



**STATE LOTTERY AND GAMING
CONTROL AGENCY (MLGCA)**

REQUEST FOR PROPOSALS (RFP)

RFP #2018-07

Issue Date: August 29, 2018

**ADVERTISING, MARKETING, MEDIA AND
RELATED SERVICES**

NOTICE

A Prospective Offeror that has received this document from the MLGCA's website, <https://emaryland.buyspeed.com/bsol/>, or a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this RFP should immediately contact the Procurement Officer and provide the Prospective Offeror's name and mailing address so that amendments to the RFP or other communications can be sent to the Prospective Offeror.

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO VENDORS**

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, take a few minutes and provide comments and suggestions regarding this RFP. Please return your comments with your response. If you have chosen not to respond to this RFP, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Sheet below for contact information).

**Title: Advertising, Marketing, Media and Related Services
RFP No: 2018-07**

1. If you have chosen not to respond to this RFP, 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 the State of Maryland is simply too complicated. (Explain in REMARKS section.)
 - ☐ We cannot be competitive. (Explain in REMARKS section.)
 - ☐ Time allotted for completion of the Proposal is insufficient.
 - ☐ Start-up time is insufficient.
 - ☐ Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
 - ☐ Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
 - ☐ MBE or VSBE requirements. (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 response to this RFP, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) ____ - _____

Address: _____

E-mail Address: _____

**STATE OF MARYLAND
STATE LOTTERY AND GAMING CONTROL AGENCY (MLGCA)**

RFP KEY INFORMATION SUMMARY SHEET

Request for Proposals: **SERVICES: ADVERTISING, MARKETING, MEDIA AND RELATED SERVICES**

Solicitation Number: **#2018-07**

RFP Issue Date: **August 29, 2018**

RFP Issuing Office: **Maryland State Lottery and Gaming Control Agency
Montgomery Park Business Center
1800 Washington Boulevard, Suite 330
Baltimore, MD 21230**

Procurement Officer: **Robert W. Howells
Maryland State Lottery and Gaming Control Agency
Montgomery Park Business Center
1800 Washington Boulevard, Suite 330
Baltimore, MD 21230
Telephone: 410-230-8789; Fax: 410-230-8727
E-mail Address: robert.howells@maryland.gov**

Contract Monitor: **Jill Baer
Maryland State Lottery and Gaming Control Agency
Montgomery Park Business Center
1800 Washington Boulevard, Suite 330
Baltimore, MD 21230
Telephone: 410-230-8792; Fax: 410-230-8795
E-mail Address: jill.baer@maryland.gov**

Proposals are to be sent to: **Maryland State Lottery and Gaming Control Agency
Montgomery Park Business Center
1800 Washington Boulevard, Suite 330
Baltimore, MD 21230
Attention: Robert W. Howells**

Pre-Proposal Conference: **September 12, 2018 @ 10:00 a.m. (Local Time)
Montgomery Park Business Center
1800 Washington Boulevard, Suite 330
Baltimore, MD 21230**

Proposal Due (Closing) Date and Time: October 10, 2018 at 2:00 p.m. (Local Time)

MBE Subcontracting Goal:	29.0% for Functional Area I 3.0% for Functional Area II (No sub-goals have been established for either Functional Area)
VSBE Subcontracting Goal:	1.0% for both Functional Area I and II
Contract Type:	Fixed Price, with adjustment
Contract Duration:	Three years and five months plus one 2-year renewal option and 6 month final renewal period for transitioning; Approximate Go-Live date February 1, 2019
SBR Designation:	No
Federal Funding:	No

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SECTION 1 – MINIMUM QUALIFICATIONS

1 Offeror Minimum Qualifications

The Offeror shall provide proof with its Proposal that the following Minimum Qualifications have been met for the Functional Area(s) being proposed. These Minimum Qualifications are requirements that shall be met by an Offeror in order to receive consideration of its Proposal. Any Offeror not meeting these Minimum Qualifications for the Functional Area(s) being proposed will not be included in the evaluation process.

1.1 Functional Area I – Creative Development and Production Services

Offeror shall demonstrate through written responses that it meets or exceeds the following requirements:

- a. Offeror shall have at least three (3) years of experience within the past five (5) years providing creative development and production services.
- b. Offeror shall have annual advertising-related billings of at least \$2 million for creative development and production services offered in calendar year 2017 or the Offeror's most recent fiscal year within the past 24 months for which their latest audited financial statement year is available.

1.2 Functional Area II – Media Planning and Buying Services

Offeror shall demonstrate through written responses that it meets or exceeds the following requirements:

- a. Offeror shall have at least three (3) years of experience within the past five (5) years providing media planning and buying services.
- b. Offeror shall have planned and purchased media for one or more clients of at least \$1 million each in annual paid media billings in each of the past two (2) calendar years (2017 and 2016).

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SECTION 2 – CONTRACTOR REQUIREMENTS: SCOPE OF WORK

2.1 Summary Statement

- 2.1.1 The Maryland State Lottery and Gaming Control Agency (MLGCA) is issuing this Request for Proposals (RFP) to invite qualified Offerors to submit proposals to provide advertising, marketing, media and related services, including creative development and production, and media planning, negotiating and buying.

As described more fully in this RFP, this wide range of marketing services includes, but is not limited to, creative development and production of advertising and marketing materials; design and production of Retailer merchandising and point-of-sale materials; creation and production of web, mobile, digital and social media advertising; media planning and buying; media post-buy analysis and reconciliation; promotion and sponsorship development and implementation assistance; website and mobile app strategy, development, and maintenance; social media strategy, development and maintenance; web analytics and reporting; conducting and managing marketing and product research studies, to further the MLGCA's overall marketing plan for retail sale of Lottery tickets to generate revenue for Maryland's General Fund; and other related activities necessary to carry out the work set forth herein. The Contractor(s) awarded Contract(s) resulting from this RFP will assist in the development, execution, and assessment of an integrated communications plan reaching players and prospective players for all Lottery games, Retailers, and other audiences

- 2.1.2 It is the State's intention to obtain services, as specified in this RFP, from two (2) Contracts between the selected Contractor(s) and the State. The MLGCA's existing Contracts for Creative Services, Media Services and Digital, Web and Social Engagement Design, Delivery and Hosting services expire on January 31, 2019. The anticipated duration of services to be provided under this Contract is an initial term of approximately three (3) years and five (5) months tentatively beginning on February 1, 2019, and extending through June 30, 2022. The MLGCA, at its sole option, shall have the unilateral right to extend the Contract for one (1) additional two (2) year renewal period and an additional final renewal period for transitioning of up to six (6) months, for a total potential contract term of five (5) years and eleven (11) months. See Attachment M – Contract paragraphs #3 and #4 for more information.
- 2.1.3 The Contract that results from this RFP will be a Fixed Price Contract with price adjustment as described in COMAR 21.06.03.02A (3). The Contractor(s) will be compensated based on a Monthly Flat Fee for each Functional Area, which will be subject to adjustment based upon changes in the MLGCA's Marketing Budget as specified in Section 2.2.3. See Attachment M – Contract paragraph #4.9 for more information.
- 2.1.4 The MLGCA intends to make a single contract award for each of the following two Functional Areas as a result of this RFP (See RFP Section 6 for more Contract award information):
- I. Creative Development and Production Services
 - II. Media Planning and Buying Services

An Offeror may submit a proposal encompassing one or both Functional Areas and may receive a contract award for one or both. Contract award will be made independently for each Functional Area.

Proposals containing any limiting conditions or in any way contingent upon the Offeror receiving a contract award for more than one Functional Area will not be accepted.

2.1.5 An Offeror, either directly or through Subcontractor(s), shall be able to provide all services and meet all of the requirements requested in this RFP for each Functional Area and the successful Offeror (Contractor) shall remain responsible for Contract performance regardless of Subcontractor participation in the work. This Contract(s) will result in a relationship between the Contractor(s) and the MLGCA which must be founded on mutual trust and respect and the Contractor(s) shall adopt the same attitudes and concerns towards the MLGCA's games, financial performance, legal compliance, integrity, security, minority participation and commitment to nondiscrimination as are held by the MLGCA.

2.1.6 Amounts provided within the RFP are estimates only and are not a guarantee of any minimum or maximum amounts under this Contract(s).

2.2 Background and Purpose

2.2.1 Background

The MLGCA, an independent agency of the State of Maryland, began operations in January, 1973. Over the last forty-five years it has grown tremendously, while also frequently evolving to adapt to the challenging retail environment. The mission of the MLGCA is to raise revenue for the State's good causes and MLGCA is now the fourth largest contributor to the State's General Fund behind individual, corporate, and sales and use taxes. While raising revenue is its top priority, the MLGCA recognizes the importance of satisfying the public's appetite for fun and entertaining games of chance which has led to the popularity and stability of the brand for more than four decades. The brand enjoys broad appeal, as approximately 73% of adult Marylanders have played the Lottery within the past 12 months. Even those who don't play regularly view the MLGCA positively.

The MLGCA has a continuously active, labor intensive advertising account with multiple marketing, creative, media, digital and research projects requiring attention and service simultaneously.

2.2.2 Objectives

The MLGCA's mission is to provide revenue for Maryland's General Fund through the sale of entertaining Lottery products that support State programs and services benefiting the citizens of Maryland. To assist in the accomplishment of this mission, the Contractor(s) shall work with the MLGCA in the development and execution of an integrated marketing program with the following overall objectives:

2.2.2.1 Effectively communicate with the MLGCA's various target audiences at all times:

- a. Players and prospective players for all Lottery games;
- b. Retailers to motivate them to sell more tickets with the assistance of a retail merchandising support program and Point of Sale advertising materials; and,
- c. Other audiences who may influence public attitudes and perceptions of the MLGCA;

2.2.2.2 Assist the MLGCA to maximize net profits from MLGCA products for the benefit of the State by:

- a. Expanding participation among current and lapsed or less frequent players;
 - b. Attracting new players with a clear, targeted, efficient presentation of the current game menu; and
 - c. Introducing new games as part of the overall fun and excitement of playing Lottery games;
- 2.2.2.3 Increasing players' and prospective players' understanding of MLGCA products and reinforcing the MLGCA's mission of raising revenue for the State's General Fund;
- 2.2.2.4 Improving Retailers' understanding, advocacy and promotion of MLGCA products and the MLGCA overall;
- 2.2.2.5 Reinforcing the credibility, integrity, and transparency of the MLGCA throughout all communications;
- 2.2.2.6 Positioning MLGCA products as a fun entertainment option by maintaining a strong competitive position with other providers of entertainment;
- 2.2.2.7 Communicating the MLGCA's responsible gaming position and informing consumers of the resources available for problem gambling; and
- 2.2.2.7 Engaging with Contractor(s) that will work with the MLGCA in the development and execution of an integrated marketing program that accomplishes the goals and objectives set forth herein, maintaining creativity to meet the needs of the MLGCA over the term of the Contract(s) with sufficient flexibility to meet the MLGCA's evolving requirements.

2.2.3 Budget

The MLGCA's approximate advertising expenditures for FY 2018 and projections for FY 2019 ad spending are listed below. These figures are provided for historical information only and are not a guarantee of any amounts under the Contract(s) anticipated to result from this RFP.

Description	FY'18 Estimated Spend	FY'19 Projected Spend
Media	\$10,557,399	\$11,500,000
Television	\$2,768,427	\$3,075,000
Radio	\$2,128,689	\$2,350,000
Out-of-Home	\$1,407,924	\$1,500,000
Digital/Social Media	\$400,097	\$440,000
Sponsorships	\$2,258,620	\$2,500,000
Print	\$418,640	\$460,000
Televised Drawings	\$1,175,002	\$1,175,000
Production	\$2,300,000	\$2,530,000
Digital	\$245,000	\$270,000
Research	\$200,000	\$200,000
Total	\$13,302,399	\$14,500,000

FY 2018 and Projected FY 2019 Budget Levels equal that amount, by category, for which the MLGCA and its current Contractors must subcontract to outside vendors to fulfill the technical requirements as specified in their respective contracts. It is reasonable to assume that most Offerors have similar in-house capabilities, so the MLGCA expects this subcontracted spending to be fairly consistent from year to year. However, this information does not preclude any Offeror from proposing that a service be provided in-house (vs. previously subcontracted).

Although the MLGCA anticipates that advertising budget amounts will remain somewhat constant over the term of the Contract(s), there are no guaranteed advertising budget amounts or guaranteed earnings to the Contractor. External budget modifications, internal budget management decisions and/or contract modifications may cause unplanned and unannounced impacts on the Contractor's earnings. The Contractor assumes the risk of such changes.

The Contractor will be paid a Monthly Flat Fee to perform the required services, which includes the expenditure and management of the MLGCA's Marketing Budget funds assigned to the respective Functional Area in order to accomplish the required services. The amounts stated above for the Functional Areas represent the anticipated annual amounts of the MLGCA's funds that the Contractor will be required to manage in accordance with the technical specifications for each respective Functional Area. Since the level of effort required by the Contractor is dependent to some degree upon the amount of MLGCA funds it will be required to manage, the Contract will provide for a price (fee) adjustment based on Marketing Budget changes.

2.2.4 Work In Progress-Existing Contracts

The MLGCA has several sponsorships, media commitments and business services established with Subcontractors via the current Contractor. These items vary in nature and range from sponsorships with venues and sports teams, to billboards equipped to digitally display current jackpots, mobile application development, maintenance and hosting. A current list of these items may be found in Attachment S.

2.2.5 Advertising Guidelines

As an agency of the state of Maryland, MLGCA marketing programs must always be in good taste and must not make unsubstantiated promises. The Contractor(s) shall adhere to the following advertising guidelines when developing any marketing program for the MLGCA. Advertising shall not:

1. Contain any off-color humor. Humorous advertising is paramount, but must reflect clean fun.
2. Unduly influence.
3. Over promise.
4. Show a change of lifestyle. Advertising shall not present, directly or indirectly, any MLGCA game as a potential means of relieving any person's financial or personal difficulty.
5. Display guns, alcohol, tobacco, improper attire or imply lewd or indecent language, images or actions.
6. Portray product abuse, excessive play or preoccupation with gambling. It should also not imply or portray any illegal activity.

7. Make fun of other's pain, misfortune or impairment, physique, nor should advertising degrade the image or status of persons of any ethnic, minority or religious group.
8. Show any form of cruelty and/or abuse of animals.
9. Specifically target with the intent to exploit a person or specific group or economic class.
10. Create the perception that the MLGCA has control over where winning tickets are sold and/or purchased.
11. Stereotype Marylanders.
12. Solicit minors or children.

2.3 Scope of Work - Requirements

In response to Sections 2.3.1, 2.3.2, and 2.3.3 below, the Offeror must provide in its proposal a statement of intent to comply with the terms, conditions, and requirements of those specifications.

2.3.1 GENERAL REQUIREMENTS

2.3.1.1 The following sections describe the **SCOPE OF WORK** for the providing of Advertising, Marketing, Media and Related Services. The Scope of Work is divided into Section 2.3.1- General Requirements which applies to all Contractors; Section 2.3.2 – Services Required – FUNCTIONAL AREA I and Section 2.3.3 – Services Required – FUNCTIONAL AREA II, which apply additionally to the specific Functional Area(s) awarded.

2.3.1.2 The Contractor shall deliver all requirements outlined in this RFP, including this Section 2.3, and shall be responsible for all technical functionality and business support, as applicable to the specific Functional Area associated with the Contract(s).

2.3.1.3 Business Partnership

The Contractor shall become a partner with MLGCA in the development and evolution of its business, brand and product portfolio in order to further the MLGCA's mission of providing funds to the State's General Fund. All Contractor personnel assigned to the Contract shall be committed to the same goals as the MLGCA and shall create and execute programs that will deliver on those objectives.

Meetings at the MLGCA's headquarters (1800 Washington Boulevard, Suite 330, Baltimore, MD 21230) with Contractor personnel shall be held a minimum of weekly, although at times could be more frequently as dictated by the project workload and as directed by the MLGCA.

2.3.1.4 Staffing Levels and Changes

The Contractor shall provide the level of service (number and experience of employees and corresponding number of full-time equivalents) as specified in its proposal and approved by the MLGCA (see Section 5.4.2.7 – Staffing Structure and Plan/Experience and Qualifications of Proposed Staff), and shall maintain at least that level of service throughout the term of the Contract. All management representatives assigned to the MLGCA account team shall be approved by the MLGCA. The Contractor shall provide notice to the MLGCA of any proposed changes to be made in the account management team and the MLGCA shall have the right to approve or reject proposed personnel changes.

Upon Contractor need for staffing changes, the Contractor shall notify and consult with the MLGCA to ensure qualified individuals are assigned to fulfill the contract requirements. All personnel dedicated to the Contract (regardless of position) are expected to be knowledgeable about the MLGCA business, the political environment within which the MLGCA operates, and the products offered by the MLGCA. All personnel dedicated to the Contract shall visit Retailers on a regular basis. (See Section 3.10 – Substitution of Personnel for further information)

2.3.1.5 Work in Progress – Transfer of Existing Contracts

During the period from contract award until the Go-Live Date, the Contractor(s) shall work with the Subcontractors specified in Attachment S (see also Section 2.2.4) to continue the existing services, which

may include the assignment of the existing contracts. This period will also provide the MLGCA and the Contractor(s) with the opportunity to evaluate the future use of these services. However, existing contracts for media commitments and sponsorships already in place shall continue until the end of their current term.

2.3.2 SERVICES REQUIRED – FUNCTIONAL AREA I: CREATIVE DEVELOPMENT AND PRODUCTION SERVICES

The Contractor shall perform all requirements specified in this Section 2.3.2 if Functional Area I is a part of the Contract.

2.3.2.1. Dedicated Account Management

The Contractor shall provide a seasoned account team that shall work collaboratively with the MLGCA's Marketing department to manage the daily activities of the account.

1. The Contractor's account management team shall become knowledgeable of the MLGCA's business objectives, industry trends, sales performance, and product developments and shall also be responsible for ensuring that consumer centric strategies are developed that tie into the MLGCA's business objectives.
2. The Contractor shall have account experience in mass merchandisers, retail grocery, and/or convenience stores.
3. The Contractor shall provide a competent team with appropriate staffing levels and a cost-effective mix of experienced and less experienced personnel led by a dedicated Account Director and Creative Director. The Contractor shall provide the same level of support throughout the term of the Contract.

The Contractor's account team shall be responsible for establishing regular communications between themselves, the MLGCA's Media Agency, and other MLGCA vendors to ensure seamless integration of the advertising program.

The Contractor shall be available as required to attend or participate in routine meetings held at MLGCA's headquarters. During these meetings, there will be discussions regarding schedules and planning, as well as discussions regarding concept approvals, pre-production of advertisements, POS or other agency-produced materials. The frequency of such discussions and number of Contractor personnel involved will depend on the scope and number of the project(s) underway.

Additional meetings may be held with certain MLGCA personnel and other MLGCA Contractors on an as-needed basis.

The Contractor shall prepare, at minimum, the following reports

1. Weekly status reports that detail the status of all current projects and include timelines for next steps and deliverables, allowing the MLGCA adequate time for approval at any stage;
2. An annual advertising plan in partnership with the MLGCA's Marketing department which includes innovative approaches for advertising Lottery business initiatives and a general breakdown of proposed spending; and
3. Reports or minutes, as specified by the MLGCA with input by the Contractor, summarizing discussion highlights and action items resulting from meetings and discussions about the status of projects.

2.3.2.2. Development of Creative Concepts and Production

The Contractor shall develop effective, breakthrough creative concepts and produce campaigns with high quality production standards in the most cost effective manner. Creative work includes, but is not limited to, television, radio, print, out of home and digital advertising, plus an array of merchandising items and point of sale materials for a network of approximately 4,500 Retailers. The Contractor may also be required to assist the MLGCA in developing game names, product logos or artwork for other uses.

1. ***Creative Brief*** – The MLGCA will provide the Contractor with a briefing document for each advertising initiative that includes a product overview, general strategies, budget, etc. The Contractor's team shall then develop a creative brief which will provide strategy recommendations, messaging priorities and other details. Once approved by the MLGCA, this creative brief will be used by the Contractor to guide creative development. Creative work presented by the Contractor will be evaluated, in part, based on its delivery against this creative brief.
2. ***Creative Concepts*** – The Contractor shall develop advertising and marketing creative concept recommendations that represent the MLGCA in a positive light and in a manner consistent with the brand identity. The Contractor shall offer alternative campaigns, rather than only one creative solution to a particular game or promotion. At least three versions of television commercials, radio scripts, newspaper ads, and all other creative products shall be offered when the Contractor makes a creative presentation to the MLGCA.
3. ***Other Creative Deliverables*** – The Contractor shall provide various copywriting, graphic design and studio services as directed by the MLGCA including, but not limited to, creation and maintenance of Brand Style Guide and related materials, logo development, publication and newsletter design, meeting/conference or special presentation materials, display materials, annual reports, specialty items, etc. Contractor shall also provide various copywriting and proofing support services that may not be related to specific advertising initiatives, as requested by MLGCA.
 - a. Contractor shall have the ability to email files in a variety of formats, including but not limited to gif, jpeg, pdf or psd. Files may also be posted on secure web/ftp site. Contractor shall be capable of delivering art electronically or as otherwise requested, within 48 hours of final approval by the MLGCA, to selected media or the MLGCA as required.
4. ***Creative Timelines*** - The Contractor shall plan and follow creative development schedules that allow sufficient time for developing and presenting integrated creative solutions, editing and/or revising selected options, obtaining final approvals from the MLGCA and/or MLGCA licensing partners, producing the final product(s) and delivering the finished product(s) according the MLGCA specifications. The Contractor shall provide detailed production schedules with task milestones for each project or job.
5. ***Casting and Talent Payments*** – The Contractor shall make all talent recommendation to the MLGCA for any and all marketing and advertising materials. Casting auditions shall be provided for all on-camera or voice talent and shall be presented with alternatives. The MLGCA shall be allowed a reasonable time for review and approval. Once approved by the MLGCA, the Contractor shall manage talent use agreements and coordinate talent payments.
6. ***Production*** – The Contractor shall be responsible for producing and delivering all creative (broadcast, print, out of home and digital, etc.) materials. As with casting, all project details shall be discussed with the MLGCA prior to finalization and approved by the MLGCA prior to implementation.
7. ***Competitive Bidding*** - For any production project with a cost of \$25,000 or more, the Contractor shall obtain a minimum of three (3) bids from qualified Subcontractors. These bids shall be submitted to the MLGCA for approval with a recommendation as to which provides the best value for the MLGCA.
8. ***Creative Approvals*** – The Contractor shall obtain written approval from the MLGCA prior to producing any advertisement or marketing items. When producing any creative work, the Contractor shall not vary from approved scripts, story boards or layouts without pre-approval from the MLGCA.

