



**AMENDMENT #5
REQUEST FOR PROPOSAL
MDM0031030513
MHBE Consolidated Service Center
May 22, 2017**

This Amendment is being issued to amend and clarify certain information contained in the above named RFP. All information contained herein is binding on all Offerors who respond to this RFP. Specific parts of the RFP have been amended. The following changes/additions are listed below; new language has been bolded and underlined and language deleted has been marked with a strikeout (ex. ~~language deleted~~).

1. Amend RFP Attachment A Section 2.2 as follows:

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.

The parties acknowledge and agree that certain material changes to MHBE, State, or federal law, regulation, rule or policy which could not reasonably have been anticipated by Contractor may result in an increase or decrease in the Contractor's cost. In such an event, the parties will meet to discuss in good faith an appropriate equitable adjustment. Any such equitable adjustment ultimately agreed upon by the parties will be reflected in a Contract modification. Contractor shall proceed diligently with the services throughout such discussions and regardless of their ultimate disposition.

2. Amend RFP Attachment A Section 5.4 as follows

5.4 Notwithstanding anything to the contrary in this Contract, to the extent (i) the Work Product incorporates any commercial-off-the shelf software (COTS) and/or any Pre-Existing Intellectual Property or (ii) any COTS and/or Pre-Existing Intellectual Property (other than a computer's operating system, supported internet browser, browser accessibility software or hardware if needed by the user, and software required to access a commonly-available data transmission tool or export format) is required to access, install, build, compile or otherwise use the Work Product (such COTS and Pre-Existing Intellectual Property individually and collectively referred to herein as "Third-party Intellectual Property" which shall be the sole property of Contractor or its third-party licensors, as applicable), Contractor hereby grants, on behalf of itself and any third-party licensors, to the State a royalty-free, paid-up, non-

exclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right to use, execute, reproduce, display, perform, distribute copies of internally, modify and prepare derivative works based upon, such Third-party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended. "Pre-Existing Intellectual Property" means any program, utility or tool owned by Contractor or its third-party licensors that was created by Contractor or its third-party licensors independently from its performance of this Contract and not solely using funds from this Contract.

The State's license rights stated in this section shall not apply to Third-Party Intellectual Property to the extent such subcontractor, vendor or other third party refuses to make its software or other Pre-Existing Intellectual Property available to Contractor to the extent required for Contractor to comply with this Section.

3. Amend RFP Attachment A Section 31 as follows:

31. Liability

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

31.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 5 of this Contract;

31.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

31.3 Without limitation for all claims, damages, losses, costs, expenses, suits, or actions arising out of or caused by a) Contractor's breach of any State or federal requirement with respect to the privacy of Protected Health Information (PHI), Personally Identifiable Information (PII), or data security, b) the fraudulent acts or deliberate and willful misconduct or gross negligence of Contractor, its employees, or subcontractors.

~~31.4~~ For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form **Contractor's liability shall not exceed three (3) times the total value of this Contract.** ~~for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.~~

Date Issued: May 22, 2017
Michelle Compton
Procurement Officer