge and belief, have not in any way colluded with anyone for and on behalf of the Contractor or themselves, to obtain information that would give the Contractor an unfair advantage over other suppliers, nor has it colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the Contract.

SECTION VII: NON-DISCRIMINATION

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 physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices settings for the substance of the clause.

SECTION VIII: CONTRACT ADMINISTRATION

The Contract Administrator for the Health Department is:

Madeline Churchman
Harford County Health Department
P.O. Box 797
Bel Air, MD 21014
HCHD 13-004

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

The Contract Administrator for the Contractor is:

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

Any notice required by this Contract is to be sent to the Contractor at:

Any notice required by this Contract is to be sent to the Health Department at:

Madeline Churchman
Harford County Health Department
P.O. Box 797
Bel Air, MD 21014
HCHD 13-004
cc: Richard G. Herbig
Senior Assistant County Attorney
Harford County Department of Law
220 South Main Street

Bel Air, MD 21014
HCHD 13-004

cc: Susan Kelly, RS
Health Officer
Harford County Health Department
P.O. Box 797
Bel Air, MD 21014
HCHD 13-004

SECTION IX: CHANGES ON CONTRACT

No modification shall be made to this Contract without the express authorization of the Contract Administrator. The modification shall not be effective unless made in writing and signed by the parties of this Contract.

SECTION X: LAWS

The Contractor hereby warrants that it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified; and it is not in arrears with respect to the payment of monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract; and it further agrees to comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract.

SECTION XI: AFFIDAVIT

Bid/Proposal Affidavit and Contract Affidavit are attached hereto and incorporated by reference.

SECTION XII: SUPREMACY CLAUSE

In the event of a conflict between the terms and conditions of the Contract and Exhibit A, the parties agree that Exhibit A shall control interpretation of any inconsistency. However, the documents shall, to the extent possible, be construed to be consistent.

SECTION XIII: TERMINATION/CANCELLATION

In the event the Contractor fails to meet any of the requirements of the Contract, the Health Department may terminate the Contract at any time by providing thirty (30) days written notice to the Contractor. In the event the Contractor should wish to terminate the Contract at any time, a thirty (30) day written notice is required.

SAMPLE

IN WITNESS WHEREOF, the parties hereto have executed this Contract, the day and year first above written.

WITNESS/ATTEST:

CONTRACTOR'S NAME

BY: _____
Signature

Date _____
Print Name

Title

Date

WITNESS/ATTEST:

**HARFORD COUNTY
HEALTH DEPARTMENT**

BY: _____
Susan Kelly, RS
Health Officer

Date _____
Date

**APPROVED FOR FORM AND LEGAL
SUFFICIENCY:**

Richard G. Herbig
Senior Assistant County Attorney

Date