Failure to adhere to approved scripts, storyboards or layouts may void the MLGCA's approval of the estimate for the project. The Contractor shall be responsible for all unauthorized expenses.

9. ***Other Production Related Business Functions*** – The Contractor shall also be responsible for the following:
- a. Trafficking all creative materials to media outlets and managing Industry Standard Commercial Identification (ISCI), or similar, commercial codes. When specified by the MLGCA and not provided through the Functional Area 2 Contract, provide Internet (web) advertising traffic services including, but not limited to, sending banner ads, rich media, and other web advertising elements and traffic instructions to media outlets or web ad servers, while including appropriate tracking mechanisms as directed by the MLGCA. To ensure proper reporting on the back-end, Contractor may be required to work through a third-party service utilized by the Media Planning and Buying Services Contractor.
 - b. Obtaining necessary legal clearances for advertising materials prior to production. Provide, as required by the MLGCA and subject to the review and approval of the Office of the Attorney General, a legal certification or information with regard to advertising and marketing activities on an "as needed" project or task basis. Such reviews may include trademark, copyright, or other intellectual property issues. In addition, the Contractor shall be responsible for copyrighting or registering trademarks, logos, commercials, etc. as directed and approved by the MLGCA.
 - c. Provide appropriate storage of all documents and materials produced for the MLGCA, including commercial props. All materials including broadcast outtakes, footage, unproduced concepts as well as print, radio and collateral jobs shall be the sole property of the MLGCA and shall be surrendered upon request. At the end of the contract, all documents and materials shall be returned to the MLGCA or transferred to a repository designated by the MLGCA. All documents and materials produced for the MLGCA become the property of the MLGCA with no further compensation to the Contractor.

2.3.2.3. Graphic Design Services

The Contractor shall provide graphic design concepts and final artwork for numerous MLGCA controlled assets. These include, but are not limited to, Lottery In Motion (LIMS) monitors (installed by the MLGCA's Central Monitoring and Control System Contractor at Retailer locations), Keno and Racetrax screens, various areas on MLGCA websites and mobile properties, and inserts for daily Drawings shows. Graphics for these assets are usually changed or updated on a weekly basis, although more frequent updating is often required. Designs generally support new product launches, promotions, winners or other MLGCA news and are either part of a larger advertising campaign (if available) or of a standalone nature.

The Contractor shall also provide digital production services including, but not limited to, digital proofs, PDF proofs or comparable files, scans, mechanical assembly, die line creation, typesetting or type formatting, digital imaging or file prep, file conversion, proofreading, or creation and/or duplication of CDs, DVDs, thumb drives, or any current method of storing and transferring advertising and graphic files.

2.3.2.4. Digital Marketing and Advertising

The Contractor shall create innovative digital marketing campaigns to effectively communicate with target audiences through all digital consumer touch points, with an emphasis placed on creativity and effectiveness of digital initiatives, with Key Performance Indicators (KPI) and measurement tools established with the MLGCA and the MLGCA's Media Planning and Buying Services Contractor prior to the development of key campaigns. Digital programs shall work synergistically with other advertising communications to achieve stated goals. The Contractor shall remain current on all emerging technologies and provide the MLGCA with

recommendations for digital marketing opportunities. The Contractor's responsibilities include but are not limited to, digital strategy development, content and creative development and production, optimization recommendations, and performance analysis.

2.3.2.5. Social Media Management

The Contractor shall work with the MLGCA's Digital Manager and other members of the MLGCA's Marketing Department, as well as the MLGCA's Media Planning and Buying Services Contractor, to enhance and manage the MLGCA's comprehensive social media communications platforms (including but not limited to Facebook, Instagram, YouTube, and Twitter.).

The goals of the social media program are to increase engagement with the Lottery brand among existing and future players, to communicate brand and product news and to reinforce the MLGCA's advertising and marketing initiatives in the social space. The Contractor's responsibilities include but are not limited to, strategy development, content and creative development and production, community management, optimization, and performance analysis and reporting.

2.3.2.6. Direct Marketing, Database Management and Customer Relationship Marketing

The Contractor shall work with the MLGCA and other MLGCA contractors to develop and implement a comprehensive strategy for building and maintaining a solid customer base that is loyal to the MLGCA brand. This shall be achieved by establishing an email marketing program, as well as providing assistance with the MLGCA's customer loyalty program, developing couponing and other incentive programs, providing database management, comprehensive reporting and other tactics as deemed appropriate by the MLGCA to achieve the MLGCA's business goals through all current and future channels.

The Contractor shall provide strategic direction on the development, implementation and expansion of My Lottery Rewards players' club, related loyalty programs, and on-line second chance Drawing platforms. Upon request, the Contractor shall provide materials to the Player's Club Contractor for promotion campaign and/or brand integration.

The Contractor shall provide other direct mail services, including but not limited to, list management, program creation, development and production, and other mail-related fulfillment services as requested by the MLGCA.

2.3.2.7. Accounting

Annual Advertising Budget

The Contractor shall develop an annual budget for all advertising expenditures and other services required by the Contract. The level of anticipated annual spending will be determined by the MLGCA, based on projections contained in the annual product and promotion plan. The MLGCA will provide the Contractor with an annual not to exceed budget amount for advertising services and the Contractor shall develop a plan that is responsive to the MLGCA's marketing needs and subject to MLGCA's approval. The Contractor shall recommend ways to generate cost savings wherever possible. The initial budget will be reviewed monthly and shall be revised as required by the MLGCA.

The Contractor shall not make any commitments on behalf of the MLGCA in accordance with the below Paragraph, *Agreements with Subcontractors or Third Parties* and Section 41.1. Any commitments to be made by the Contractor to third parties for work related to the Contract may not be made without prior written approval of the MLGCA Contract Monitor, or designee.

Accounting Services

The Contractor shall provide experienced accounting staff support to implement timely and accurate reports and billing to meet MLGCA specifications.

The Contractor shall provide to the MLGCA monthly by the 15th of the month a summary of all approved expenditures to date for the current fiscal year. The summary shall indicate the current amount billed to the MLGCA during the year, amounts committed that have not been billed, and any funds remaining.

Cost Savings

The Contractor shall make the MLGCA aware of any cost savings that might be achieved by the expedited payment of media or other invoices.

Estimates Required

The Contractor shall prepare a written estimate for any expenditure and obtain the MLGCA's written approval before making any commitment to third parties for work related to the Contract. Only the MLGCA Director, Chief Marketing Officer, Director of Creative Services or Marketing designee can give such approval, unless otherwise specified in writing. The MLGCA will not be responsible for any expenditure for which prior written approval was not obtained. All estimates must be segregated by fiscal year and by budget category, as defined by the MLGCA.

The MLGCA will not be responsible for expenditures exceeding the estimate. The Contractor may submit revised estimates for consideration by the MLGCA if it appears that the cost of a particular estimate will exceed the originally approved amount. All costs relating to work required to complete the initiative, project or job (including Subcontractors) shall be detailed in a written estimate submitted to the MLGCA for approval. The approval of any such estimate will be contingent upon the subsequent submission and approval of required documentation. Each estimate shall be identified by a unique identification number which will be included on the invoice for reference. The Contractor shall maintain a list of all approved estimates, including the amount and description of the expenditure, and provide the MLGCA with an updated list of all such estimates monthly. No payment will be made without a signed estimate.

Production Estimates

The Contractor shall submit for MLGCA approval all production estimates. Estimates shall clearly indicate any Subcontractors or other parties who will be involved in the production work and where those parties are located. Any production work to be conducted at a location outside of the State shall be specified, and the Contractor shall demonstrate to the MLGCA's satisfaction that locations or facilities within the State were not adequate for the production work required. The Contractor shall strive to have production work done within the State for all projects.

Advance Payments

Payment will be made only after the completion of services or delivery of goods authorized in an approved invoice. However, in an acknowledgement to industry standards, the MLGCA will allow the Contractor to pre-bill no more than 50% of a television production estimate prior to service receipt. All pre-bills shall include appropriate detailed backup. Documentation shall verify that the remaining 50% was invoiced after the service was performed and shall include detailed backup for the entire job.

Agreements with Subcontractors or Third Parties

The Contractor shall have no power or authority to sign an agreement on behalf of the MLGCA, to bind the MLGCA, the Commission, or the State to any such agreement, or to obligate the MLGCA to

any liability if the Contractor fails to pay any Subcontractor or other third-party vendor. All agreements into which the Contractor enters with Subcontractors and other third-party vendors for work to be performed under this Contract shall be in the Contractor's name only and shall name the MLGCA only as a client of Contractor and shall not name the MLGCA as a party to the agreement.

Budget and Spending Reports

Following approval of the MLGCA's annual budget, the Contractor shall work with MLGCA's Creative Services staff to develop plans and ensure that budgets are not exceeded. Additionally, the Contractor shall provide the MLGCA with the following budget related reports:

1. Monthly budget recap reports, which include expenditures for fiscal year to date, approved commitments for planned expenditures and any budget balances remaining or available. These reports shall be submitted by the 15th day of the month following the month covered by the report.
2. Year-end summaries of expenditures by type and product. The summaries shall be submitted to the MLGCA forty-five (45) days after the end of the state's fiscal year for each contract year.

2.3.2.8. Timelines

The Contractor shall provide the MLGCA with a timely response to its marketing and advertising needs within agreed upon timelines. Adequate time for MLGCA approval shall be included. Additional expenditures due to missed timelines by the Contractor shall be the sole responsibility of the Contractor, unless pre-approved in writing by the MLGCA.

2.3.2.9. Research

The Contractor shall work with the MLGCA's Marketing Department to identify advertising and marketing issues and to assist in formulating strategies, as needed. In addition, the Contractor shall:

1. Provide insight and analysis into consumer behaviors as requested by the MLGCA.
2. Recommend, manage and procure research vendors as required for various projects, including working with vendors to provide insight and analysis into research findings and reporting, scheduling, coordinating meetings and presentations, invoicing and processing payment.
3. Facilitate focus group or similar testing of scratch-off designs and promotion concepts, advertising concepts for major campaigns, brand positioning, or other marketing-related issues as requested by the MLGCA.
4. Conduct other formal market research as required by the MLGCA.
5. When assigned a research project by the MLGCA, Contractor shall complete or manage the completion of the project through a Subcontractor in a timely manner, with several milestones or deliverables throughout. These would typically include, but are not be limited to:
 - a. Define research objective(s) and methodology selection recommendation;
 - b. Provide participant screener criteria and questionnaire or discussion guide design;
 - c. Execute actual research project and supervise any Subcontractors required;
 - d. Provide data analysis and formulate conclusions and/or recommendations; and
 - e. Summarize key results or findings in written form and communicate research results to the MLGCA, as directed by the MLGCA.

The MLGCA shall own all research results, materials, and databases generated for this Contract or arising out of this Contract for the benefit of the MLGCA.

The MLGCA acknowledges that some projects may be completed entirely in-house by the Contractor (e.g. Survey Monkey) while others may require that all or parts be subcontracted.

2.3.2.10 Retail Marketing Support, Collateral (Point of Sale) Materials and Signage

The Contractor shall:

1. Develop concepts for POS that complement advertising campaigns or standalone promotions based on an approved creative brief and/or other advertising plan. This requirement includes (but is not limited to) such items as game brochures and posters, retailer identification, displays, and other POS items intended for temporary use.
2. Provide production assistance, including providing detailed production specifications, as requested by the MLGCA. (Note: the MLGCA is responsible for procuring vendors and producing collateral and POS materials.)
3. Assist Marketing staff to develop a comprehensive POS program that includes but is not limited to the following:
 - a. Develop and implement POS kits/packages for Retailers as needed;
 - b. Develop POS for use at fairs, events, or other promotions as needed and directed by the MLGCA;
 - c. Design elements for increased exposure on Lottery Vending Machines and other hardware enhancements;
 - d. Assist in integrating Corporate Account POS needs into the general POS program as directed by the MLGCA;
 - e. Provide coordination and logistical support in the development of sell-in materials for non-English speaking Retailers as directed by the MLGCA;
 - f. Lead the development of Retailer sell-in sheets or other Retailer focused communication vehicles; and
 - g. Design and produce interior and exterior signage, which identifies retail locations as Lottery Retailers. Such signage is generally intended for permanent or long-term use.

2.3.2.11. Strategic Planning

The Contractor shall provide ongoing strategic counsel for the MLGCA's core products and corporate brand by providing direction on initiatives, marketing, communication, and development issues:

1. Participate in the development of the annual MLGCA's product and promotion plans, as requested by the MLGCA.
2. Assist in situation analysis and development of overall goals, objectives, and strategies.
3. Advise the MLGCA regarding advertising, marketing, communications, and sales opportunities via the Internet, social media, mobile and other digital or social channels.
4. Perform routine field market checks to provide the MLGCA with additional strategic feedback on retail trends, products and programs.
5. Participate in selected lottery industry conferences. The Contractor shall pay for travel expenses, registration fees and all other fees incurred when attending these conferences.

2.3.2.12. Web Design, Implementation and Management

The Contractor shall design, develop, implement, secure, and maintain the MLGCA's various web properties. Specially, these responsibilities shall include, but are not limited to:

1. Create, manage, configure, and maintain the complete website hosting platform; Linux, Apache, MySQL, and PHP (LAMP) stack. This includes development and production systems. Work with the hosting provider to ensure the proper infrastructure, system and network components are in place and properly configured. The hosting platform (LAMP) software shall be kept up to date via software patches and version updates. The MLGCA's Lottery Central Monitoring and Control System Contractor maintains the physical hosting infrastructure. Work with the hosting provider and the MLGCA to perform software updates and other changes to the environment without affecting the availability of the sites.
2. Create, implement, maintain, and upgrade databases and applications including but not limited to jackpots, winning numbers results database, scratch-off prizes remaining, and content delivery network.
3. Implement and maintain a Web Application Firewall (WAF); the hosting contractor is currently providing this.
4. Design, deploy, and maintain all website and software solutions at the highest reasonably achievable and accessible functionality as defined by the W3C. The website shall perpetually meet these standards as they evolve.
5. Design, deploy and maintain all website development work and software solutions to meet ADA compliance as defined by the most recent version of the Web Content Accessibility Guidelines (WCAG) at level AA, and the State's Department of Information Technology. Create and deliver documentation that describes how the site is compliant.
6. Web site performance shall meet or exceed industry standards. Metrics include but are not limited to time to first impression, time to on-load event, time to fully loaded, client time, and rendering time.
7. Work with the hosting provider to design, develop, and implement systems and processes to ensure the sites are highly available and to mitigate downtime.
8. Implement a version control process and provide the MLCGA with the source code after significant changes occur.
9. Implement secure coding practices in the development of the web application as prescribed by the Open Web Application Security Project (OWASP) organization.
10. Utilize a web application vulnerability scanner as part of the development process to frequently scan the sites for security vulnerabilities. Scanning shall also occur regularly and the results of the scans shall be reported to the MLGCA. Security vulnerabilities shall be addressed and evidence of the resolution shall be provided. Scanning shall be performed statically and dynamically.
11. Contract with a third party to obtain a security vulnerability assessment for the web application code, remediate all confirmed vulnerabilities identified by the assessment, document the process, and retain this documentation for future reference. The results of the review, and evidence of the remediation shall be provided to the MLGCA as directed.
12. Implement other security measures as defined by the MLGCA.
13. Develop, produce, and implement all artwork required to update and maintain the MLGCA's websites, and promotional landing pages.
14. Provide content management for all MLGCA websites and landing pages, and assist in the implementation as directed by the MLGCA.
15. Provide front end programming services to implement and integrate all graphics, contests and content into MLGCA's websites, landing pages, etc.

16. Recommend various functional options to improve and enhance customer engagement with the MLGCA's websites, and upon approval, implement or integrate these features into the MLGCA's website(s).
17. Design, develop, and deploy promotional microsites or landing pages that are required for limited time MLGCA promotions or contests.
18. Work cooperatively with the MLGCA's Drawings team, IT Department and the MLGCA's Lottery Central Monitoring and Control System Contractor on various projects requiring data feeds or exchanges of information (i.e. Scratch Off prizes remaining, current jackpots, etc.); all providing valuable digital content on an automated basis.
19. Provide multi-language support for all websites.
20. Implement analytics tracking, and provide monthly analytical dashboards that include report traffic, downloads, etc.
21. Any hosting services provided by the contractor or its subcontractors shall engage an independent auditing firm to conduct annual SOC 2 Type 2 reviews. All SOC reports related to MLGCA web hosting shall be promptly provided to the MLGCA. The reports shall be reviewed by the MLGCA, and the contractor to ensure satisfactory assurance as to the adequacy and operational effectiveness of the controls protecting the web hosting, and to ensure that any material security concerns identified in the reports are promptly addressed. The review process shall be documented, and retained for future reference.
22. Implement any and all other items not related to infrastructure required to provide fully operational and secure sites as defined by the MLGCA.

Note: The Contractor is not responsible for hosting the MLGCA's websites. Hosting and associated infrastructure is provided and maintained by the Lottery's Central Monitoring and Control System Contractor. However, the Contractor shall work cooperatively with the hosting provider, as required, to ensure the websites are secure, software is up to date, accurate data exchange, performance, functionality, and implemented to provide an exceptional customer experience for players on the MLGCA's digital properties.

2.3.2.13. Mobile Application Design, Implementation and Management

The Contractor shall design, develop, implement, secure, and maintain the MLGCA's various mobile application properties. Specially, these responsibilities shall include, but are not limited to:

1. Assume responsibilities of existing contracts with companies who provide and maintain the MLGCA's current mobile applications. The contracts include the design, development, implementation, management, security, and hosting of the applications.
2. Manage all aspects of the existing contracts for the successful operation, maintenance, and deployment of the MLGCA's mobile applications.
3. Design, develop, implement, maintain and host future mobile applications as directed by the MLGCA.
4. At a minimum, the applications shall be developed to operate on iOS and Android platforms, and on smartphone and tablet devices.
5. Design, deploy, and maintain all mobile solutions at the highest reasonably achievable and accessible functionality as defined by the W3C. The applications must perpetually meet these standards as they evolve.
6. Implement application security measures as defined by the MLGCA, and to meet industry best practices.
7. Implement a version control process and provide the MLCGA with the source code after significant changes occur.

8. Develop, produce, and implement all artwork required to update and maintain the MLGCA's mobile applications.
9. Provide content management and implementation for all mobile applications as directed by the MLGCA.
10. Provide programming services to implement and integrate all graphics, contests and content into MLGCA's mobile applications.
11. Recommend various functional options to improve and enhance customer engagement with the MLGCA's mobile applications and, upon approval, implement or integrate these features into the MLGCA's mobile applications.
12. Work cooperatively with the MLGCA's Drawings team, IT Department and the MLGCA's Lottery Central Monitoring and Control System Contractor on various projects requiring data feeds or exchanges of information (i.e. winning numbers, current jackpots, etc.); all providing valuable digital content on an automated basis.
13. Implement analytics tracking, and provide monthly analytical dashboards that include report traffic, download, etc.
14. Work with the provider to design, develop, and implement systems and processes to ensure the applications are highly available and to mitigate downtime.
15. Application performance shall meet or exceed industry standards.
16. Design, deploy and maintain all software solutions to meet ADA compliance as defined by the most recent version of the Web Content Accessibility Guidelines (WCAG) at level AA, and the State's Department of Information Technology. Create and deliver documentation that describes how the site is compliant.
17. Any hosting services provided by the contractor or its subcontractors shall engage an independent auditing firm to conduct annual SOC 2 Type 2 reviews. All SOC reports related to MLGCA hosting shall be promptly provided to the MLGCA. The reports shall be reviewed by the MLGCA, and the contractor to ensure satisfactory assurance as to the adequacy and operational effectiveness of the controls protecting the hosting, and to ensure that any material security concerns identified in the reports are promptly addressed. The review process shall be documented, and retained for future reference.

2.3.2.14. Subcontractors

The MLGCA recognizes that the selected Offeror may not have the ability to perform or complete all of the above requirements in-house and that some may require the use of a Subcontractor. With prior written approval from the MLGCA in the form of an itemized cost estimate, the Contractor may subcontract certain elements of a given project or task if the expertise required is not available from the Contractor. Examples include, but are not limited to, various technical resources, database administrators, broadcast and video production services, research providers, etc.

The Contractor may not subcontract any services required under the Contract to an affiliated entity.

Competitive Bids - The Contractor shall provide at least three (3) competitive bids for outside supplier expenditures for broadcast or out-of-home production or any other products or services that the MLGCA designates when such purchases exceed \$25,000.

2.3.3 SERVICES REQUIRED – FUNCTIONAL AREA II: MEDIA PLANNING AND BUYING SERVICES

2.3.3.1 Dedicated Account Management

The Contractor shall provide a seasoned media account team that shall work collaboratively with the MLGCA's Marketing Department to manage the daily activities of the account. The account team shall participate in regular communications with the Creative Development and Production Services Contractor to ensure seamless integration of the advertising program.

Members of the Contractors account team shall attend various planning meetings with MLGCA staff and/or other MLGCA Contractors. The team shall be available for in-person or conference call discussions with the MLGCA on a weekly basis, at minimum. The frequency of such discussions and number of Contractor personnel involved will depend on the scope and number of the project(s) underway.

The Contractor shall prepare the following reports:

1. **Status Reports** – Weekly status reports shall be issued detailing all current projects and initiatives, which shall include timelines and deadlines for all activity, allowing time for MLGCA approvals.
2. **Flowcharts** – All media activity (both current and planned) shall be displayed in/on flowcharts prepared and maintained by the Contractor; Media type, timing, Gross Rating Point (GRP) levels, projected reach and frequency, and costs for each campaign shall be detailed.
3. **Conference Reports** – If requested by the MLGCA, the Contractor shall provide reports or minutes summarizing discussion highlights and action items resulting from meetings and discussions about the status of projects.
4. **P.O.V.'s** – When requested by the MLGCA, the Contractor shall provide an evaluation (point of view) on the effectiveness and suitability of any media opportunity presented to the MLGCA.
5. **Other Reports** - Contractor may be required to provide various media reports throughout the year, which may include but are not limited to spending reports by geographic market, media type, station or vendor, MLGCA product, etc.

2.3.3.2 Media Research and Strategy Development

The Contractor shall utilize a wide range of syndicated and proprietary research tools to obtain consumer behaviors and media consumption patterns and keep on top of media trends and emerging technologies to ensure that effective communications plans are developed and executed for the MLGCA.

2.3.3.3 Strategic Media Buying, Planning and Placement

The Contractor shall deliver innovative and effective solutions for the MLGCA's statewide, multichannel advertising program utilizing the most inventive and effective media for the individual campaign goals and objectives as determined by the MLGCA. Media for the MLGCA typically includes, but is not limited to, television, radio, print, out of home, digital and social.

1. **Strategic Media Planning** – The Contractor shall use all the research, analytical tools and sales data at its disposal to develop the most creative and effective media plans to achieve stated objectives and drive business outcomes for the MLGCA.
2. **Media Briefs and Plans** – Upon the initiation by the MLGCA of each project or initiative, the Contractor shall prepare media briefs and plans which include recommendations for the following:
 - a. Definition of target audience;
 - b. Media and day part mix with appropriate rationale for recommendation;
 - c. Target cost per point and projected budget;
 - d. Projected allocation of dollars by media type and market;
 - e. Recommended dates; and
 - f. GRP objectives with reach/frequency goals.

3. **Negotiation** - Contractor shall provide the MLGCA with detailed buy specifications for all approved media plans or buys in a timely manner. Buy specifications or authorizations shall be approved by the MLGCA and shall include any pertinent information, such as: target audience, flight dates or timing, budget, geography/markets, media type, GRPs, impressions, number of insertions or placements, added value goals, etc.
 - a. Prior to a buy being finalized or executed, Contractor shall provide the MLGCA with the total cost of the buy, specific media vendors being recommended (broadcast stations, print vendors, websites, etc.), media weight recommended for each vendor (GRPs, impressions, number of placements, etc.), recommended spend by vendor, added value, etc.
 - b. Contractor shall provide the MLGCA with buy reports detailing the buy specifics. Contractor shall also provide the MLGCA's Creative Services or Digital Services Contractors with appropriate buy reports that allow for timely traffic of the creative units.
4. **Purchase and Placement** – The Contractor shall be responsible for the placement and purchase of all media, and its experience and buying power in the local media markets should provide cost savings for the MLGCA for upfront as well as last minute jackpot buys. In negotiating media purchases, the Contractor shall make the MLGCA aware of any savings that might be achieved through long-term commitments or other specialized programs.
5. **Placement Verification** – The Contractor shall ensure that all media was broadcast or published according to any contracts or placement instructions.
 - a. Contractor shall track and evaluate advertising programs utilizing timely post-buy evaluation and reporting methodologies to ensure buys are delivered as ordered and to provide recommendations on future placements. Contractor shall negotiate appropriate make good schedules and/or credits for buys under-delivering or not meeting the approved media specifications. The Contractor shall monitor all buys while in progress, unless otherwise specified by the MLGCA; all broadcast post buy analyses are due to the MLGCA quarterly.
 - b. Contractor shall optimize all on-line media buys using an independent tracking service. Contractor shall provide recommendations and analysis in writing. Unless otherwise specified by the MLGCA, the Contractor shall provide digital post buy reports on a monthly basis.
 - c. Contractor shall reconcile all media invoices. Contractor shall review and verify the accuracy of all invoices received from media vendors to ensure all advertisements and sponsorships run as ordered and are billed correctly.
6. **Jackpot Support** – The current strategy for supporting high level jackpots includes purchasing media on short notice up to the evening of the Drawing. However, since these jackpot amounts cannot be predicted in advance, the media shall be purchased in a timely and dynamic fashion in the event that a jackpot reaches a certain pre-determined threshold. This requires that the Contractor shall remain vigilant with the jackpots and that it shall also be nimble, diligent and responsive in negotiating and implementing such last minute incremental media plans.

2.3.3.4 State and Local Marketing Programs

The Contractor shall work with the MLGCA to select, develop, negotiate and contract for sponsorships with local venues, sports teams, concerts, promotional events and activities, and other State and local marketing programs.

1. **Free Tickets and Other Benefits** – Sponsorships often carry with them an offer for free tickets to events, premium items and other special benefits. All such benefits provided to the Contractor in relation to a sponsorship purchased for work related to the Contract for the benefit of the MLGCA shall be fully disclosed and documented. The Contractor may not utilize any such items for its own

benefit or for the benefit of other clients. No such item shall be provided to an employee of the MLGCA.

2. The MLGCA reserves the right to accept or reject the offer of any such items or benefits offered in association with a sponsorship or other media buy. If utilized by the MLGCA, they will be used for sponsorship audit or business development purposes.

2.3.3.5 Legal Review of Agreements

The Contractor shall have no power or authority to sign an agreement on behalf of the MLGCA, to bind the MLGCA, the Commission, or the State to any such agreement, or to obligate the MLGCA to any liability if the Contractor fails to pay any subcontractor or other third-party vendor. All agreements into which the Contractor enters with subcontractors and other third-party vendors for work to be performed under this Contract shall be in the Contractor's name only and shall name the MLGCA only as a client of Contractor and shall not name the MLGCA as a party to the agreement. Contractor shall provide legal review of all agreements generated as a result of this contract at the Contractor's expense.

2.3.3.6 Accounting

Annual Advertising Budget

The Contractor shall develop an annual budget for all media-related advertising expenditures required by the contract. The level of anticipated annual spending will be determined by the MLGCA, based on projections contained in the annual product and promotion plan. The MLGCA will provide the Contractor with an annual not to exceed budget amount for advertising services and the Contractor shall develop a plan that is responsive to the MLGCA's marketing needs and subject to MLGCA's approval. The Contractor shall recommend ways to generate cost savings wherever possible. The initial budget will be reviewed monthly and shall be revised as required by the MLGCA.

The Contractor shall not make any commitments on behalf of the MLGCA in accordance with Section 41.1. Any commitments to be made by the Contractor to third-parties for work related to the Contract may not be made without prior written approval of the MLGCA Contract Monitor, or designee.

Accounting Services

The Contractor shall provide experienced accounting staff support to implement timely and accurate reports and billing to meet MLGCA specifications.

The Contractor shall provide to the MLGCA monthly by the 15th of the month a summary of all approved expenditures to date for the current fiscal year. The summary shall indicate the current amount billed to the MLGCA during the year, amounts committed that have not been billed and any funds remaining.

Cost Savings

The Contractor shall make the MLGCA aware of any cost savings that might be achieved by the expedited payment of media or other invoices.

Estimates Required

The Contractor shall prepare a written estimate or authorization for any expenditure and obtain the MLGCA's written approval before making any commitment to third-parties for work related to the Contract. Only the MLGCA Director, Chief Marketing Officer, Director of Creative Services or Marketing designee can give such approval, unless otherwise specified in writing. The MLGCA will

not be responsible for any expenditure for which prior written approval was not obtained. All estimates must be categorized by fiscal year and by budget category, as defined by the MLGCA.

The MLGCA will not be responsible for expenditures exceeding an approved authorization. The Contractor may submit revised authorizations for consideration by the MLGCA if it appears that the cost of a particular estimate will exceed the originally approved amount. The approval of any such authorization will be contingent upon the subsequent submission and approval of required documentation. Each authorization shall be identified by a unique identification number which will be included on the invoice for reference. The Contractor shall maintain a list of all approved authorizations, including the amount and description of the expenditure, and provide the MLGCA with an updated list of all such authorizations monthly. No payment will be made without a signed authorization.

Budget and Spending Reports

Following approval of the MLGCA's annual budget, the Contractor shall work with MLGCA's Creative Services staff to develop plans and ensure that budgets are not exceeded. Additionally, the Contractor shall provide the MLGCA with the following budget related reports:

1. Monthly budget recap reports, which include expenditures for fiscal year to date, approved commitments for planned expenditures and any budget balances remaining or available. These reports shall be submitted by the 15th day of the month following the month covered by the report.
2. Year-end summaries of expenditures by type and product. The summaries shall be submitted to the MLGCA forty-five (45) days after the end of the state's fiscal year for each contract year.

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SECTION 3 – CONTRACTOR REQUIREMENTS: GENERAL REQUIREMENTS

3.1 Insurance Requirements

- 3.1.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or Subcontractors, with minimum limits of \$1,500,000 per occurrence and \$3,000,000 aggregate.
- 3.1.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$5,000,000 per claim and annual aggregate.
- 3.1.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.1.4 The Contractor shall maintain Crime Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000.
- 3.1.5 Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
- a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act;
 - b. Commercial General Liability as required in Section 3.1.1;
 - c. Errors and Omissions/Professional Liability as required in Section 3.1.2;
 - d. Automobile and/or Commercial Truck Insurance as required in Section 3.1.3; and
 - e. Crime Insurance as required in Section 3.1.4.
- 3.1.6 The State of Maryland shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella policies with the exception of Workers' Compensation Insurance, which is currently handled by the Chesapeake Employer's Insurance Company (formerly Injured Workers' Insurance Fund). This means the faces of the certificates of insurance for these policies must state, "The State of Maryland is an Additional Insured." All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and provide such policies.
- 3.1.7 The Contractor shall require that any Subcontractors providing primary services (as opposed to non-critical, ancillary services) under this Contract obtain and maintain the same levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

3.2 Security Requirements

3.2.1 Employee Identification

1. Each person who is an employee or agent of the Contractor or Subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
2. At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

3.2.2 **Information Technology**

For purposes of this RFP and the resulting Contract:

1. "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., General Provisions § 14-3501(d); or (4) falls within the definition of "personal information" under Md. Code Ann., St. Govt. § 10-1301(c).
2. "Relevant subcontractor" includes any relevant subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
3. The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security, and ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
4. The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online on this website.

3.2.3 **Contingency/Disaster Recovery Plans**

1. The Contractor and any relevant Subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/Subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
2. The contingency and disaster recovery plans shall be designed to ensure that services under this Contract are restored after a disruption within 24 hours in order to avoid unacceptable consequences due to the unavailability of services.

3. The Contractor and any relevant Subcontractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover / fallback operations.
4. Such contingency and disaster recovery plans shall be available for the MLGCA to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

3.2.4 Incident Response Requirement

1. The Contractor shall notify the Contract Monitor when any Contractor and/or Subcontractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
2. The Contractor shall notify the Contract Monitor within one (1) Business Day of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Monitor and Procurement Officer.
3. The Contractor shall notify the Contract Monitor within one (1) Business Day if there is a threat to the Contractor's and/or Subcontractor's systems as it pertains to the use, disclosure, and security of the Department's Sensitive Data.
4. If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Monitor within one (1) Business Day after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
5. The Contractor, within one (1) Business Day of discovery, shall report to the Contract Monitor any improper or non-authorized use or disclosure of Sensitive Data. The Contractor shall provide such other information, including a written report, as reasonably requested by the MLGCA or State. The Contractor's report shall identify:
 - a. The nature of the unauthorized use or disclosure;
 - b. The Sensitive Data used or disclosed;
 - c. Who made the unauthorized use or received the unauthorized disclosure;
 - d. What the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
 - e. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
6. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and indemnify, hold harmless, and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.

7. This Section 3.2.4 shall survive expiration or termination of the Contract.

3.2.5 Web and Mobile Application Design, Implementation, and Management

Design, develop, and implement secure web applications, and implement security related processes as defined in section 2.3.2.12.

3.3 Problem Escalation Procedure

- 3.3.1 The Contractor shall provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP shall state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the MLGCA within appropriate timeframes.
- 3.3.2 The Contractor shall provide contact information to the Contract Monitor, as well as to other MLGCA personnel as directed, should the Contract Monitor not be available.
- 3.3.3 The Contractor shall provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
 - a. The process for establishing the existence of a problem;
 - b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
 - c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
 - d. Expedited escalation procedures and any circumstances that would trigger them;
 - e. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the MLGCA;
 - f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
 - g. A process for updating and notifying the Contract Monitor of any changes to the PEP.

Nothing in this section shall be construed to limit any rights of the Contract Monitor or the MLGCA which may be allowed by the Contract or applicable law.

3.4 Invoicing

3.4.1 General

All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor. All invoices shall include the following information:

- (1) Contractor name and address;
- (2) Remittance address;
- (3) Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- (4) Invoice period (i.e. time period during which services covered by invoice were performed);

- (5) Invoice date;
- (6) Invoice number;
- (7) State assigned Contract number;
- (8) State assigned (Blanket) Purchase Order number(s);
- (9) Detailed back-up to support all charges, including signed estimates or authorizations, documentation from Subcontractors, etc.; and
- (10) Amount due.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

3.4.2 Travel

The MLGCA does not reimburse for travel related expenses for regularly held meetings at MLGCA Headquarters, for meetings with other Subcontractors, or for lottery industry conferences. In the event that the MLGCA requires the Contractor(s) to travel for television and radio production, event management or other such reasons, any travel costs incurred by employees or Subcontractors of the Contractor will be reimbursed pursuant to State travel guidelines and per diem rates.

3.4.3 The MLGCA reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the MLGCA with all required deliverables within the time frame specified in the Contract or otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Also see the “Living Wage” provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the MLGCA, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

3.4.4 See also Attachment M – Contract, Paragraph #4, for additional information regarding Invoices.

3.5 SOC 2 Type 2 Audit Report

A SOC 2 Type 2 Audit Report shall be required as stated in Section 2.3.2.13 Item #17.

3.5.1 A SOC 2 Type 2 Audit applies to the Contract. The applicable trust principles are: Security and Availability.

3.5.2 In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit performed by an independent audit firm of the Contractor’s handling of Sensitive Data or the MLGCA’s critical functions. Critical functions are identified as all aspects and functionality of the Solution including any add-on modules and shall address all areas relating to Information Technology security and operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the “Information Functions and Processes.” Such audits shall be performed in accordance with audit guidance: Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the MLGCA, to assess the security of outsourced client functions or data (collectively, the “Guidance”) as follows:

- A. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the “SOC 2 Audit” or “SOC 2 Report”). All SOC2 Audit Reports shall be submitted to the Contract Monitor as specified in Section F below. The initial SOC 2 Audit shall be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the

Contract Effective Date unless otherwise agreed to in writing by the Contract Monitor. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract, and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.

- A. The SOC 2 Audit shall report on the suitability of the design and operating effectiveness of controls over the Information Functions and Processes to meet the requirements of the Contract, including the Security Requirements identified in **Section 3.2**, relevant to the trust principles identified in 3.5.1: as defined in the aforementioned Guidance.
- B. The audit scope of each year's SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Processing Integrity, Confidentiality, and Privacy) to accommodate any changes to the environment since the last SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and Processes through modifications to the Contract or due to changes in Information Technology or the operational infrastructure. The Contractor shall ensure that the audit scope of each year's SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- C. The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the TO Contractor or essential support to the Information Functions and Processes provided to the MLGCA under the Contract. The Contractor shall ensure the audit includes all such subcontractors operating in performance of the Contract.
- D. All SOC 2 Audits, including those of the Contractor, shall be performed at no additional expense to the MLGCA.
- E. The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a complete copy of the final SOC 2 Report(s) and a documented corrective action plan addressing each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.
- F. If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information Functions and Processes being provided to the MLGCA under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the MLGCA will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- G. If the Contractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in **Section 3.5.2.A**, the MLGCA shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and Processes utilized or provided by the Contractor and under the Contract. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The MLGCA will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.
- H. Provisions in **Section 3.5.1-2** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Section 3.5.1-2** (or the substance thereof) in all subcontracts.

3.6 MBE Reports

If this RFP includes an MBE Goal (see Section 4.26), the Contractor and its MBE Subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

- (1) **Attachment D-4A**, the MBE Participation Prime Contractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer;
- (2) **Attachment D-4B** (*if applicable*), the MBE Prime Contractor Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer; and
- (3) **Attachment D-5**, the MBE Participation Subcontractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

3.7 VSBE Reports

If this solicitation includes a VSBE Goal (see Section 4.27), the Contractor and its VSBE Subcontractors shall provide the following VSBE Monthly Reports based upon the commitment to the goal:

- (1) **Attachment E-3**, the VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer; and
- (2) **Attachment E-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.

3.8 Liquidated Damages

3.8.1 **General** - It is agreed by the Contractor and the MLGCA that:

- a. If the Contractor does not provide or perform the requirements specified in Section 3.8.5, damage(s) to the MLGCA will result.
- b. Proving such damage(s) will be costly, difficult, and time consuming.
- c. The damage figures listed below represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the Contract and is not considered a penalty.
- d. Liquidated damages shall become due within thirty (30) calendar days after written notification by the MLGCA to the Contractor. The MLGCA may, at its sole discretion, deduct liquidated damages from payments due to the Contractor, and such deduction(s) shall not be a ground upon which the Contractor may file a contract dispute. The Contractor's surety shall be liable under the Performance Bond for all liquidated damages assessed against the Contractor.
- e. Nothing in this provision shall be construed as relieving the Contractor from performing all Contract requirements whether listed herein or not, nor is the MLGCA's right to enforce or to seek other remedies from failure to perform any other Contract duty hereby diminished.
- f. Remedies of the MLGCA specified in this section or elsewhere in the Contract for breach or failure of performance by the Contractor shall in no way limit any other remedies available to the MLGCA under the Contract; under any statute or regulation; or at law or in equity including, without limitation, all remedies of a buyer under the Uniform Commercial Code. All rights, powers and remedies shall be cumulative and concurrent. Any failure of the MLGCA to exercise a remedy shall not be a waiver of any breach or non-

performance by the Contractor nor shall it prevent the MLGCA from later exercising that or any other remedy.

- g. The Contract will be used by the MLGCA to monitor Contractor performance and will provide the basis for determining liquidated damages.

3.8.2 Liquidated Damages Assessment: Collections, Withholds

- a. Once the MLGCA has determined that liquidated damages are to be assessed, the MLGCA Director shall notify the Contractor of the assessment (or assessments). At the Director's discretion, the assessment notice may direct payment of the assessment by the Contractor. If payment is thus directed, the Contractor shall pay the assessment within thirty (30) calendar days of receipt of the assessment notice unless directed otherwise by the Director. If the Director determines that any damage was caused in part by the MLGCA, the Director shall reduce damage assessment against the Contractor proportionately.
- b. Any liquidated damages assessment may also be collected, at the Director's discretion, by withholding the funds from any payment (or payments) due the Contractor after the date of assessment.

3.8.3 Conditions for Termination of Liquidated Damages

As determined appropriate by the Director, the following are the conditions under which the Contractor may obtain relief from the continued assessment of liquidated damages which have been imposed.

- a. Except as waived by the Director, no liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the Director verifying the correction of condition(s) for which liquidated damages were imposed.
- b. The necessary level of documentation to verify corrections will be determined by the Director, who is the sole judge of the accuracy of any documentation provided.
- c. The Contractor shall certify that each defect is corrected.

3.8.4 Severability of Individual Liquidated Damages Clauses

If any portion of any provision on liquidated damages in this Contract is determined to be unenforceable in one or more of its applications, the remaining portion remains in effect in all applications not determined to be invalid that are severable from the invalid applications. If any portion of this liquidated damages provision is determined to be unenforceable in total, the other portions shall remain in full force and effect.

3.8.5 Damages Imposed

3.8.5.1 Failure to Meet Required Delivery Date

In the event the Contractor fails to meet a required delivery or completion date, without the prior written approval of the MLGCA, the Director may impose liquidated damages in the amount of up to One Thousand Dollars (\$1,000.00) per day for each day that the Contractor does not meet the specified delivery or completion date.

3.8.5.2 Failure to Promptly Pay Subcontractors/Third Party Vendors

In the event the Contractor fails to promptly (within thirty (30) days of receipt of payment from the MLGCA) pay a Subcontractor or third-party vendor an undisputed amount to which a Subcontractor or third-party vendor is entitled for work performed under this contract, the Director may impose liquidated damages in the amount of up to Two Hundred Fifty Dollars (\$250.00) per day, per Subcontractor/third-party vendor for each day that the Contractor does not meet the required payment date.

3.8.5.3 Availability – Important Application

If Availability falls below 99% for more than 2 days of a month during regular business hours, the Director may impose liquidated damages in the amount of up to One Thousand Dollars (\$1,000.00) per day for each day that the Availability is below 99%.

3.8.5.4 Availability – Supportive Application

If Availability falls below 98% for more than 2 days of a month during regular business hours, the Director may impose liquidated damages in the amount of up to One Thousand Dollars (\$1,000.00) per day for each day that the Availability is below 98%.

3.9 End of Contract Transition

The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this RFP to any subsequent contract for similar services. The transition period shall begin ninety (90) days before the Contract end date, or the end date of any final exercised option or contract extension. The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with instructions to meet specific transition requirements prior to the end of Contract.

3.10 Substitution of Personnel

3.10.1 Continuous Performance of Key Personnel

Unless substitution is approved per paragraphs 3.10.2-3.10.4 of this section, Key Personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under this Contract, as described in the RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Monitor.

If the Contract is task order based, the provisions of this section apply to Key Personnel identified in each task order proposal and agreement.

3.10.2 Definitions

For the purposes of this section, the following definitions apply:

Extraordinary Personal Circumstance – Any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in

the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

Incapacitating – Any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Contractor's Technical Proposal.

Sudden – When the Contractor has less than thirty (30) days' prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

3.10.3 Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in paragraph 3.10.4 of this section.

1. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute Key Personnel have qualifications at least equal to those of the Key Personnel for whom the replacement is requested.
2. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
 - A detailed explanation of the reason(s) for the substitution request;
 - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
 - The official resume of the current personnel for comparison purposes; and
 - Any evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested Key Personnel replacement.

3.10.4 Replacement Circumstances

3.10.4.1 Voluntary Key Personnel Replacement. To voluntarily replace any Key Personnel, the Contractor shall submit substitution request as described in paragraph 3.10.3 of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph 3.10.4.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

3.10.4.2 Key Personnel Replacement Due to Vacancy. The Contractor shall replace Key Personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section 3.10.4.1 of this section.).

Under any of the circumstances set forth in this paragraph 3.10.4.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph 3.10.3 of this section within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

3.10.4.3 Key Personnel Replacement Due to an Indeterminate Absence. If any Key Personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Monitor as required under paragraph 3.10.3 of this section.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

3.10.4.4 Directed Personnel Replacement.

3.10.4.4.1 The Contract Monitor may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstances, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 3.10.4.4.2. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph 3.10.3 of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

3.10.4.4.2 If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Key Personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

3.11 Performance Bond

3.11.1 The Contractor shall deliver to the Procurement Officer, within ten (10) days after notice of recommended award, a Performance Bond or other suitable security in the amount of Five Hundred Thousand Dollars

(\$500,000.00) for each Functional Area recommended for award guaranteeing that the Contractor shall well and truly perform the Contract.

- 3.11.2 The Bond shall be in the form provided in Attachment P and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the MLGCA, or other acceptable security for bond as described in COMAR 21.06.07 (See Section 4.42)
- 3.11.3 The Bond shall be maintained throughout the term of this Contract, and option period, if exercised. Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the MLGCA. This Bond shall also secure liquidated damages.
- 3.11.4 The Bond may be renewable annually. The Contractor shall require that the surety provide to the MLGCA thirty (30) days written notice of non-renewal, cancellation, or material modification of the Bond by either the surety or the Contractor. Non-renewal, cancellation or material modification of the Bond by the Surety will not constitute an event of default by the Contractor provided that the Contractor obtains an acceptable replacement Performance Bond to be effective prior to the expiration of the thirty (30) day notice period.
- 3.11.5 Failure of the Contractor to submit and maintain the required Performance Bond coverage throughout the term of the Contract, and any option period, if exercised, will constitute an event of default under the Contract.
- 3.11.6 After the first year of the Contract, the Contractor may request a reduction in the amount of the Bond. The amount and the duration of the reduction, if any, will be at the MLGCA's sole discretion. If any reduction is granted, the MLGCA shall have the right to increase the amount of the Bond to any amount, up to the original amount, at any time and at the MLGCA's sole discretion.
- 3.11.7 The Performance Bond is forfeited to the MLGCA, in whole or in part, if the Contractor defaults in the performance of its contractual obligations or if the MLGCA incurs damages due to the willful or negligent performance of the Contractor or its Subcontractors. However, the surety shall have the option within thirty (30) days of notice of default to cure the default or tender funds sufficient to pay the cost of completion up to an amount not to exceed the penal sum of the bond. With the concurrence of the MLGCA, the surety may assume the remainder of the Contract to perform or sublet.
- 3.11.8 The cost of this Bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.

3.12 Payment Bond

- 3.12.1 The Contractor shall submit to the Procurement Officer, within ten (10) business days after notice of recommended Contract award, a Payment Bond in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each Functional Area recommended for award. The Bond shall be in the form provided in Attachment Q and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the MLGCA, or other acceptable security for bond as described in COMAR 21.06.07. The Payment Bond shall be maintained throughout the term of this Contract, and renewal option period, if exercised. Evidence of renewal of the Payment Bond and payment of the required premium shall be provided to the MLGCA. This bond shall also secure liquidated damages.
- 3.12.2 Failure of the Contractor to submit and maintain the required Payment Bond coverage throughout the term of the contract, and any Renewal Option Period, if exercised, will constitute an event of Default under the Contract.
- 3.12.3 The Payment Bond is forfeited to the MLGCA, in whole or in part, if the Contractor defaults in its payment of Subcontractors or vendors for work performed under this Contract.

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SECTION 4 – PROCUREMENT INSTRUCTIONS

4.1 Pre-Proposal Conference

- 4.1.1 A Pre-Proposal Conference (Conference) will be held at the date, time, and location indicated on the RFP Key Information Summary Sheet (near the beginning of the RFP, after the Title Page and Notice to Vendors). All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.
- 4.1.2 The Conference will be summarized. As promptly as is feasible after the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace (See Section 4.2) and the MLGCA's website (mdlottery.com).
- 4.1.3 In order to assure adequate seating and other accommodations at the Conference, please e-mail or fax the Pre-Proposal Conference Response Form (**Attachment A**) to the attention of the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. The MLGCA will make a reasonable effort to provide such special accommodation.

4.2 eMaryland Marketplace

- 4.2.1 Each Offeror shall indicate its eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP.
- 4.2.2 eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the MLGCA website (mdlottery.com) and possibly other means for transmitting the RFP and associated materials, the summary of the Pre-Proposal Conference, Offeror questions and Procurement Officer's responses, amendments, and other RFP-related information will be provided via eMM.
- 4.2.3 In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bso/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

4.3 Questions

- 4.3.1 Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the Procurement Officer's e-mail address indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). Identify in the subject line the RFP Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.
- 4.3.2 Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email in a timely manner prior to the Proposal due date. Questions are requested to be submitted at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are

not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.

4.4 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

4.5 Proposals Due (Closing) Date and Time

- 4.5.1 Proposals, in the number and form set forth in RFP Section 5.2 “Proposals” must be received by the Procurement Officer at the Procurement Officer’s address no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet (near the beginning of the RFP, after the Title Page and Notice to Vendors) in order to be considered.
- 4.5.2 Requests for extension of this time or date will not be granted. Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the RFP Key Information Summary Sheet will not be considered.
- 4.5.3 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the RFP Key Information Summary Sheet for receipt of Proposals.
- 4.5.4 **Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.**
- 4.5.5 Vendors not responding to this RFP are requested to submit the “Notice to Vendors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements, etc.). This form is located in the RFP immediately following the Title Page (page ii).

4.6 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted. (Note: An Offeror may submit a proposal encompassing only a single Functional Area or both Functional Area I and Functional Area II as described in Section 2.1.4)

4.7 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror’s Proposal to meet the requirements of this RFP.

4.8 Public Information Act Notice

- 4.8.1 An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see RFP Section 5.4.2.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

- 4.8.2 Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

4.9 Award Basis

The Contract(s) shall be awarded to the responsible Offeror(s) submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP Section 6 for further award information.

4.10 Oral Presentation/Site Visits/Presentation of Functional Area Assignments

4.10.1 Assignments

Section 5.6 describes a required Assignment for each Functional Area. This Assignment is *not* to be submitted with the Offeror's original proposal. After MLGCA's initial review of technical proposals, Offerors that are determined to be Qualified Offerors will be invited to submit a written response to the Assignment required in Section 5.6 for the Functional Area(s) being proposed and to also make an oral presentation to the Evaluation Committee to present the materials developed for the Assignment(s).

4.10.2 Oral Presentations

During the evaluation process, Offerors may be required to make individual oral presentations to State representatives. Submission of a proposal does not guarantee an Offeror the opportunity to be invited to participate in oral presentations or discussions. An Offeror's presentation must include the key staff that would be assigned to this project if awarded the Contract.

4.10.3 Site Visits

The Evaluation Committee may make site visit(s) to the Offeror's place of business or other location where Offeror is providing services to a third party.

4.10.4 Scheduling

The Procurement Officer will notify Offerors of the time, place, procedure, scope, and format for the presentation of Assignments and for any additional oral presentations, discussions, demonstrations and/or site visit(s) that may be required. These events may be scheduled concurrently or separately at the MLGCA's discretion. An Offeror's failure to promptly comply and cooperate with these requirements could result in its proposal being rejected and eliminated from further consideration.

4.10.5 Representations

Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions, oral presentations, demonstrations and site visits. Any such written clarifications or changes then become part of the Offeror's Proposal and are binding if the Contract is awarded.

4.11 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for 180 days following the closing date for submission of Proposals or best and final offers (see Section 6.5.2.5) if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

4.12 Revisions to the RFP

- 4.12.1 If it becomes necessary to revise this RFP before the due date for Proposals, the MLGCA shall endeavor to provide amendments to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. In addition, amendments to the RFP will be posted on the MLGCA's website (mdlottery.com) and through eMM. It remains the responsibility of all prospective Offerors to check all applicable websites for any amendments issued prior to the submission of Proposals. Amendments made after the due date for Proposals will be sent only to those Offerors that submitted timely Proposals and that remain under award consideration as of the issuance date of the amendment.
- 4.12.2 Acknowledgment of the receipt of all amendments to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal. 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 an amendment does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the amendment.

4.13 Cancellations

- 4.13.1 The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.13.2 In the event a government entity proposes and receives the recommendation for award for the Contract resulting from this RFP, the procurement may be cancelled and the award processed as a Memorandum of Understanding in accordance with COMAR 21.01.03.01.A(4).

4.14 Incurred Expenses

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

4.15 Protest/Disputes

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

4.16 Offeror Responsibilities

- 4.16.1 The selected Offeror(s) shall be responsible for all products and services required by this RFP. All Subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, Subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.26 "Minority Business Enterprise Goals" and Section 4.27 "Veteran-Owned Small Business Enterprise Goal").

- 4.16.2 If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror shall submit with its Proposal an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- 4.16.3 A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualification of the parent are transferred to and shared with the Offeror, the parent is directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

4.17 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 5.4.2.4).**

4.18 Proposal Affidavit

A Proposal submitted by an Offeror must be accompanied by a completed Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP.

4.19 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this RFP, the successful Offeror will be required to complete a Contract Affidavit, a copy which is included as **Attachment N** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. The Contractor must also submit a Contract Affidavit with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a "foreign" business.

4.20 Compliance with Laws/Arrearages

- 4.20.1 By submitting a Proposal in response to this RFP, the Offeror(s), if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.
- 4.20.2 By submitting a response to this RFP, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

4.21 Verification of Registration and Tax Payment

- 4.21.1 Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.
- 4.21.2 It is strongly recommended that any potential Offeror 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.

4.22 False Statements

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

- (a) In connection with a procurement contract a person may not willfully:
- (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of a material fact; or
 - (3) 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 5 years or both.

4.23 Payments by Electronic Funds Transfer

By submitting a response to this RFP, the Offeror(s) agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The selected Offeror(s) shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/X-1020130407.pdf.

4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this RFP are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all Subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract "Prompt Payment" clause (see **Attachment M**). Additional information is available on GOMA's website at: <http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf>.

4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the MLGCA may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the RFP 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 Contract.
- 4.25.3 “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, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsa/>), and electronic data interchange.
- 4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g., RFP § 4.23 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section 4.25.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
- 4.25.4.1 The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
- (a) The RFP;
 - (b) Any amendments;
 - (c) Pre-Proposal conference documents;
 - (d) Questions and responses;
 - (e) Communications regarding the RFP or Proposal to any Offeror or potential Offeror;
 - (f) Notices of award selection or non-selection; and
 - (g) The Procurement Officer’s decision on any Proposal protest or Contract claim.
- 4.25.4.2 An Offeror or potential Offeror may use e-mail or facsimile to:
- (a) Ask questions regarding the RFP;
 - (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 e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer; and
 - (c) Submit a “No Proposal Response” to the RFP.
- 4.25.4.3 The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- 4.25.5 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
- (a) Submission of initial Proposals;
 - (b) Filing of Proposal Protests;
 - (c) Filing of Contract Claims;
 - (d) Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); or

- (e) 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.

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

4.26 Minority Business Enterprise Goals

4.26.1 Establishment of Goal and Subgoals.

An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any, has been established for this procurement.

Notwithstanding any subgoals established for this RFP, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.

An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP will result in the State's rejection of the Offeror's Proposal for the applicable Service Category. This failure is not curable.

4.26.2 Attachments D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:

Attachment D-1A	MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
Attachment D-1B	Waiver Guidance
Attachment D-1C	Good Faith Efforts Documentation to Support Waiver Request
Attachment D-2	Outreach Efforts Compliance Statement
Attachment D-3A	MBE Subcontractor Project Participation Certification
Attachment D-3B	MBE Prime Project Participation Certification
Attachment D-4A	Prime Contractor Paid/Unpaid MBE Invoice Report
Attachment D-4B	MBE Prime Contractor Report
Attachment D-5	Subcontractor/Contractor Unpaid MBE Invoice Report

4.26.3 An Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:

- (a) The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE Subcontractors were treated fairly in the solicitation process; and
- (b) The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE Subcontractor identified

on the MBE participation schedule, including any work performed by the MBE Prime (including a Prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

- (c) An Offeror requesting a waiver should review Attachment D-1B (Waiver Guidance) and D-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.
- (d) ***If an Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.***

4.26.4 Offerors are responsible for verifying that each MBE (including any MBE Prime and/or MBE Prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

4.26.5 Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror(s) must provide the following documentation to the Procurement Officer.

- (a) Outreach Efforts Compliance Statement (**Attachment D-2**);
- (b) MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
- (c) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE Subcontractor participation goal or any applicable subgoals.
- (d) Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.
- (e) ***If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.***

4.26.6 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

4.26.7 The Contractor, once awarded a Contract, will be responsible for submitting or requiring its Subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE participation:

- (a) **Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report);
- (b) **Attachment D-4B** (MBE Prime Contractor Report, *if applicable*); and
- (c) **Attachment D-5** (MBE Subcontractor Unpaid MBE Invoice Report).

4.26.8 An Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

4.26.9 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M**, Section 2.1).

4.26.10 The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M**, “Liquidated Damages” clause).

4.26.11 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

In order to receive credit for self-performance, an MBE Prime must list its firm in Section 4A of the MBE Participation Schedule (**Attachment D-1A**) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the sub-goals, the MBE Prime must also identify certified MBE Subcontractors (see Section 4B of the MBE Participation Schedule (**Attachment D-1A**) used to meet those goals. If dually-certified, the MBE Prime can be designated as only one of the MBE sub-goal classifications but can self-perform up to 100% of the stated sub-goal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE Prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract.

4.26.12 With respect to Contract administration, the Contractor shall:

- (1) Submit to the MLGCA’s designated representative by the 10th of the month following the reporting period:
 - a. A Prime Contractor Paid/Unpaid MBE Invoice Report (**Attachment D-4A**) listing any unpaid invoices, over 45 days old, received from any certified MBE Subcontractor, the amount of each invoice and the reason payment has not been made; and
 - b. (If Applicable) An MBE Prime Contractor Report (**Attachment D-4B**) identifying an MBE Prime’s self-performing work to be counted towards the MBE participation goals.
- (2) Include in its agreements with its certified MBE Subcontractors a requirement that those Subcontractors submit to the MLGCA’s designated representative by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) that identifies the Contract and lists all payments to the MBE Subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- (3) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority Subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (4) Consent to provide such documentation as reasonably requested and right-of-entry at reasonable times for purposes of the State’s representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- (5) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE Subcontractors.

4.27 Veteran-Owned Small Business Enterprise Goal

4.27.1 **Notice to Offerors.** Questions or concerns regarding the Veteran-Owned Small Business Enterprise (VSBE) participation goal of this solicitation must be raised before the due date for submission of Proposals.

4.27.2 **Purpose.** The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment E**, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment E**.

Veteran-Owned Small Business Enterprises must be verified by the Office of Small and Disadvantaged Business Utilization (OSDBU) of the United States Department of Veterans Affairs. The listing of verified VSBEs may be found at <http://www.va.gov/osdbu>.

4.27.3 **VSBE Goal.** A VSBE participation goal of the total Contract dollar amount for both Functional Areas I and II has been established for this procurement as identified in the Key Information Summary Sheet. By submitting a response to this RFP, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

4.27.4 RFP and Contract Formation.

4.27.4.1 In accordance with COMAR 21.11.13.05 C (1), this RFP requires Offerors to:

- (a) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
- (b) Solicit VSBEs before proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;
- (c) Attempt to make personal contact with the VSBEs solicited and to document these attempts;
- (d) Assist VSBEs to fulfill, or to seek waiver of, bonding requirements; and
- (e) Attempt to attend preproposal or other meetings the procurement agency schedules to publicize contracting opportunities to VSBEs.

4.27.4.2 An Offeror must include with its Proposal a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) whereby the Offeror:

- (1) Acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal; and
- (2) Responds to the expected degree of VSBE participation as stated in the RFP, by identifying the specific commitment of VSBEs at the time of Proposal submission. The Offeror shall specify the percentage of contract value associated with each VSBE prime/Subcontractor identified on the VSBE Participation Schedule.

4.27.4.3 As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.

4.27.4.4 In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment E-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE Subcontractors used to meet the remainder of the goal.

4.27.4.5 Within ten (10) Business Days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer.

- (1) VSBE Project Participation Statement (**Attachment E-2**);
- (2) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
- (3) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

4.27.4.6 *If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for Contract award.*

4.27.5 **Contract Administration Requirements.** The Contractor, once awarded the Contract shall:

- (1) Submit monthly to the MLGCA a report listing any unpaid invoices, over 45 days old, received from any VSBE Subcontractor, the amount of each invoice, and the reason payment has not been made. (**Attachment E-3**).
- (2) Include in its agreements with its VSBE Subcontractors a requirement that those Subcontractors submit monthly to the MLGCA a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. (**Attachment E-4**).
- (3) Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE Subcontractors employed on the contract, the type of work performed by each, and actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (4) Consent to provide such documentation as reasonably requested and right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.
- (5) At the option of the procurement agency, upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE Subcontractors.

4.28 Living Wage Requirements

4.28.1 Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et al.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. *See* COMAR 21.11.10.05.

4.28.2 If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. See the "Living Wage" clause in the Contract (**Attachment M**).

4.28.3 Additional information regarding the State's living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If an Offeror fails to complete and submit the required documentation, the State may determine the Offeror to be not responsible under State law.

- 4.28.4 Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.
- 4.28.5 The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
- (1) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
 - (2) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
 - (3) If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.
- 4.28.6 Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website: <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.

4.29 Federal Funding Acknowledgement

This Contract does not contain Federal funds.

4.30 Conflict of Interest Affidavit and Disclosure

Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with their Proposals. All Offerors are advised that if a Contract is awarded as a result of this RFP, the Contractor's personnel who perform or control work under this Contract and each of the participating Subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to **Attachment H**, 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.

4.31 Non-Disclosure Agreement

All Offerors are advised that this RFP and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this RFP as **Attachment I**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Proposal.

4.32 HIPAA - Business Associate Agreement

A HIPAA Business Associate Agreement is not required for this procurement.

4.33 Nonvisual Access

By submitting a Proposal, the Offeror warrants that the information technology (IT) offered under the Proposal: (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual 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 nonvisual access. The Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than five percent (5%). For purposes of this RFP and resulting 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 nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Maryland IT Nonvisual Access standards can be found at: www.doit.maryland.gov/policies/pages/nva.aspx.

4.34 Mercury and Products That Contain Mercury

This RFP does not include the procurement of products known to likely include mercury as a component.

4.35 Location of the Performance of Services Disclosure

The Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment L**. The Disclosure must be provided with the Proposal.

4.36 Department of Human Resources (DHR) Hiring Agreement

This RFP does not require a DHR Hiring Agreement.

4.37 Small Business Reserve (SBR) Procurement

This RFP is not designated as a Small Business Reserve (SBR) Procurement.

4.38 Ownership of Written Material

All opened proposals become the property of the MLGCA upon receipt and will not be returned to the Offerors. Selection or rejection of the proposal will not affect this right. Unopened financial proposals will be returned to the Offeror.

4.39 Proposal Disclosure Prohibition

- 4.39.1 Upon issuance of this RFP, neither the MLGCA or Commission, nor their representatives shall discuss the contents of this RFP with potential Offerors or their representatives, other than in conjunction with the Pre-Proposal Conference, the Question and Answer process, oral presentations/site visits or discussions (See RFP Sections 4.1, 4.3 and 4.10).
- 4.39.2 Until a Contract resulting from this RFP is awarded, no employee, agent, or representative of any Offeror may make available or discuss its proposal with any officer of the State, any Commission member, or any employee, agent or representative of the MLGCA, unless specifically authorized to do so in this RFP or in writing by the Procurement Officer for the purposes of clarification, evaluation, and/or negotiation.
- 4.39.3 Prior to Contract execution, Offerors shall not represent themselves to MLGCA staff, Retailers or the public as having the endorsement of the MLGCA or Commission or as a supplier of any products or services to the MLGCA or Commission.

4.40 Information Not Contained in RFP

Proposals shall be based solely on the material contained in this RFP and any amendments thereto. Offerors are to disregard any newspaper advertisements, news articles, and oral representations when preparing their proposals.

4.41 Trademark Notice

- 4.41.1 The MLGCA employs several trademarks or registered trademarks. The list that follows is intended to be illustrative, but not necessarily exhaustive. Offerors are hereby provided notice that certain marks listed below may not be identified elsewhere in this RFP as holding intellectual property rights.

<u>Name</u>	<u>Mark</u>	<u>Owner</u>
1. Cash4Life®	®	Multi-State Lottery Association
2. Lottery in Motion™	TM	Scientific Games International, Inc.
3. Mega Millions®	®	Illinois Department of the Lottery
4. Megaplier®	®	Texas Lottery Commission
5. Powerball®	®	Multi-State Lottery Association
6. Power Play®	®	Multi-State Lottery Association
7. Properties Plus®	®	Scientific Games International, Inc.
8. Racetrax®	®	Tabcorp International Pty Ltd
9. Racetrax Bonus™	TM	Not filed for registration

- 4.41.2 In addition, the MLGCA owns the rights to the following:

1. Keno Bonus®	®
2. Multi-Match®	®
3. Keno To Go™	TM
4. PHARAOH'S GOLD®	®
5. Packaged Keno To Go®	®
6. World Championship Poker®	®
7. Super Slots®	®

4.42 Surety Bond Assistance Program

Assistance in obtaining bid, performance and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDFA). MSBDFA can directly issue bid, performance or payment bonds up to \$750,000. MSBDFA may also guarantee up to 90% of a surety's losses as a result of a Contractor's breach of Contract; MSBDFA exposure on any bond guaranteed may not, however, exceed \$900,000. Bonds issued directly by the program will remain in effect for the duration of the Contract, and those surety bonds that are guaranteed by the program will remain in effect for the duration of the surety's exposure under the Contract. To be eligible for bonding assistance, a business must first be denied bonding by at least one surety on both the standard and specialty markets within 90 days of submitting a bonding application to MSBDFA. The applicant must employ fewer than 500 full-time employees or have gross sales of less than \$50 million annually, have its principal place of business in Maryland or be a Maryland resident, must not subcontract more than 75 percent of the work, and the business or its principals must have a reputation of good moral character and financial responsibility. Finally, it must be demonstrated that the bonding or guarantee will have a measurable economic impact, through job creation and expansion of the state's tax base. Applicants are required to work through their respective bonding agents in applying for assistance under the program. Questions regarding the bonding assistance program should be referred to:

Maryland Department of Business and Economic Development
Maryland Small Business Development Financing Authority
MMG Ventures
826 E. Baltimore Street
Baltimore, Maryland 21202
Phone: (410) 333-4270
Fax: (410) 333-2552

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SECTION 5 – PROPOSAL FORMAT

5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

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

5.2 Proposals

5.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of a contact person for the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and six (6) copies. Unless the resulting package will be too unwieldy, the MLGCA’s preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

- (1) RFP title and number,
- (2) Name and address of the Offeror, and
- (3) Closing date and time for receipt of Proposals

to the Procurement Officer (see RFP Key Information Summary Sheet) prior to the date and time for receipt of Proposals (see RFP Section 4.4 “Proposals Due (Closing) Date and Time”).

5.2.2 An electronic version (on Compact Disk/CD, Digital Versatile Disc/DVD, or Universal Serial Bus/USB Flash/Thumb Drive) of Volume I - Technical Proposal in Microsoft Word format must be enclosed with the original Volume I - Technical Proposal submission. An electronic version (on CD, DVD, or USB Flash Drive) of Volume II - Financial Proposal in Microsoft Word or Microsoft Excel format must be enclosed with the original Volume II - Financial Proposal submission. Each CD/DVD/USB Flash Drive must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number. Each CD/DVD/USB Flash Drive must be packaged with the original copy of the appropriate Proposal (Technical or Financial). In the event of any discrepancy between the hard copy and electronic versions of an Offeror’s Proposal, the State shall determine the controlling version in accordance with the State’s interests.

5.2.3 A second electronic version of Volume I and Volume II in searchable Adobe .pdf format shall be submitted on CD, DVD, or USB Flash Drive for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see RFP Section 4.8 “Public Information Act Notice”).

5.2.4 Beginning with Tab B (see RFP Section 5.4.2.3), all pages of both Proposal volumes shall be consecutively-numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; see RFP Sections 5.4.2.1 and 5.4.2.2), should be numbered using romanettes (e.g. i, ii, iii, iv, v, etc.).

5.2.5 Proposals and any modifications to Proposals will be shown only to State employees, members of the Evaluation Committee, and other persons deemed by the MLGCA to have a legitimate interest in them.

5.3 Delivery

Offerors may either mail or hand-deliver Proposals.

- 5.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the MLGCA by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the MLGCA 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 the MLGCA. 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 and an Offeror using first class mail will not be able to prove a timely delivery at the mailroom.
- 5.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, an Offeror is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 5.3.3 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(s).

5.4 Volume I – Technical Proposal

Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing information is to be included only in the Financial Proposal (Volume II).

- 5.4.1 **Format of Technical Proposal.** Inside a sealed package described in Section 5.2 “Proposals,” the unbound original, six (6) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 5.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 5.4.2.1 “Title and Table of Contents,” Section 5.4.2.2 “Claim of Confidentiality,” Section 5.4.2.3 “Transmittal Letter,” Section 5.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (e.g. “Section 2.2.1 Response . . . ; “Section 2.2.2 Response . . . ,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 6.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.
- 5.4.2 **The Technical Proposal** shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:
 - 5.4.2.1 **Title Page and Table of Contents (Submit under TAB A).** The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.
 - 5.4.2.2 **Claim of Confidentiality (If applicable, submit under TAB A-1).** Any 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 Section 4.8 “Public Information Act Notice”). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

5.4.2.3 Transmittal Letter (Submit under TAB B). A Transmittal Letter shall accompany the Technical Proposal. Its purpose is to transmit the Proposal and acknowledge the receipt of any amendments. 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. The Transmittal Letter should include the following:

- (1) Name and address of the Offeror;
- (2) Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- (3) RFP Title and RFP Number that the Proposal is in response to;
- (4) Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- (5) Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- (6) Offeror's eMM number;
- (7) Offeror's MBE certification number (if applicable);
- (8) Acceptance of all State RFP and Contract terms and conditions (see Section 4.17); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 5.4.2.4);
- (9) Acknowledgement of all amendments to this RFP; and,
- (10) A statement of the Functional Areas being proposed (An Offeror may submit a proposal for either one or both of the Functional Areas)

5.4.2.4 Executive Summary (Submit under TAB C).

5.4.2.4.1 The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary.

5.4.2.4.2 The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment M), 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.

5.4.2.4.3 If the Offeror has taken no exceptions to the requirements of this RFP, the Contract (Attachment M), or any other attachments, the Executive Summary shall so state.

5.4.2.5 Minimum Qualifications Documentation (If applicable, Submit under TAB D). The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP Section 1, "Minimum Qualifications."

5.4.2.6 Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E).

5.4.2.6.1 General Requirements

5.4.2.6.1.1 The Offeror shall address each Scope of Work requirement (RFP Section 2) for the Functional Area being proposed in its Technical Proposal and describe how its proposed services, including the services of any proposed Subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work requirement shall include an explanation of how the work will be done. Any exception to

a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

5.4.2.6.1.2 The Offeror shall give a definitive **section-by-section** description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required services as outlined in RFP Section 2, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

(Note: The Dedicated Account Management requirement in the Scope of Work RFP Section 2 should be described as requested in 5.4.2.7 **Staffing Structure and Plan/Experience and Qualifications of Proposed Staff (Submit under TAB F)**.

5.4.2.6.1.3 The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the MLGCA's Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in RFP Section 3.3.

5.4.2.6.2 **Business Recovery Plan**

The Offeror must describe its Business Recovery Plan and emergency procedures to be used in the event that its facility becomes unavailable, to include an alternate backup facility.

5.4.2.7 **Staffing Structure and Plan/Experience and Qualifications of Proposed Staff (Submit under TAB F)**.

5.4.2.7.1 General Requirements: The Offeror shall identify the types of staff, their number and qualifications proposed to be utilized under the Contract. The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed Subcontractor(s), as detailed in the Work Plan. The Offeror shall include individual resumes for the Key Personnel, including Key Personnel for any proposed Subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed Subcontractor(s), shall be included in this section.

The Offeror shall provide an Organizational Chart outlining personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

5.4.2.7.2 The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any other current facilities that it operates, and any required construction to satisfy the requirements outlined in this RFP. If the primary office for key staff members assigned to the MLGCA's account for the performance of the contract is not located in the Baltimore/Washington metropolitan area, then Offeror shall describe in detail how it will be responsive to the requirements of the contract such as frequent on-site meetings. Regardless of office location, Contractor's Key staff members shall be available

to attend meetings, make presentations, etc. at the MLGCA headquarters on an as needed basis as required by the MLGCA.

- 5.4.2.7.3 Offerors must provide an organizational chart for each Functional Area and identify all personnel that will be assigned to the MLGCA account.
- The organizational chart should include the title or position of proposed personnel. Include on the chart any new positions that would be created as a result of acquiring the MLGCA account and indicate when the positions will be filled.
 - The organizational chart should include corporate directors and/or officers who will provide direction or oversight to the MLGCA account.
 - Offerors shall provide detailed resumes for all personnel who may be assigned to the MLGCA account. Resumes must demonstrate that the individuals have the background and experience required to perform the position to which they will be assigned.
- 5.4.2.7.4 Offerors must submit an in-depth staffing plan, by department, detailing how they will service the MLGCA account.
- The plan should include a description of the key functions or responsibilities for each position as it relates to the MLGCA's account.
 - The plan should indicate the number of personnel being proposed and indicate if they will be assigned to the MLGCA's account on a full-time, part-time or as-needed basis; this number or its equivalent must remain constant over the term of the contract.
 - Offerors must identify if a different individual will not be assigned to each position in the Offeror's staffing plan and explain how service levels will be maintained.
- 5.4.2.7.5 The MLGCA is not predisposed to any particular staffing model. Offerors are encouraged to propose staffing plans that offer the best value to the MLGCA, both in terms of service and adequate staffing. Offerors must submit a staffing plan for each Functional Area proposed.

A. Functional Area I – Creative Development and Production Services:

- Account Management - Offerors shall identify the key personnel who will provide strategic direction or oversight to the MLGCA account. At a minimum these include the Account Director and Account Supervisor. The Account Director shall have a minimum of five (5) years account management experience and the Account Supervisor shall have a minimum of three (3) years account management experience. In addition to the Account Director and Account Supervisor, the Account Management staff *may include but is not limited to the following*:
 - Account Planner;
 - Account Executive;
 - Junior Account Executive; and
 - Account Coordinator.
- Creative Department - Offerors shall describe the staffing plan being proposed for its creative department. The Creative Director shall have a minimum of five (5) years of relevant creative experience. In addition to the Creative Director, the Creative staff *may include but is not limited to the following*:
 - Associate Creative Director;
 - Art Director;
 - Copywriter;
 - Print Production Manager;
 - Studio Manager;
 - Broadcast Business Manager;
 - Broadcast Producer;
 - Traffic Manager;
 - Graphic Designer; and
 - Studio Artist.

- Digital, Web and Social Media - Offerors shall describe the staffing plan being proposed for its Digital department. The Digital Creative Director shall have a minimum of five (5) years of relevant creative experience. In addition to the Digital Creative Director, other digital and social staff *may include but is not limited to the following*:
 - a. Public Relations Director;
 - b. Account Supervisor;
 - c. Account Executive;
 - d. Digital Art Director;
 - e. Copywriter;
 - f. Digital Developer;
 - g. Digital Producer; and
 - h. Technical Support Manager.
- Research – Offerors shall describe the staffing plan being proposed to support MLGCA research projects and requests.

B. Functional Area II – Media Planning and Buying Services: Offerors shall describe the staffing plan being proposed to meet the needs of the Media Services contract. The Media Director shall have a minimum of five (5) years of relevant media experience. In addition to the Media Director, Media staff *may include but is not limited to the following*:

- a. Associate Media Director;
- b. Media Supervisor – Buying or Planning;
- c. Media Planner;
- d. Junior Media Planner;
- e. Media Buyer;
- f. Junior Media Buyer; and
- g. Interactive/Digital Media Planner/Buyer.

5.4.2.8 Offeror Background and Experience/Qualifications and Capabilities (Submit under TAB G).

5.4.2.8.1 The Offeror shall describe its background and experience providing similar projects and/or services to those required in in Section 2 for the appropriate Functional Area. This experience must be under the Offeror’s company name. Offerors shall describe how their organization can meet the requirements of this RFP and shall include:

- (1) Any relevant experience comparable to what is requested in Section 2 Technical Specifications for each Functional Area being proposed.
- (2) The number of years the Offeror has provided the similar services;
- (3) The number of clients/customers and geographic locations that the Offeror currently serves;
- (4) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- (5) The Offeror’s process for resolving billing errors; and
- (6) An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.
- (7) Provide a list of current client accounts and billings. Has your organization lost any client accounts within the last three (3) years? Why?
- (8) Provide total annual billings for the past three (3) calendar years, along with a percentage breakout of the billings by Functional Area, as applicable.

5.4.2.8.2 Offerors shall state whether or not any of the following have occurred during the last three (3) years:

- a. Offeror has had a contract terminated, and if so, shall provide full details, including the account's name, address and phone number.
- b. Offeror has been assessed any penalties or liquated damages under any existing or past contracts and if so note the reason for and the amount of the penalty or liquated damages for each incident.
- c. Offeror was the subject of (i) any disciplinary action for substandard work or unethical practices or (ii) any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of the Offeror to engage in any business, practice or activity.
- d. Offeror has been involved in any litigation related to contract performance.

5.4.2.8.3 Case Study

Provide a clear, concise case study of work your organization has performed for a client within the past two (2) years. Strategy statements, assignment briefs, work plans, and any relevant deliverables (spots, reports, etc.) should be included. The case study should demonstrate how your organization was effective in helping the client achieve goals similar to those of the MLGCA.

5.4.2.8.4 Resources and Capabilities

- The Offeror must describe its resources and capabilities, and distinguish between those which it has in-house and those which it proposes to subcontract.
- The Offeror must describe the current operational capacity of the organization and the Offeror's ability to absorb the additional workload resulting from this award. Offeror must provide evidence that it has in place, or will put in place, the personnel, internal procedures and any other resources required under the terms of this contract to ensure successful performance and contract compliance.
- Offeror should describe any unique services it can offer that would be helpful in meeting the goals of the Contract.

5.4.2.9 **References (Submit under TAB H).** Provide at least three (3) client references who are capable of documenting the Offeror's ability to manage projects of similar size and complexity and capability to provide the services specified in this RFP. Also provide at least two (2) references from other organizations, Subcontractor or service providers, which you think are relevant. Each reference shall include the following information:

- (1) Name of client organization;
- (2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization;
- (3) Value, type, duration, and description of services provided;
- (4) The services provided, scope of the contract, geographic area being supported, and performance objectives satisfied; and
- (5) An explanation of why the Offeror is no longer providing the services to the client organization, should that be the case.

The MLGCA reserves the right to request additional references or utilize references not provided by an Offeror.

5.4.2.10 **List of Current or Prior State Contracts (Submit under TAB I).** Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing services or for which

services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

- (1) The State contracting entity;
- (2) A brief description of the services/goods provided;
- (3) The dollar value of the contract;
- (4) The term of the contract;
- (5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- (6) 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 the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

5.4.2.11 Financial Capability (Submit under TAB J). An Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror *may* supplement its response to this Section by including one or more of the following with its response:

- (1) Dun & Bradstreet Rating;
- (2) Standard and Poor's Rating;
- (3) Lines of credit;
- (4) Evidence of a successful financial track record; and
- (5) Evidence of adequate working capital.

5.4.2.12 Certificate of Insurance (Submit under TAB K). The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.1. See Section 3.1 for the required insurance certificate submission for the recommended Offeror.

5.4.2.13 Subcontractors (Submit under TAB L). The Offeror shall provide a complete list of all Subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each Subcontractor will perform and why/how each Subcontractor was deemed the most qualified for this project.

5.4.2.14 Legal Action Summary (Submit under TAB M). This summary shall include:

- (1) A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- (2) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- (3) A description of any judgments against the Offeror within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court;
- (4) A listing, brief description and disposition of any liquidated damages assessed against the Offeror within the past two (2) years; and

- (5) In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, the name of the judge and location of the court.

5.4.2.15 Economic Benefit Factors (Submit under TAB N).

5.4.2.15.1 The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price from Attachment B, the Financial Proposal Form. See COMAR 21.05.03.03A(3).

5.4.2.15.2 Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.

5.4.2.15.3 Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.

5.4.2.15.4 As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

5.4.2.15.5 In responding to this section, the following do not generally constitute economic benefits to be derived from this Contract:

- (1) Generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- (2) Descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; and
- (3) Tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

5.4.2.15.6 Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded this Contract.

5.4.2.15.7 Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

- (1) The 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. Do not include actual fees or rates paid to Subcontractors or information from your Financial Proposal;
- (2) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;

- (3) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- (4) Subcontract dollars committed to Maryland small businesses and MBEs; and
- (5) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

5.4.3 Additional Required Technical Submissions (Submit under TAB O).

5.4.3.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 5.4.2.

- a. Completed Proposal Affidavit (**Attachment C**).
- b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**).

5.4.3.2 ***If Required**, the following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 5.4.2. ***See appropriate RFP Section to determine whether the particular document is required for this procurement:**

- (1) A Signed Statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. **See Section 4.16;**
- (2) Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**). **See Section 4.26;**
- (3) Completed Federal Funds Attachment (**Attachment G**). **See Section 4.29;**
- (4) Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**). **See Section 4.30;**
- (5) Completed Mercury Affidavit (**Attachment K**). **See Section 4.34;**
- (6) Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule. (**Attachment E-1**). **See Section 4.27;**
- (7) Completed Location of the Performance of Services Disclosure (**Attachment L**). **See Section 4.35;**
- (8) Completed Authorization for Release of Information (**Attachment R**).

5.5 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 5.2 "Proposals," the Offeror shall submit an original unbound copy, six (6) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

5.6 Assignments

5.6.1 Information Required For Assignment in each Functional Area

The Assignments listed by Functional Area below are presented at this time for informational purposes only. **These Assignments are not to be submitted at the time of submission of the Offeror's original Technical Proposal.**

After an initial review of technical proposals, Offerors that are determined to be Qualified Offerors will be invited to submit a written response to the Assignment(s) for the Functional Area(s) being proposed and to make an oral presentation to the Evaluation Committee to present its materials complied for the Assignment(s). For any item requested below, if the Offeror does not have a sample or example the response should be annotated as “Not Available”.

5.6.2 Functional Area I - Creative Development and Production Services Assignment

To the extent available, Offeror should submit individual examples of advertising in the following areas that were created, produced and executed in the past three (3) years by the Offeror:

- Up to four (4) different television ads.
 - Up to three (3) different radio ads.
 - Up to three (3) different outdoor ads.
1. Provide an overview of your design and studio capabilities and expertise. Include an overview of programs and resources used to create and deliver high quality in-retail point of purchase materials. Explain what services can be completed in-house and what services, if any, are performed using Subcontractors. If available, provide five (5) samples of work produced for clients developed by a team(s) that will be assigned to the MLGCA account. One sample should include photography and one should be a coordinated campaign with multiple elements.
 2. Describe your organization’s experience in retail merchandising. Provide an example from a client for whom you have developed and executed a merchandising strategy, including sales results if available.
 3. The MLGCA has partnerships with all major sports teams in Maryland and participates in many event and venue sponsorships throughout the State. These partnerships are often multi-faceted and include in-stadium/venue signage, in-stadium/venue features, jumbotron messages, on-site set-ups and giveaway items. Provide examples of materials that were created for use or distribution in a stadium or venue. Each example should include multiple pieces of creative for a single sponsorship. Provide examples of sports related materials.
 4. Provide three (3) examples for the following digital, mobile and social media categories that your organization has developed and implemented within the past twelve (12) months:
 - a. Digital advertising executions. Include standard display ads and any rich media examples. To the extent possible, provide performance measures or results;
 - b. Mobile advertising executions;
 - c. Websites and/or mobile apps;
 - d. Landing pages and/or microsite executions; and
 - e. Social media executions.
 5. Describe promotions or campaigns where your organization has utilized social media to drive business objectives for a client(s) within the past twelve months. Include a brief write up on each campaign, including objectives, tactics utilized and results.
 6. Describe your organization’s market research resources and capabilities. Specifically identify any market research techniques or approaches you would recommend for the MLGCA.

5.6.3 Functional Area II - Media Planning and Buying Services Assignment

Offeror should submit individual examples of media activities as requested below that were created, produced and executed in the past three (3) years by the Offeror:

1. The MLGCA supports several product launches or initiatives in a fiscal year. These initiatives are each assigned a media budget and the plans range from a radio or television buy to a multi-media plan. Offeror shall provide two (2) sample media plans it has developed for a client in the past three (3) years. If available, at least one (1) plan should cover the Maryland and/or Washington, D.C. geography. Offerors should provide all elements of the plan, including but not limited to:
 - a. Media brief;
 - b. Media plan;
 - c. Flowchart;
 - d. Buy summaries; and
 - e. Any other reports or summaries that support your approach. Offerors should take this opportunity to provide the MLGCA with any additional information surrounding its media planning approach or steps it takes to ensure the best result for its clients.
2. In FY 2018 the MLGCA spent approximately \$2.3 million of its media budget with sport and event sponsorships. Sponsorships have included partnerships with all major sports teams in Maryland, event and venue sponsorships, and sponsorships secured through media partners. The MLGCA's relationship with these entities is an important one as many have become the backbone for the development of scratch off games, product promotions and unique second-chance contests. Provide an overview of your experience with developing, evaluating and negotiating a current and or previous client sponsorship. Also, provide any sports sponsorship experience that your agency may have. Describe your role with the sponsorships and how you worked with the vendor and the client to develop and negotiate the sponsorship, the details of the sponsorship, the assets included, and to the extent possible, any results achieved through the program.
3. The Offeror shall provide its total gross annual media billings by media (television, radio, print, outdoor, sponsorships, digital, etc.) for the past three (3) fiscal years. The Offeror should indicate the amount spent in Maryland and Washington, D.C. media markets and specify the accounts.
4. The Offeror shall provide up to two (2) digital and two (2) social media plans it has developed and executed in the past three (3) years. Offerors shall detail the strategy and if applicable, how it tied-in with other advertising efforts. Offerors shall detail plan specifics, including any program goals, the type of units selected, the sites or networks chosen and why. Offerors shall describe the process it takes to analyze a digital plan, any third-parties used to track or manage the data, and a sample digital report.

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SECTION 6 – EVALUATION AND SELECTION PROCESS

6.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the Evaluation Criteria set forth below. The Evaluation Committee will be appointed by the Director and may include members of the Commission. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The MLGCA reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

6.2 Technical Proposal Evaluation Criteria

6.2.1 The Evaluation Criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any subcriteria within each Criterion have equal weight.

6.2.2 Offeror's Technical Response to RFP Requirements and Work Plan (See RFP § 5.4.2.6.1.2). The State prefers an Offeror's response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

6.2.3 Evaluation Criteria

Functional Area I – Creative Service and Production

1. Credentials (Sections 5.4.2.6 through 5.4.2.10)
2. Creative Assignment (Section 5.6)
3. Financial Capability, Legal Action Summary, Insurance and Subcontractors (Sections 5.4.2.11 through Section 5.4.2.14)
4. Economic Benefit to State of Maryland (Section 5.4.2.15)

Functional Area II – Media Services

1. Credentials (Sections 5.4.2.6 through 5.4.2.10)
2. Media Assignment (Section 5.6)
3. Financial Capability, Legal Action Summary, Insurance and Subcontractors (Sections 5.4.2.11 through Section 5.4.2.14)
4. Economic Benefit to State of Maryland (Section 5.4.2.15)

6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form.

6.4 Reciprocal Preference

Although Maryland law does not generally authorize procuring units to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore,

COMAR 21.05.01.04 permits procuring units to apply a reciprocal preference in favor of a Maryland resident business under the following conditions:

- The Maryland resident business is a responsible Offeror;
- The most advantageous offer is from a responsible Offeror whose principal office or principal operations through which it would provide the services required under this RFP is in another state;
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The Maryland resident 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 resident businesses.

6.5 Selection Procedures

6.5.1 General. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The Competitive Sealed Proposals method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.

In either case (i.e., with or without discussions), 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 prior to Contract award. 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, that Offeror's Financial Proposal will subsequently be returned if the Financial Proposal is unopened at the time of the determination.

6.5.2 Selection Process Sequence

6.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and properly completed, if there is an MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and Subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal. Finally, a determination is made that all Minimum Qualifications, if any (See RFP Section 1), have been satisfied.

6.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and Offeror's ability to perform the services, as well as facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.

6.5.2.3 Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.

6.5.2.4 The Financial Proposal of Qualified Offerors (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

6.5.2.5 When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

6.5.3 **Award Determination.** Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State for each Functional Area. In making this most advantageous Proposal determination, *technical factors will receive higher weight than financial factors.*

6.5.4 **Debriefing of Unsuccessful Offerors**

Unsuccessful Offerors shall be debriefed upon their written request to the Procurement Officer, provided the request is made within a reasonable period of time, not to exceed ten (10) days, after receiving notice from the Procurement Officer of not being recommended for award. Request for debriefings shall be honored by the MLGCA at the earliest feasible time after the request has been received. Debriefings shall be held in accordance with COMAR 21.05.03.06.

6.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit two (2) copies of each of the following documents:

- (1) Contract (**Attachment M**);
- (2) Contract Affidavit (**Attachment N**);
- (3) MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; ***see Section 4.26**;
- (4) MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; ***see Section 4.26**);
- (5) VSBE **Attachment E-2**, if applicable ***see Section 4.27**;
- (6) Non-Disclosure Agreement (**Attachment I**), if applicable; ***see Section 4.31**;
- (7) HIPAA Business Associate Agreement (**Attachment J**), if applicable; ***see Section 4.32**;
- (8) DHR Hiring Agreement, **Attachment O**, if applicable ***see Section 4.36**;
- (9) Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.1 “Insurance Requirements,” listing the State as an additional insured, if applicable; ***see Section 3.1**;
- (10) Performance Bond (**Attachment P**), see **Section 3.11**; and
- (11) Payment Bond (**Attachment Q**), see **Section 3.12**.

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RFP ATTACHMENTS

ATTACHMENT A – Pre-Proposal Conference Response Form

It is requested that this form be completed and submitted as described in RFP Section 4.1 by those potential Offerors that plan on attending the Pre-Proposal Conference.

ATTACHMENT B – Financial Proposal Instructions and Form

The Financial Proposal Form must be completed and submitted in the Financial Proposal package.

ATTACHMENT C –Proposal Affidavit

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

ATTACHMENTS D – Minority Business Enterprise Forms

If required (see RFP Section 4.26), these Attachments include the MBE subcontracting goal statement and instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within ten (10) Business Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3A/B.

ATTACHMENTS E – Veteran-Owned Small Business Enterprise Forms

If required (see RFP Section 4.27), these Attachments include the VSBE Attachments E-1 through E-4. Attachment E-1 must be completed and submitted with the Technical Proposal. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommendation for award.

ATTACHMENT F – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement

Attachment F-1 Living Wage Affidavit of Agreement must be completed and submitted with the Technical Proposal.

ATTACHMENT G – Federal Funds Attachment (Not Applicable)

ATTACHMENT H – Conflict of Interest Affidavit and Disclosure

If required (see RFP Section 4.30), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT I – Non-Disclosure Agreement

If required (see RFP Section 4.31), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT J – HIPAA Business Associate Agreement (Not Applicable)

ATTACHMENT K – Mercury Affidavit (Not Applicable)

ATTACHMENT L – Location of the Performance of Services Disclosure

If required (see RFP Section 4.35), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT M – Contract

This is the sample contract used by the MLGCA. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Contractor.

ATTACHMENT N – Contract Affidavit

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT O – DHR (Department of Human Resources) Hiring Agreement (Not Applicable)**ATTACHMENT P – Performance Bond**

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within ten (10) Business Days of receiving notification of recommendation for award.

ATTACHMENT Q – Payment Bond

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within ten (10) Business Days of receiving notification of recommendation for award.

ATTACHMENT R - Authorization for Release of Information

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

ATTACHMENT S – Work In Progress – FY 19 Vendor Contracts

ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM

RFP #2018-07
ADVERTISING, MARKETING, MEDIA AND RELATED SERVICES

A Pre-Proposal Conference will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet (near the beginning of the RFP, after the Title Page and Notice to Vendors).

Please return this form at least five (5) Business Days prior to the Pre-Proposal Conference date, advising whether or not you plan to attend. The completed form should be returned via e-mail or fax to the Procurement Officer. The Procurement Officer's contact information is provided in the RFP Key Information Summary Sheet.

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.1 "Pre-Proposal Conference"):

Signature

Title

Name of Firm (please print)

B-1: FINANCIAL PROPOSAL INSTRUCTIONS

B-1-1 GENERAL REQUIREMENTS

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this RFP, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

The Offeror must provide complete price information for all services required. Offers to provide only partial services are not acceptable and shall be rejected

The Financial Proposal Form is used to calculate the Offeror's TOTAL PROPOSAL PRICE, which will be the "Basis For Award" and used for price evaluation, comparison and selection for recommendation for award. Follow these instructions carefully when completing your Financial Proposal Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in 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) Any goods or services required through this RFP 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 every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03, and may cause the Proposal to be rejected.
- H) All Prices proposed shall be fixed prices for the entire term of the Contract, to include the Renewal Option period, if exercised, and any other extensions. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the RFP. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.

- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the MLGCA does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.
- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

B-1-2 CONTRACT PRICES

- A) The Offeror shall state its proposed price to provide all services, equipment, and personnel required by this RFP to provide all creative development and production services. As listed in Section 2.3.2 – Functional Area I: Creative Development and Production Services include Staff, Development of Creative Concepts and Production, Graphic Design Services, Digital Marketing and Advertising, Social Media Management, Direct Marketing, Database Management and Customer Relationship Marketing, Accounting, Research Services, Development of Retail Marketing Support, Collateral Materials and Signage, Strategic Planning, Web and Mobile App Design, Implementation and Management, and Subcontracted Services. The price to provide all services as outlined in Section 2.3.2 – Functional Area I: Creative Development and Production Services shall be expressed as a FIXED PRICE as stated on Attachment B-2 - Financial Proposal Form.
- B) The Offeror shall state its proposed price to provide all services, equipment, and personnel required by this RFP to provide all media planning and buying services. As listed in Section 2.3.3 – Functional Area II: Media Planning and Buying Services include Staff, Media Research and Strategy Development, and Strategic Media Buying, Planning and Placement. The price to provide all services as outlined in Section 2.3.3 – Functional Area II: Media Planning and Buying Services shall be expressed as a FIXED PRICE as stated on Attachment B-2 - Financial Proposal Form.

B-2: FINANCIAL PROPOSAL FORM

ADVERTISING, MARKETING, MEDIA AND RELATED SERVICES (#2018-07)

SEE ATTACHED EXCEL SPREADSHEET

ATTACHMENT C – PROPOSAL AFFIDAVIT (Effective 10/24/2017)

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Offeror hereby certifies and agrees that the following information is correct: In preparing its Proposal on this project, the Offeror has considered all Bid/proposals submitted from qualified, potential Subcontractors and suppliers, and has not engaged in “discrimination” as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “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, sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test, 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 Proposal submitted by the Offeror on this project, and terminate any contract awarded based on the Proposal. As part of its Proposal, the Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Offeror discriminated against Subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Offeror 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 Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority bid/proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the 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 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 Proposal submitted by the Offeror on this project, and terminate any contract awarded based on the Proposal.

B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

The undersigned Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1) -(5) of this regulation.

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 Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), 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 Criminal Procedure Article, § 6-220, Annotated Code of Maryland, 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/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (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/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
 - (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review; or
 - (15) 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)—(14) 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 does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; 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. SUBCONTRACT 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 Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland 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 Proposal that is being submitted; or
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Proposal price of the 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 Proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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, State Department of Assessments and Taxation, and Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. 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.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
 - (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
 - (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.
- (2) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL

I FURTHER AFFIRM THAT:

In preparing its proposal on this project, the Offeror has considered all bid/proposals submitted from qualified, potential Subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any Subcontractor, vendor, or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel and its territories. The Offeror also has not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. Without limiting any other provision of the solicitation for proposals for this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the Proposal submitted by the Offeror on this project, and terminate any contract awarded based on the proposal.

N. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the Proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package or service in connection with the marketing, offering for sale, or sale of such item or service.

O. 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 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.

By: _____

Signature of Authorized Representative and Affiant

Printed Name: _____

Printed Name of Authorized Representative and Affiant

Title: _____

Title

Date: _____

Date

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

**MBE ATTACHMENT D-1A (Version 11/10/17):
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
& MBE PARTICIPATION SCHEDULE**

PART 1 - INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the proposal. If the Offeror fails to accurately complete and submit this Affidavit and Schedule with the proposal, the Procurement Officer shall determine that the proposal is not reasonably susceptible of being selected for award.

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) Subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of Subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code and the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm's NAICS Code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.
5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
- ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE Subcontractors used to meet those goals or request a waiver.
- ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
- ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
- ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.
http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf

6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.

8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**

- ✓ **Regular Dealers:** Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions. Generally, a Regular Dealer will be identified as a wholesaler or supplier in the MDOT Directory.
- ✓ **Manufacturers:** A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
- ✓ **Brokers:** With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions

charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.

- ✓ **Furnish and Install:** The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS Code(s) to furnish and install materials necessary for successful contract completion may be counted in full.

9. **Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.

10. **CAUTION:** The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).

11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.

Subgoals (if applicable)

Total African American MBE Participation:	_____ %
Total Asian American MBE Participation:	_____ %
Total Hispanic American MBE Participation:	_____ %
Total Women-Owned MBE Participation:	_____ %

Overall Goal

Total MBE Participation (include all categories):	_____ %
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PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE

This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the proposal. If the Offeror fails to accurately complete and submit this Affidavit and Schedule with the proposal as required, the Procurement Officer shall determine that the proposal is not reasonably susceptible of being selected for award.

In connection with the bid/proposal submitted in response to Solicitation No. **2018-07**, I affirm the following:

1. MBE Participation (PLEASE CHECK ONLY ONE)

☐ I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of **29.0% for Functional Area I or 5.0% for Functional Area II** and all of the following subgoals for **Functional Area I only**:

7% percent for African American-owned MBE firms

N/A percent for Hispanic American-owned MBE firms

4% percent for Asian American-owned MBE firms

12% percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule in order to be considered for award.

OR

☐ I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete PART 3, the MBE Participation Schedule for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award.

Additional MBE Documentation

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)
- (b) Outreach Efforts Compliance Statement (Attachment D-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

Information Provided to MBE firms

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.

PART 3 - MBE PARTICIPATION SCHEDULE

Set forth below are the (i) certified MBEs I intend to use, (ii) the percentage of the total Contract value allocated to each MBE for this project and, (iii) the items of work each MBE will provide under the Contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT-certified.

Prime Contractor	Project Description	Project/Contract Number

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. **MBE PRIMES:** PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification </p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p> <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Broker <input type="checkbox"/> Furnish and Install <input type="checkbox"/> Services <input type="checkbox"/> Other </p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p>Description of the Work to be performed with MBE prime's own forces:</p> <p>_____</p> <p>_____</p>
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SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification </p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p> <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Broker <input type="checkbox"/> Furnish and Install <input type="checkbox"/> Services <input type="checkbox"/> Other </p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p>
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<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____ % Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____ % Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____ % Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p>

CONTINUE ON SEPARATE PAGE IF NEEDED

I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.

Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Authorized Representative

Address

Printed Name and Title

City, State and Zip Code

Date

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

MBE ATTACHMENT D-1B

WAIVER GUIDANCE

GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the Offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

I. Definitions

MBE Goal(s) – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

Good Faith Efforts – The “Good Faith Efforts” requirement means that when requesting a waiver, the Offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether a Offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the Offeror has made. The efforts employed by the Offeror should be those that one could reasonably expect a Offeror to take if the Offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the Offeror’s good faith efforts is a judgment call; meeting quantitative formulas is not required.

Identified Firms – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the Offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the Offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

Identified Items of Work – “Identified Items of Work” means the Proposal items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

MBE Firms – “MBE Firms” refers to firms certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State’s MBE Program.

II. Types of Actions Agency will Consider

The Offeror is responsible for making relevant portions of the work available to MBE Subcontractors and suppliers and select those portions of the work or material needs consistent with the available MBE Subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the Offeror's Good Faith Efforts when the Offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Identify Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements
 - (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
 - (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.
2. Identified Items of Work by Offerors
 - (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.
 - (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a Prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts.

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements
 - (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
 - (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.
2. MBE Firms Identified by Offerors
 - (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
 - (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

C. Solicit MBEs

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:
 - (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
 - (b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
 - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. “All” Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Offeror provides written solicitations.
3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested MBE.
4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:
 - (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
 - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:
 - (a) attending any pre-proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
 - (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors’ groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate With Interested MBE Firms

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
 - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
 - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
 - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. An Offeror using good business judgment would consider a number of factors in negotiating with Subcontractors, including MBE Subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a Offeror’s failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm’s quote is excessive or unreasonable include, without limitation, the following:
 - (a) dollar difference between the MBE Subcontractor’s quote and the average of the other Subcontractors’ quotes received by the Offeror;
 - (b) percentage difference between the MBE Subcontractor’s quote and the average of the other Subcontractors’ quotes received by the Offeror;
 - (c) percentage that the MBE Subcontractor’s quote represents of the overall contract amount;
 - (d) number of MBE firms that the Offeror solicited for that portion of the work;
 - (e) whether the work described in the MBE and Non-MBE Subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
 - (f) number of quotes received by the Offeror for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
6. The "average of the other Subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all Subcontractors. Offeror should attempt to receive quotes from at least three Subcontractors, including one quote from an MBE and one quote from a Non-MBE.
7. An Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
 - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
 - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

E. Assisting Interested MBE Firms

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBE Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

III. Other Considerations

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether an Offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other Offerors in meeting the contract. For example, when the apparent successful Offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Offeror could have met the goal. If the apparent successful Offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Offeror having made Good Faith Efforts.

IV. Documenting Good Faith Efforts

At a minimum, an Offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 business days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

A. Items of Work (Complete Good Faith Efforts Documentation Attachment D-1C, Part 1)

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

B. Outreach/Solicitation/Negotiation

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement – Attachment D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
 - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and
 - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

C. Rejected MBE Firms (Complete Good Faith Efforts Attachment D-1C, Part 3)

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

MBE ATTACHMENT D-1B - Exhibit A
MBE Subcontractor Unavailability Certificate

1. It is hereby certified that the firm of _____
(Name of Minority firm)
located at _____
(Number) (Street)

(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. _____
in _____ County by _____
(Name of Prime Contractor's Firm)

2. _____ (Minority Firm), is either unavailable for the
work/service or unable to prepare a bid for this project for the following reason(s):

Signature of Minority Firm's MBE Representative

Title

Date

MDOT CERTIFICATION #

TELEPHONE #

.....

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

Signature of Prime Contractor

Title

Date

MBE ATTACHMENT D-1C
GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PAGE __ OF __

Prime Contractor	Project Description	SOLICITATION NUMBER

PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST.

I affirm that I have reviewed **Attachment D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-1C** Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS

PAGE __ OF __

Prime Contractor	Project Description	SOLICITATION NUMBER

Identify those items of work that the Offeror made available to MBE Firms. This includes, where appropriate, those items the Offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the Offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the procurement?	Does Offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why?
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION
TO SUPPORT WAIVER REQUEST
PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE __ OF __

Prime Contractor	Project Description	SOLICITATION NUMBER

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see **Attachment D-1B – Exhibit A**). If the Offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
Firm Name: <hr/> MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing
Firm Name: <hr/> MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing

☐ Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE __ OF __

Prime Contractor	Project Description	SOLICITATION NUMBER

This form must be completed if Part 2 indicates that an MBE quote was rejected because the Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from Proposal)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

☐ Please check if Additional Sheets are attached.

MBE ATTACHMENT D-2
OUTREACH EFFORTS COMPLIANCE STATEMENT

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Proposal submitted in response to Solicitation No. _____, I state the following:

1. Offeror identified subcontracting opportunities in these specific work categories:

2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

4. Please Check One:

- ☐ This project does not involve bonding requirements.
- ☐ Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS): _____

5. Please Check One:

- ☐ Offeror did attend the pre-proposal conference.
- ☐ No pre-Proposal meeting/conference was held.
- ☐ Offeror did not attend the pre-Proposal conference.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

MBE ATTACHMENT D-3A

MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR CONTRACT AWARD.

Provided that _____ (Prime Contractor's Name) is awarded the State Contract in conjunction with Solicitation No. _____, such Prime Contractor intends to enter into a subcontract with _____ (Subcontractor's Name) committing to participation by the MBE firm _____ (MBE Name) with MDOT Certification Number _____ which will receive at least \$ _____ which equals to _____ % of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the 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 Proposal.

PRIME CONTRACTOR	SUBCONTRACTOR
Signature of Representative: _____	Signature of Representative: _____
Printed Name and Title: _____	Printed Name and Title: _____
Firm's Name: _____	Firm's Name: _____
Federal Identification Number: _____	Federal Identification Number: _____
Address: _____	Address: _____
Telephone: _____	Telephone: _____
Date: _____	Date: _____

MBE ATTACHMENT D-3B

MBE PRIME - PROJECT PARTICIPATION CERTIFICATION

PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR CONTRACT AWARD.

Provided that _____ (Prime Contractor's Name) with Certification Number _____ is awarded the State contract in conjunction with Solicitation No. _____, such MBE Prime Contractor intends to perform with its own forces at least \$_____ which equals to ____% of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

MBE PRIME CONTRACTOR

Signature of Representative: _____

Printed Name and Title: _____

Firm's Name: _____

Federal Identification Number: _____

Address: _____

Telephone: _____

Date: _____

MBE ATTACHMENT D-4A
Minority Business Enterprise Participation
MBE Prime Contractor Paid/Unpaid Invoice Report

Report #: _____ Reporting Period (Month/Year): _____ Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	--

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:		E-mail:																																				
MBE Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
Subcontractor Services Provided:																																							
List all payments made to MBE Subcontractor named above during this reporting period: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice#</u></th> <th style="width: 50%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Paid: \$		_____	List dates and amounts of any outstanding invoices: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice #</u></th> <th style="width: 50%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid: \$		_____
	<u>Invoice#</u>	<u>Amount</u>																																					
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Total Dollars Paid: \$		_____																																					
	<u>Invoice #</u>	<u>Amount</u>																																					
1.																																							
2.																																							
3.																																							
4.																																							
Total Dollars Unpaid: \$		_____																																					

- If more than one MBE Subcontractor is used for this contract, you must use separate D-4A forms for each Subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment D-4B
- Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____

Signature: _____ **Date:** _____
 (Required)

MBE ATTACHMENT D-4B **Minority Business Enterprise Participation** **MBE Prime Contractor Report**

MBE Prime Contractor: Certification Number: Report #: _____ Reporting Period (Month/Year): _____ MBE Prime Contractor: Report is due to the MBE Liaison by the __ of the month following the month the services were provided. Note: Please number reports in sequence	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: _____ Project Begin Date: _____ Project End Date: _____
---	--

Contact Person:		
Address:		
City:	State:	ZIP:
Phone:	Fax: _____ E-mail: _____	

Invoice Number	Value of the Work	NAICS Code	Description of the Work

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____

Signature: _____ **Date:** _____
(Required)

MBE ATTACHMENT D-5
Minority Business Enterprise Participation
MBE Subcontractor Paid/Unpaid Invoice Report

Report #: _____ Reporting Period (Month/Year): _____ Report is due by the ____ of the month following the month the services were performed.	Contract #: _____ Contracting Unit: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
---	---

MBE Subcontractor Name: _____																					
MDOT Certification #: _____																					
Contact Person: _____		E-mail: _____																			
Address: _____																					
City: _____	State: _____	ZIP: _____																			
Phone: _____	Fax: _____																				
Subcontractor Services Provided:																					
List all payments received from Prime Contractor during reporting period indicated above. <table style="width: 100%;"> <thead> <tr> <th style="text-align: center;"><u>Invoice Amt</u></th> <th style="text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1. _____</td><td>_____</td></tr> <tr><td>2. _____</td><td>_____</td></tr> <tr><td>3. _____</td><td>_____</td></tr> <tr> <td colspan="2">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>	<u>Invoice Amt</u>	<u>Date</u>	1. _____	_____	2. _____	_____	3. _____	_____	Total Dollars Paid: \$ _____		List dates and amounts of any unpaid invoices over 30 days old. <table style="width: 100%;"> <thead> <tr> <th style="text-align: center;"><u>Invoice Amt</u></th> <th style="text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1. _____</td><td>_____</td></tr> <tr><td>2. _____</td><td>_____</td></tr> <tr><td>3. _____</td><td>_____</td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>	<u>Invoice Amt</u>	<u>Date</u>	1. _____	_____	2. _____	_____	3. _____	_____	Total Dollars Unpaid: \$ _____	
<u>Invoice Amt</u>	<u>Date</u>																				
1. _____	_____																				
2. _____	_____																				
3. _____	_____																				
Total Dollars Paid: \$ _____																					
<u>Invoice Amt</u>	<u>Date</u>																				
1. _____	_____																				
2. _____	_____																				
3. _____	_____																				
Total Dollars Unpaid: \$ _____																					
Prime Contractor: _____		Contact Person: _____																			

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Monitor: _____
Contracting Unit and Address: _____

Signature: _____ **Date:** _____
 (Required)

ATTACHMENT E-1
VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule

(submit with Proposal)

This document **MUST BE** included with the Proposal. If the Offeror fails to complete and submit this form with the Proposal, the procurement officer may determine that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Proposal submitted in response to RFP No. **2018-07**, I affirm the following:

1. ☐ I acknowledge and intend to meet the overall verified VSBE participation goal of **1.0 % (applies to both Functional Area I and II)**. Therefore, I will not be seeking a waiver.

OR

- ☐ I conclude that I am unable to achieve the VSBE participation goal. I hereby request a waiver, in whole or in part, of the overall goal. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.13.07. If this request is for a partial waiver, I have identified the portion of the VSBE goal that I intend to meet.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 days of receiving notice of the apparent award or from the date of conditional award (per COMAR 21.11.13.06), whichever is earlier.
- (a) Subcontractor Project Participation Statement (**Attachment E-2**); and
- (b) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

3. In the solicitation of subcontract quotations or offers, VSBE Subcontractors were provided not less than the same information and amount of time to respond as were non-VSBE Subcontractors.
4. Set forth below are the (i) verified VSBEs I intend to use and (ii) the percentage of the total contract amount allocated to each VSBE for this project. I hereby affirm that the VSBE firms are only providing those products and services for which they are verified.

ATTACHMENT E-1A
VSBE Prime/Subcontractor Participation Schedule

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: - _____	

List Information For Each Verified VSBE Prime Contractor or Subcontractor On This Project

Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:

Continue on a separate page, if needed.

SUMMARY

TOTAL VSBE Participation: _____%

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Affiant

Name: _____
Title: _____
Date: _____

VSBE ATTACHMENT E-1B - Exhibit A
VSBE Subcontractor Unavailability Certificate

1. It is hereby certified that the firm of _____
(Name of Veteran-owned firm)
located at _____
(Number) (Street)

(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. _____
in _____ County by _____
(Name of Prime Contractor's Firm)

2. _____ (Veteran-owned Firm), is either unavailable for the
work/service or unable to prepare a bid for this project for the following reason(s):

Signature of Minority Firm's VSBE Representative **Title** **Date**

USDVA #

TELEPHONE #

.....
4. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Veteran-Owned Small Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

Signature of Prime Contractor Title Date

ATTACHMENT E-2
VSBE Subcontractor Participation Statement

Please complete and submit one form for each verified VSBE listed on Attachment E-1 within 10 Business days of notification of apparent award

_____ (prime contractor) has entered into a contract with
_____ (Subcontractor) to provide services in connection with the Solicitation described below.

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: _____	Total Contract Amount: \$
Name of Veteran-Owned Firm:	DUNS Number:
Address:	FEIN:
Work to Be Performed:	
Percentage of Total Contract:	Total Subcontract Amount: \$

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Veteran-Owned Small Business Enterprise Law, State Finance and Procurement Article, Title 14, Subtitle 6, Annotated Code of Maryland.

PRIME CONTRACTOR SIGNATURE

By: _____
Name, Title

Date _____

SUBCONTRACTOR SIGNATURE

By: _____
Name, Title

Date _____

This form is to be completed
monthly by the prime contractor.

ATTACHMENT E-3 **Veterans Small Business Enterprise (VSBE) Participation** **VSBE Prime Contractor Paid/Unpaid Invoice Report**

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
Report is due to the Contract Monitor by the 10th of the month following the month the services were provided.	Contract Amount: _____
	VSBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
Note: Please number reports in sequence	Services Provided: _____

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	Fax:	E-mail:	
VSBE Prime Contractor Services Provided (if applicable):			
Subcontractor Name:		Contact Person:	
Phone:	Fax:		
VSBE Subcontractor Services Provided (if applicable):			
List all payments made to VSBE Subcontractor named above during this reporting period:		List dates and amounts of any outstanding invoices:	
<u>Invoice#</u>	<u>Amount</u>	<u>Invoice #</u>	<u>Amount</u>
1.		1.	
2.		2.	
3.		3.	
4.		4.	
Total Dollars Paid: \$ _____		Total Dollars Unpaid: \$ _____	

If more than one VSBE Subcontractor is used for this contract, you must use separate M-3 forms for each Subcontractor.
Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Monitor: _____
Contracting Unit and Address: _____

Signature: _____ **Date:** _____
 (Required)

This form must be completed monthly
by all VSBE Subcontractors.

ATTACHMENT E-4

Veterans Small Business Enterprise Participation

VSBE Subcontractor Paid/Unpaid Invoice Report

Report #: _____ Reporting Period (Month/Year): _____ Report is due by the 10th of the month following the month the services were performed.	Contract # _____ Contracting Unit: _____ VSBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	---

VSBE Subcontractor Name: _____																																
Department of Veterans Affairs Certification #: _____																																
Contact Person: _____		E-mail: _____																														
Address: _____																																
City: _____	State: _____	ZIP: _____																														
Phone: _____	Fax: _____																															
VSBE Subcontractor Services Provided:																																
List all payments received from Prime Contractor during reporting period indicated above. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 40%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3" style="padding-top: 10px;">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>			<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Paid: \$ _____			List dates and amounts of any unpaid invoices over 30 days old. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 40%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3" style="padding-top: 10px;">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Unpaid: \$ _____		
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1.																																
2.																																
3.																																
Total Dollars Paid: \$ _____																																
	<u>Invoice Amt</u>	<u>Date</u>																														
1.																																
2.																																
3.																																
Total Dollars Unpaid: \$ _____																																
Prime Contractor: _____		Contact Person: _____																														

Return one copy of this form to the following address (electronic copy with signature & date is preferred):

Contract Monitor: _____
Contracting Unit and Address: _____

Signature: _____ **Date:** _____
(Required)

ATTACHMENT F – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is 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 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 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 Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in 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.
- 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 Finance and 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 <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

Maryland Living Wage Requirements Affidavit of Agreement

(submit with Proposal)

Contract No. 2018-07

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):

- ☐ Offeror is a nonprofit organization
- ☐ Offeror is a public service company
- ☐ Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- ☐ 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 its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The 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 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 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 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 PROPOSAL

ATTACHMENT G- FEDERAL FUNDS ATTACHMENT

This RFP does not include a Federal Funds Attachment.

ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

Re: #2018-01

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 a 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 Proposal 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 PROPOSAL

ATTACHMENT I – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through MLGCA (the “Department”), and _____ (the “Contractor”).

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the RFP for Advertising, Marketing, Media and Related Services RFP # 2018-07; 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 “Contractor’s Personnel”) with access to certain information the State deems confidential (the “Confidential Information”).

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the solicitation 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. 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” means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, General Provisions §4-101(h)) and Protected Health Information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. 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. The 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, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. The 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 are attached hereto and made a part hereof as ATTACHMENT I-1. The Contractor shall update ATTACHMENT I-1 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 Contract or will otherwise have a role in performing any aspect of the Contract, 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. The Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, adopt or establish operating procedures and physical security measures, and 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. The Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. The 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. The

Contractor shall complete and submit ATTACHMENT J-2 when returning the Confidential Information to the Department. At such time, the Contractor shall also permanently delete any Confidential Information stored electronically by the Contractor.

- 7. A breach of this Agreement by the Contractor or 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 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, in no event less restrictive than as set forth in 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;
 - f. The Recitals are not merely prefatory but are an integral part hereof; and
 - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

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

Contractor:_____	MLGCA
By: _____(SEAL)	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

NON-DISCLOSURE AGREEMENT - ATTACHMENT I-1

**LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO
THE CONFIDENTIAL INFORMATION**

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

NON-DISCLOSURE AGREEMENT – ATTACHMENT I-2

**CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL
INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between _____ the _____ State of _____ Maryland and _____ (“Contractor”) 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 Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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 CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT

This RFP does not require a HIPAA Business Associate Agreement.

ATTACHMENT K – MERCURY AFFIDAVIT

This RFP does not include the procurement of products known to likely include mercury as a component.

ATTACHMENT L – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE

(submit with Proposal)

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Proposal submitted in response to RFP No. 2018-07, the following disclosures are hereby made:

1. At the time of Proposal submission, the Offeror and/or its proposed Subcontractors:

___ have plans

___ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Offeror or its proposed Subcontractors, the Offeror shall answer the following (attach additional pages if necessary):

- a. Location(s) services will be performed:

- b. Reasons why it is necessary or advantageous to perform services outside the United States:

The undersigned, being an authorized representative of the Offeror, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

Date: _____

Offeror Name: _____

By: _____

Name: _____

Title: _____

Please be advised that the MLGCA may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

ATTACHMENT M – CONTRACT

ADVERTISING, MARKETING, MEDIA AND RELATED SERVICES RFP No: 2018-07

THIS CONTRACT (the “Contract”) is made this (“Xth”) day of (month), 2018 by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the Maryland State Lottery and Gaming Control Agency (MLGCA).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract” means this agreement between (Contractor’s name) and the State of Maryland, acting through the Maryland State Lottery and Gaming Control Agency (MLGCA).
- 1.3 “Contract Monitor” means the following MLGCA employees identified as the Contract Monitor:

Jill Baer
Maryland State Lottery and Gaming Control Agency
Montgomery Park Business Center
1800 Washington Boulevard, Suite 330
Baltimore, MD 21230
Telephone: 410-230-8792; Fax: 410-230-8795
E-mail Address: jill.baer@maryland.gov

- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the Maryland State Lottery and Gaming Control Agency (MLGCA).
- 1.6 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.7 “Procurement Officer” means the following Department employee identified as the Procurement Officer:

Robert W. Howells
Maryland State Lottery and Gaming Control Agency
Montgomery Park Business Center
1800 Washington Boulevard, Suite 330
Baltimore, MD 21230
Telephone: 410-230-8789; Fax: 410-230-8727
E-mail Address: robert.howells@maryland.gov

- 1.8 “RFP” means the Request for Proposals for Advertising, Marketing, Media and Related Services RFP # 2018-07, and any amendments thereto issued in writing by the State.

- 1.9 “State” means the State of Maryland.
- 1.10 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

2. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract for Advertising, Marketing, Media and Related Services – Functional Area I and/or II awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. 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 – State Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Proposal (Technical and Financial)

- 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 the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance.

- 3.1 The term of this Contract begins on the date the Contract is signed by the MLGCA following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately three (3) years beginning **February 1, 2019** and ending on **January 31, 2022**.
- 3.2 The State, at its sole option, has the unilateral right to extend the term of the Contract for one (1) additional two (2) year renewal term at the prices quoted in the Financial Proposal for the renewal option term.
- 3.3 Upon the expiration of this Contract, or of the Renewal Option Period if exercised, the MLGCA, at its sole option, shall have the unilateral right to extend the Contract for a Final Renewal Option Period (for transitioning) of up to an additional six (6) month period in order to facilitate the conversion and transition to a follow-on Advertising Services contractor. For this Final Renewal Option Period, the MLGCA will determine and indicate the number of months needed to facilitate the conversion and transition to a follow-on contractor at the time of exercising this Option. All other terms and conditions, including price, shall remain the same for this Final Renewal Option as what is in effect at time of expiration of the initial Contract term or of a Renewal

Option Period, as applicable. Upon expiration of the initial Contract term of three (3) years, the Renewal Option Periods of two (2) years total (if exercised), and the Final Renewal Option for transitioning of up to six (6) months (if exercised), the total Contract Term shall not exceed approximately five (5) years and six (6) months.

- 3.4 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the MLGCA will pay the Contractor in accordance with the terms of this Contract and at the prices quoted in Attachment B to the RFP - Financial Proposal dated #### ##, 2018, which is attached hereto as Exhibit B to the Contract. Beginning on February 1, 2019, or upon the commencement of the Contract, whichever is later, the Contractor will begin to accrue earnings and the MLGCA agrees to pay the amounts set forth in this Section 4. All projects to be performed by the Contractor shall be pre-approved by the MLGCA.

- 4.2 The Contractor will be compensated for direct costs incurred to third parties the production of materials for advertising and promotions (Functional Area I) and for media time or space (Functional Area II). These third party costs include, but are not limited to, television, radio, print and out-of-home media time or space, services for broadcast (television and radio) production, photography, illustration, production of billboard or transit facings/vinyls, and production of digital communications components. The Contractor will also be compensated for other direct costs performed by third parties including, but not limited to, research services, loyalty and CRM engagement services, and creative development for certain projects and assignments as predetermined by the MLGCA. These costs shall be pre-approved by the MLGCA and will be reimbursed at the Contractor's actual costs and no markup, fee, commission, or handling fee will be allowed or charged to the MLGCA by the Contractor.

All direct costs to the third parties must be substantiated in writing and must be pre-approved by the MLGCA. In those circumstances where the Contractor needs clarification or where the MLGCA requests clarification, the Contractor shall promptly contact the MLGCA to discuss the matter prior to incurring any such costs.

The Contractor shall furnish to the MLGCA, in advance, a written cost estimate of all expenditures in connection with all services or projects recommended by the Contractor or requested by the MLGCA. Prior to undertaking any projects, or committing any MLGCA funds, the Contractor shall obtain written authorization from the MLGCA. For any production expenditure with a value estimated to be Twenty Five Thousand Dollars (\$25,000) or more, the Contractor also shall provide the MLGCA with copies of at least three (3) solicited bids or proposals for production of all expenditures in connection with all services or projects recommended by the Contractor or requested by the MLGCA.

A revised estimate, reflecting all proposed additional services or charges which exceed the original estimate, shall be approved by the MLGCA prior to any additional performance and shall be accompanied by a written justification stating why the increase in cost was necessary. Revised estimates shall also include previously approved amounts and/or history of amounts. No amount exceeding the original approved estimate will be paid by the MLGCA, unless a revised estimate has been approved in writing by the MLGCA.

- 4.3 The Contractor shall submit monthly billing invoices to the MLGCA for verification of accuracy, processing and payment. All invoices submitted to the MLGCA for payment shall be itemized, and include the appropriate MLGCA product and budget codes. Invoices shall be accompanied by back-up materials supporting each invoice, which may include a signed copy of the cost estimate for the job, other supplier invoices for outside services, and/or written explanations or justifications for any overages that may have occurred. In the event of an incorrect or incomplete invoice, the entire monthly billing will not be approved and will be returned to the Contractor for appropriate corrective action. Disputed invoice amounts will be documented and deducted from the appropriate monthly invoice. Resolution of all disputed amounts should occur within 45 days of the invoice date.

- 4.4 Payments to the Contractor shall be made no later than thirty (30) days after the MLGCA's receipt of a proper invoice for services provided by the Contractor, acceptance by the MLGCA 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 or Social Security Number for a Contractor who is an individual which is **(Contractor's FEIN or SSN)**. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. 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. The MLGCA will not pay for services prior to their delivery. The MLGCA may withhold and/or reduce payment for unsatisfactory performance, as well as for set-off, counterclaim, liquidated damages, or any other legally permitted deduction.
- 4.5 The Contractor shall endeavor to obtain all prompt payment or other similar discounts from media and suppliers in the performance of services hereunder. When the Contractor receives a cash discount from media or suppliers, the MLGCA shall receive full allowance for each such amount provided. Any such allowances or credits shall be reflected in the next monthly invoices submitted to the MLGCA.
- 4.6 The Contractor shall promptly, within thirty (30) days of receipt of payment from the MLGCA, pay its Subcontractors and other third-party vendors an undisputed amount to which a Subcontractor or third-party vendor is entitled for work performed under this Contract. The Contractor shall submit to the MLGCA monthly (not later than the 5th business day of the month following the month covered by the report) a report certifying, under penalties of perjury, all payments made to Subcontractors and third-party vendors that have performed work under this Contract and the balances including aging information owed to those Subcontractors and third-party vendors.

NOTE: The Contractor shall not subcontract any services required under the Contract to an affiliated entity.

- 4.7 The total amount of this Contract for the initial three (3) year term excluding any future modifications shall not exceed (**\$ amount to be inserted upon contract award**) Dollars. In the event that the MLGCA exercises its unilateral option to extend the Contract in its sole discretion, the amount of this Contract for the one (1) two (2) year Renewal Option period, excluding any future modifications shall not exceed (**\$ amount to be inserted upon contract award**). If the MLGCA exercises the option to extend, such option shall be at the same prices, terms and conditions. The "not to exceed" amounts are not guaranteed amounts, but only the maximum amount authorized to be expended under this Contract without further written and properly authorized modification. If the charges are likely to become greater than the not to exceed amounts, the MLGCA will request approval from the Maryland Department of Budget and Management, the Maryland Board of Public Works, and other necessary State officials. Approval from these entities is not guaranteed.
- 4.8 The portion of the funds paid to the Contractor that represents the MLGCA's Marketing Budget, exclusive of the Contractor's compensation, is strictly designated for the Contractor's use to pay for work placed with third-parties and is not to be considered to be the property of the Contractor or to be used by the Contractor in any way for its own purposes.
- 4.9 **Price Adjustment:** At the start of the Contract(s), the Contractor(s) will be compensated at the Monthly Flat Fee level that corresponds to the Budget Level (this amount is designated as "Lottery Spending Managed by Offeror" on Attachment B-2 Financial Proposal Form) for each Functional Area. The Budget Level for each Functional Area will be determined by the MLGCA and be based on Legislative appropriation and marketing initiatives planned for the coming fiscal year. The MLGCA will provide this Budget Level at the start of the Contract(s) and will periodically review the Budget Levels for each Functional Area to determine if adjustments need to be made. New Budget Levels will be provided to Contractor(s) at the beginning of each fiscal year.

In the event the MLGCA determines that a shift in Budget Level from one Functional Area to another is appropriate, the Contractor's Monthly Flat Fee may be adjusted (up or down) based on the information provided by the Contractor(s) on the Financial Proposal Sheet. Adjustments, if any, are based upon the Budget Level by Functional Area in effect as of the last day of the month being billed. Budget Levels by Functional Area may be modified at any time, and without prior notice, by action or order of the Governor, the State Department of Budget and Management, the State Legislature, the MLGCA Director, Deputy Director, or the Director of Creative Services.

NOTE: Contractor(s) fees will not be adjusted for Budget Levels allocated but not spent in any given fiscal year.

For billing purposes, adjustments to the Monthly Flat Fee will not be effective until conveyed by the MLGCA to the Contractor in writing via e-mail. Any adjustment to the Monthly Flat Fee will become effective the billable month after written notification is received by the Contractor. Additionally, any adjustment to the Monthly Flat Fee will not affect the Monthly Flat Fee paid to the Contractor for prior months.

- 4.10 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.
- 4.11 Payment of an invoice by the MLGCA is not evidence that services were rendered as required under this Contract.
- 4.12 Contractor's eMaryland Marketplace vendor ID number is (Contractor's eMM number).
- 4.13 The MLGCA and Commission shall have no responsibility for the payment of any federal, state or local taxes which become payable by the Contractor or its Subcontractors as a result of this Contract. The State is generally exempt from Federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Exemption certificates will 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.
- 4.14 The MLGCA reserves the right to participate in separate, cooperative advertising campaigns with marketing partners or through separate statewide advertising, research, or public relations contracts if such opportunities become available. Additionally, MLGCA reserves the right to secure directly the services of third-parties to perform promotional services and furnish promotional goods under separate contracts. The Contractor will not be entitled to receive fees based on any media advertising placed through such separate cooperative arrangements.

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 made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and Subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or Subcontractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.

7. Patents, Copyrights, and 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 will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. 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 attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) 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.

8. Confidential or Proprietary Information and Documentation

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and the implementation of regulations

promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) 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.

8.2 This Section 8 shall survive expiration or termination of this Contract.

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 Monitor. 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 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.3 The State of Maryland 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 performance under this Contract.
- 10.4 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 performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or lawsuit 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, lawsuit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a Subcontractor on this Contract.

12. Disputes

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

13. Maryland Law

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause Subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, 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 or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, 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 21.07.01.12A(2).

19. Delays and Extensions of Time

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the 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 Md. Code Ann., State Finance and Procurement Article, § 11-206, 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 Md. Code Ann., State Finance and Procurement Article, § 13-221, 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 thirty (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 Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

24. Documents Retention and Inspection Clause

The Contractor and Subcontractors shall retain and maintain all records and 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 or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or Subcontractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the Contract services being performed for the State.

- 25.2 Upon three (3) Business Days' notice, the Contractor and/or any Subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.
- 25.3 The right to audit shall include any of the Contractor's Subcontractors including but not limited to any lower tier Subcontractor(s) that provide essential support to the Contract services. The Contractor and/or Subcontractor(s) shall ensure the Department has the right to audit such Subcontractor(s).
- 25.4 The Contractor and/or Subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.
- 25.5 This Section shall survive expiration or termination of the Contract.

26. Compliance with Laws

The Contractor hereby represents and warrants that:

- 26.1 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;
- 26.2 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;
- 26.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 26.4 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.

27. Cost and Price Certification

- 27.1 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 Proposal.
- 27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

28. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer; provided, however, that a Contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are

completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its Subcontractors.

29. Liability

For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, the Contractor shall be liable as follows:

- 29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
- 29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form the 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. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The 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. The 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 the 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.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, the Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all Subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and 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.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its Subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- Not process further payments to the contractor until payment to the Subcontractor is verified;
 - Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - Pay or cause payment of the undisputed amount to the Subcontractor from monies otherwise due or that may become due;
 - Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An “undisputed amount” means an amount owed by the Contractor to a Subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation:
- 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
 - An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a Subcontractor under this provision, may not:
- Affect the rights of the contracting parties under any other provision of law;
 - Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
 - Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to Subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 - Inspecting any relevant records of the Contractor;
 - Inspecting the jobsite; and
 - Interviewing Subcontractors and workers.
- Verification shall include a review of the:
- The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE Subcontractors and the reason for nonpayment; and
 - The monthly report of each certified MBE Subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the Subcontractor has not been paid.
- If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

- c. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- d. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE Subcontractors.

32. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

33. Use of Estimated Quantities

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

34. Contract Monitor and Procurement Officer

The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

35. 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: Robert W. Howells
Procurement Officer
Maryland State Lottery and Gaming Control Agency
Montgomery Park Business Center
1800 Washington Boulevard, Suite 330
Baltimore, MD 21230
Telephone: 410-230-8789; Fax: 410-230-8727
E-mail Address: robert.howells@maryland.gov

If to the Contractor: _____

36. Liquidated Damages

- 36.1 The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of each violation.

- 36.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): \$25.00 per day until the monthly report is submitted as required.
- 36.1.2 Failure to include in its agreements with MBE Subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$100.00 per MBE Subcontractor.
- 36.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE Subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- 36.1.4 Failure to meet the Contractor’s total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- 36.1.5 Failure to promptly pay all undisputed amounts to a Subcontractor in full compliance with the prompt payment provisions of the Contract: \$50.00 per day until the undisputed amount due to the Subcontractor is paid.
- 36.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or otherwise may be available at law or in equity.

37. Parent Company Guarantee

(Corporate name of Contractor’s Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor’s Parent Company) may not transfer this absolute guaranty to any other person

or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, lawsuit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

38. Change In Financial Condition/Bankruptcy

If the Contractor experiences a substantial change in its financial condition during the term of the Contract or any extension thereof, the Contractor shall notify the Procurement Officer in writing of the change at the time the change occurs or is identified. Failure to notify the Procurement Officer of such a substantial adverse change in financial condition may be sufficient grounds for terminating the Contract.

Upon the filing of any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor shall notify the Procurement Officer in writing immediately.

39. Dissemination of Information/News and Press Releases

The Contractor shall not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of the MLGCA. The Contractor shall indemnify the State, MLGCA and Commission, their officials, agents, and employees, from any liability that may be incurred by reason of dissemination, publication, distribution or circulation, of any information, or materials pertaining to this Contract by the Contractor, its agents, or employees.

The MLGCA is the only entity authorized to issue news releases relating to this Contract and performance thereunder. The Contractor shall not issue any news or press releases or any commercial advertising pertaining to this Contract or to the MLGCA or Commission without the prior written approval of the Procurement Officer.

40. Lottery Ticket Purchase and Prize Payment Restrictions

In accordance with Section 9-123 of the Maryland State Government Article, Annotated Code, no officer or employee of the MLGCA, their spouse, child, brother, sister, or parent residing in the household of such officer or employee shall purchase a Maryland Lottery ticket or be paid a prize in any Maryland Lottery game. During the term of this Contract, this restriction shall also apply to officers and employees of the Contractor or of any Subcontractor whose use is subject to MLGCA approval who are directly involved in the Drawings, and their spouse, child, brother, sister, or parent residing in the household of such officer or employee. The Contractor shall ensure that this requirement is made known to each officer and employee of the Contractor and any Subcontractor whose use is subject to MLGCA approval. The Director shall have the sole discretion to determine the applicability of this restriction to any specific individual.

41. Relationship of the Parties (Independent Contractor)

During the course of this Contract, the Contractor may enter into agreements with third-parties in order for Contractor to fulfill its contractual obligations and responsibilities under this Contract. Contractor understands and agrees that the relationship between the MLGCA (State) and the Contractor is that of client and Independent Contractor, and is not, and shall not be deemed to be, any other relationship, including but not limited to, that of joint venture, partners, joint employers or principal and agent. No agent, employee, or servant of the Contractor or any of its Subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of this Contract.

From any amount due the Contractor, there will be no deductions for federal income tax or FICA payments, nor for State income tax, nor for any other purposes that are associated with any employer-employee relationship, unless required by law. Payment of federal income tax, FICA, and State income tax is the responsibility of the Contractor. The Contractor is responsible for complying with all federal and state laws as to taxes and Social Security payments to be withheld from wages paid to its employees and other contractors.

41.1 No Liability by MLGCA to Third-Party Vendors or Subcontractors

The MLGCA, Commission and State, have no liability for payment or performance to any third party which enters into an agreement with the Contractor for work related to this Contract. The Contractor does not have the power or authority to sign an agreement in the MLGCA's name or on behalf of the MLGCA, to bind or attempt to bind the MLGCA, Commission or the State, or any employee or official thereof, to any agreement with a third-party vendor, for payment of any monies or other obligations related to, or arising out of that third-party agreement, or to obligate the MLGCA to any liability if the Contractor fails to pay any Subcontractor or other third-party vendor. All agreements into which the Contractor enters with Subcontractors and other third-party vendors for work to be performed under this Contract shall be in the Contractor's name only and shall not name the MLGCA as a party to the agreement.

41.2 Contractor Acknowledgement, Indemnification and Duty to Notify

Contractor acknowledges, fully understands and agrees that the MLGCA, Commission or State is not a party to, and is not liable for payment or performance, any third-party agreement that the Contractor may enter into arising out of work related to this Contract. Contractor agrees to remove, redact, or strike any language from agreements it signs with Subcontractors and third-party vendors, noting a responsibility or liability by the MLGCA, Commission or State with respect to the payment of any monies or other obligations. Contractor agrees to fully indemnify and hold harmless the MLGCA, Commission and State from any and all liability of any nature arising out of its third-party relationships, and agrees to provide written notice for each agreement it completes with a third-party vendor, notifying such entities of the Independent Contractor relationship.

42. Contractor Cooperation/Good Faith

The Contractor shall cooperate with any subsequent contractor or any other contractor designated by the MLGCA to accomplish its objectives. All parties agree to cooperate fully in good faith and to assist each other to the extent reasonable and practicable to accomplish the objectives set forth in this Contract.

43. News/Press Releases

The MLGCA is the only entity authorized to issue news releases relating to this Contract and performance thereunder. The Contractor shall not issue any news or press releases or any commercial advertising pertaining to this Contract or to the MLGCA or Commission without the prior written approval of the Procurement Officer.

44. Adverse Interest

The Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further agrees that in the performance of this Contract it will not knowingly employ, directly or indirectly, any person having such an interest.

45. Non-Exclusive Rights

The Contract shall be non-exclusive and nothing in this Contract shall preclude the MLGCA from procuring similar services from another vendor. The MLGCA reserves the right to secure directly the services of third parties to perform

any services secured under this Contract. The Offeror will not be entitled to payment of any fee or otherwise for any services performed by these third parties.

46. Compliance with Americans With Disabilities Act (ADA)

Contractor shall comply with the Americans with Disabilities Act (ADA), 42 USC §§ 12101 et seq. and applicable regulations. To the extent required by the ADA, Contractor's facilities, services, and programs shall be accessible to persons with disabilities. Contractor shall bear sole responsibility for assuring that its activities under this Contract conform to the ADA. Contractor shall indemnify the State in any action brought pursuant to the ADA for all damages, attorney fees, litigation expenses, and costs, if such action or proceeding arises from the acts of Contractor, or of Contractor's employees, agents, or Subcontractors.

47. Miscellaneous

- 47.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 47.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

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

CONTRACTOR

**STATE OF MARYLAND
MARYLAND STATE LOTTERY AND
GAMING CONTROL AGENCY**

By:

Date

By: Gordon Medenica, Director

PARENT COMPANY (GUARANTOR) (if applicable) By:

By:

Date

Date

Approved for form and legal sufficiency
this ____ day of _____, 2018

Jennifer L. Tosky, Assistant Attorney General

APPROVED BY BPW: _____
(Date) (BPW Item #)

ATTACHMENT N – CONTRACT AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☐ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID

Number: _____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. 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 Proposal, 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 who 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's 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 §E(2)(b), above;

(h) Notify its employees in the statement required by §E(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 §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(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 §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(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.

F. 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 Proposal Affidavit dated _____, 201____, 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: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT O – DHR HIRING AGREEMENT

This RFP does not require a DHR Hiring Agreement.

ATTACHMENT P – PERFORMANCE BOND

PAGE 1 OF 3

Principal

Business Address of Principal

Surety

a corporation of the State of _____
and authorized to do business in
the State of Maryland

Obligee: STATE OF MARYLAND

By and through the following
Administration: Lottery & Gaming Control

Five Hundred Thousand Dollars (\$500,000.00)

Penal Sum of Bond (express in words and figures)

_____, 20_____
Date Bond Executed

Contract Number: 2018-07

Description of Contract:

_____, 20_____
Date of Contract

Advertising, Marketing, Media and Related Services (#2018-07)

(Functional Area I and/or II)

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State of Maryland, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of the time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions contained in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on the Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of: **INDIVIDUAL PRINCIPAL**
Witness

_____ as to _____
(SEAL)

In Presence of: **CO-PARTNERSHIP PRINCIPAL**
Witness

(Name of Co-Partnership) (SEAL)

_____ as to BY : _____ (SEAL)

_____ as to _____ (SEAL)

_____ as to _____ (SEAL)

CORPORATE PRINCIPAL

Attest: _____
(Name of Corporation)

BY: _____ AFFIX
Corporate Secretary President CORPORATE
SEAL
SURETY

Attest: _____
BY: _____ AFFIX
Signature SEAL CORPORATE

Title: _____

(Business Address of Surety)

Bonding Agent's Name _____ - _____

Agent's Address _____

ATTACHMENT Q – PAYMENT BOND**PAGE 1 OF 3**

Principal	Business Address of Principal
Surety	Obligee
a corporation of the State of _____	STATE OF MARYLAND
and authorized to do business in the State of Maryland	By and through the following Administration .Lottery and Gaming Control.....
Penal Sum of Bond (express in words and figures) \$500,000 (Functional Area I) \$500,000 (Functional Area II)	Date of Contract _____, 2018
Description of Contract	Date Bond Executed _____, 2018
Contract Number: <u>2018-07</u>	

The required payment bond shall be in the form specified as follows:

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business address as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the "Contract".

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying labor and materials (including lessors of the equipment to the extent of the fair market value thereof) to the Principal or its Subcontractors and Subcontractors in the prosecution of the work provided for in the Contract, entitled to the protection provided by Section 9-113 of the Real Property Article of the Annotated Code of Maryland, as from time to time amended.
2. The above named Principal and Surety hereby jointly and severally agree with the Obligees that every claimant as herein defined, who has not been in full may, pursuant to and when in compliance with the provisions of the aforesaid Section 9-113, sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Obligees shall not be liable for the payment of any costs or expenses of any such suit.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Payment Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of: _____ Individual Principal
 Witness: _____
 _____ as to _____ (SEAL)

In Presence of: _____ Co-Partnership Principal
 Witness: _____
 _____ (SEAL)
 _____ (Name of Co-Partnership)
 _____ as to By: _____ (SEAL)
 _____ as to _____ (SEAL)
 _____ as to _____ (SEAL)

Corporate Principal

 Attest: _____ (Name of Corporation)
 _____ AFFIX
 _____ By: _____ CORPORATE
 Corporate Secretary President SEAL

 (Surety)
 _____ AFFIX
 Attest: _____ (SEAL) By: _____ CORPORATE
 _____ SEAL

 Signature Title _____
 Bonding Agent's Name: _____

 Agent's Address _____ (Business Address of Surety)

Approved as to legal form and sufficiency this
 _____ day of _____ 2018

 Asst. Attorney General

ATTACHMENT R – AUTHORIZATION FOR RELEASE OF INFORMATION

_____ (*Insert Name of Offeror*) has submitted a proposal in response to RFP #2018-01 issued by the Maryland State Lottery and Gaming Control Agency (“MLGCA”). As part of the MLGCA’s evaluation of the proposal, it will be contacting other entities that have had business relationships with Offeror.

This document, signed by an authorized representative of Offeror, demonstrates the desire of Offeror to:

1. Allow representatives of the MLGCA unfettered access to any and all monitoring reports, licensing or certification documents, and records of evaluations related to the experiences of Offeror in its prior or current contracts for lottery related services, as well as the experiences of any of its parent or subsidiary corporations or other entities with which it has been associated;
2. Allow the same access afforded by the previous section 1 above to apply to situations in which Offeror may have functioned as a Subcontractor;
3. Grant representatives of the MLGCA unfettered access to discuss openly the performance of Offeror related to the experiences set out in sections 1 and 2 above; and
4. Expressly authorize that any and all of the information conveyed to representatives of the MLGCA be kept in confidence by the MLGCA without any expectation or requirement that the content of such information shall ever be released to Offeror or any other entity, except where otherwise required by law.

Name & Title:

(Name of Offeror) _____

Date: _____

ATTACHMENT S – WORK IN PROGRESS – FY 19 VENDOR CONTRACTS*

Vendor	Project	Term	Status
PROFESSIONAL TEAM SPONSORSHIP			
Baltimore Ravens	Team Sponsorship	8/1/2018 – 3/31/2019 (2018 Season)	The 2018 agreement has been finalized and includes language that allows the contract to be transferred.
Washington Redskins	Team Sponsorship	8/1/2018 – 3/31/2019 (2018 Season)	The 2018 agreement has been finalized and includes language that allows the contract to be transferred.
Baltimore Orioles	Team Sponsorship	2019 Season	The Orioles 2018 Team Sponsorship was executed on 1/18/18. It is expected that the 2019 agreement will be finalized and could be executed by 1/31/2019. If the contract is executed before the new agency contract takes effect, transfer language will be included allowing the contract to be transferred.
MASN (Orioles)	Team Sponsorship	2019 Season	The MASN 2018 Team Sponsorship was executed on 1/31/18. It is expected that the 2019 agreement will be finalized and could be executed by 1/31/2019. If the contract is executed before the new agency contract takes effect, transfer language will be included allowing the contract to be transferred.
UNIVERSITY SPONSORSHIP			
University of Maryland	Team Sponsorship	7/1/2018 - 6/30/2019 (2018/2019 Season)	The 2018 agreement has been finalized and includes language that allows the contract to be transferred.
Towson University	Team Sponsorship	8/1/2018 – 6/30/2019 (2018/2019 Season)	
Morgan State University	Team Sponsorship	2018/2019 Season	The 2018 agreement is being negotiated. The contract will include language that allows the contract to be transferred.
OUT-OF-HOME			
Clear Channel Outdoor	Digital Bulletin Network	7/2/2018 – 6/23/2019	The 2018 agreements have been finalized and include language that allow the contracts to be transferred.
Maryland Outdoor	Four (4) Jackpot Bulletins	6/25/2018 – 6/23/2019; 7/1/2018 – 6/30/2019	
Clear Channel Outdoor	Two (2) Jackpot Bulletins	6/18/2018 – 6/16/2019; 6/25/2018 – 6/23/2019	
OUTFRONT	Twenty-three (23) Metro Dioramas	6/25/2018 – 6/23/2019	
Sunshine Electronics	Jackpot Display Units for the Metro Dioramas	7/1/2018 – 6/30/2019	
PRODUCT CAMPAIGNS			
Product campaigns in Feb/Mar/Apr 2019	Media Elements TBD – TV, Radio, Digital, Social, Out-of-Home	2/1/2019 – 4/30/2019	The current agency may be asked to plan and place media buys for products launching in February – April 2019 prior to the new advertising contract taking effect. If media is placed during this window, the Lottery’s agency of record will be expected to take over any purchased media beginning on 2/1/2019.

Vendor	Project	Term	Status
WEB & MOBILE APPLICATIONS			
Mindgrub (Core App)	Developed and built Core App	TBD	Currently performs app updates and maintenance on an as needed basis. Update projects are estimated individually and approved by the Lottery prior to initiation.
Heroku (Core App) with Fixie Add-On	Provides hosting and database services for the core app	TBD	The current hosting contract runs through July 2018. Heroku uses Amazon Web Services that provide an on-demand cloud computing platform for paid subscriptions. Terms of the subscription can be adjusted by app usage. Add-ons include Fixie, Mongo DB.
Hello World (Keno and Racetrax App)	Developed and built the Keno and Racetrax app.	TBD	Hello World performs app updates and maintenance on an as needed basis. Update projects are estimated individually and approved by the Lottery prior to initiation. Hello World also provides hosting services for the mobile app.
Managed Network Services Group (MNSG)	Continuous monitoring/security of mdlottery.com	1/31/2019	MNSG will be performing ongoing security scans, monitoring, performance reporting and troubleshooting for the Lottery's website.
Databank Ltd (Edge Hosting)	Monthly hosting services	Ongoing as needed	Provides hosting services for mdlottery.com and its microsites.

**The vendor contract list is representative of all known contracts as of July 2018, new contracts may be added at any point and an updated list can be provided upon request.*

APPENDIX 1

Abbreviations and Definitions

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

1. **ADA** - Americans With Disabilities Act, Public Law 101-336 of the 101st Congress, enacted July 26, 1990, including changes made by the ADA Amendments Act of 2008, and regulations promulgated pursuant to that statute.
2. **Brand Style Guide** - A document that describes, defines and presents examples of what an organization's brand, logos and marks look like in various visual media such as print, Internet and broadcast commercials.
3. **Budget** –
 - a. **Budget Level** – Amount allocated by the MLGCA's Creative Services Division for each Functional Area for all anticipated expenditures by the MLGCA for creative development and production, media planning and buying, digital, web and social media development and maintenance and research. Contractor compensation is not included in this amount. (**Note: this amount is designated as "Lottery Spending Managed by Offeror" on Attachment B-2 Financial Proposal Form**)
 - b. **Marketing Budget** – Amount is inclusive of all anticipated expenditures by the MLGCA for media, creative development and production, media planning and buying, digital, web and social media development and maintenance, research and contractor fees.
4. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of "Normal State Business Hours" below).
5. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us. Regulations governing the MLGCA are found in COMAR Title 36. Regulations governing the State procurement process are found in COMAR Title 21.
6. **Commission** - The Maryland State Lottery and Gaming Control Commission.
7. **Contract** – The Contract(s) awarded to the successful Offeror(s) pursuant to this RFP. The Contract(s) will be in the form of **Attachment A**.
8. **Contract Commencement** - The date the Contract is signed by the MLGCA following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
9. **Contract Monitor (CM)** – The State representative for this Contract(s) who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract(s) to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities.
10. **Contractor**
 - a. **Creative Development and Production Services Contractor** - The selected Offeror that is awarded a Contract by the State for Functional Area I.

- b. **Media Planning and Buying Services Contractor** - The selected Offeror that is awarded a Contract by the State for Functional Area II.
11. **Contractor Fees** – The annual fees that the MLGCA pays to its Contractor to fulfill the requirements in its Contract for services that are not subcontracted.
 12. **Days** – Means calendar days unless otherwise specified.
 13. **Director** – Director of the Maryland State Lottery and Gaming Control Agency.
 14. **Drawing** - The live random selection event used for determining the winning numbers for MLGCA’s draw games to include but not limited to Pick 3, Pick 4, Bonus Match 5, Multi-Match, Mega Millions and Powerball.
 15. **eMM** – eMaryland Marketplace (see RFP Section 1.8).
 16. **FY** – State Fiscal Year, July 1 – June 30. For example, FY18 represents the period beginning July 1, 2017 through June 30, 2018.
 17. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this RFP. See Section 1.4.
 18. **Gross Rating Point (GRP)** –a measure of the size of an advertising campaign by a specific medium or schedule. GRPs quantify impressions as a percentage of the target population.
 19. **Industry Standard Commercial Identification (ISCI)** – A standard coding system developed by the advertising industry to identify commercials that air on television.
 20. **Key Personnel** – All personnel identified in the RFP as such, or personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract. See RFP Sections 3.10 and 5.4.2.7.
 21. **Key Performance Indicators (KPI)** - A quantifiable measure used to evaluate the success of a particular program or initiative.
 22. **Local Time** – Time in the Eastern Time Zone as observed by the State. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
 23. **Lottery In Motion (LIMS)** - The network of video monitors placed at Retailer locations displaying information about new products, promotions, jackpots, etc.
 24. **Lottery Ticket** - An authorized game Ticket for a MLGCA game.
 25. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
 26. **MLGCA** – Maryland State Lottery and Gaming Control Agency.
 27. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
 28. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-

Live Date, and is the official start date of the Contract for the actual delivery of services as described in this RFP. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this RFP with a delayed or non-specified implementation date.

- 29. **Offeror** – An entity that submits a Proposal in response to this RFP.
- 30. **Player’s Club** – A structured marketing program offering a variety of incentives to members and designed to encourage players to purchase Lottery products and engage with the MLGCA.
- 31. **Point of Sale (POS)** – Any materials created and/or produced that aid in the sale of Lottery products and services. Point of Sales is often placed in Retailer locations, but depending on the context, can mean promotional, advertising or display pieces as well.
- 32. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this RFP. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment M), and is the only State representative who can authorize changes to the Contract. The MLGCA may change the Procurement Officer at any time by written notice to the Contractor.
- 33. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
- 34. **Qualified Offerors** – Include only those Responsible Offerors that submitted proposals initially classified by the Procurement Officer as Reasonably Susceptible of Being Selected for Award (COMAR 21.05.03.03C.(1)).
- 35. **Request for Proposals (RFP)** – This Request for Proposals issued by the MLGCA, with the RFP Number and date of issuance indicated in the RFP Key Information Summary Sheet (near the beginning of the RFP, after the Title Page and Notice to Vendors), including any amendments.
- 36. **Retailer** – Any entity or retail location that is authorized by the MLGCA to sell Lottery products. The term “Agent” may occasionally be used interchangeably to mean Retailer.
- 37. **State** – The State of Maryland.
- 38. **Subcontractor** – Any person or firm having an agreement with a Contractor to perform all or some of the Contractors’ work under a contract with the MLGCA. Does not include an employee with a employment contract or an employee organization with a collective bargaining agreement.
- 39. **Total Proposal Price** - The Offeror’s total proposed price for services in response to this RFP for the Functional Area(s) being proposed, included in the Financial Proposal with Attachment B-2 – Financial Proposal Form, and used in the financial evaluation of Proposals (see RFP Section 6.3).
- 40. **Veteran-owned Small Business Enterprise (VSBE)** – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.