

# *Civil Monetary Penalty Reinvestment Fund*

## *Request for Applications*



**January 29, 2021**

This solicitation is a Request for Applications (RFA) for potential CMP Reinvestment projects that will improve the lives of individuals residing in nursing facilities across the Commonwealth of Virginia. Specific details about this solicitation are enclosed in the following RFA 2021-02.

The Civil Monetary Penalties (CMP) Reinvestment Fund is a collection of monetary penalties the U.S. Centers for Medicare & Medicaid Services (CMS) may impose against skilled nursing facilities (SNFs), nursing facilities (NFs), and dually-certified SNF/NF for each instance that a facility is not in substantial compliance with one or more Medicare and Medicaid participation requirements for long-term care facilities (LTC) (42 CFR 488.430). The requirements for participation with Medicare and Medicaid for (LTC) facilities may be found at 42 CFR 483.

In accordance with 1819(h)(2)B(ii)(IV)(ff) and 1919(h)(3)(c)(ii)(IV)(ff) of the federal Social Security Act, the Commonwealth of Virginia commits to the following as an annual plan for the expenditure of nursing facility Civil Monetary Penalty (CMP) Reinvestment funds. This plan has been developed and agreed to by the Virginia Department of Medical Assistance Services (DMAS).

DMAS has been given the responsibility for administering these funds, and providing direct oversight in accepting proposals. In Virginia, CMP Reinvestment funds are used for projects that are approved by DMAS and CMS that directly benefit individuals residing in a nursing facility in the Commonwealth.

DMAS is soliciting applications from qualified organizations for the purpose of determining eligibility to receive CMP Reinvestment funds. To be considered to receive CMP Reinvestment funds, organizations must submit the required cover sheet via email to [CMPFunds@dmas.virginia.gov](mailto:CMPFunds@dmas.virginia.gov) no later than **2:00 pm, Eastern Time Friday, February 26, 2021.**

After timely submission of the prerequisite cover sheet, the required formal application must be completed and submitted electronically via eVA no later than **2:00pm, Eastern Time Wednesday, March 31, 2021.**

Applications shall not be accepted from applicants who have not submitted a Cover Sheet by the deadline specified above.

Applicants are requested not to call the DMAS office. All inquiries related to this RFA should be sent by email to: the CMP Reinvestment Program Team, Department of Medical Assistance Services, at [CMPFunds@dmas.virginia.gov](mailto:CMPFunds@dmas.virginia.gov)

Sincerely,

*Courtney Richter*

Courtney Richter

*Evelyn Hardwick*

Evelyn Hardwick

**NOTE: No funds shall be released to the applicant without a complete and signed interagency agreement or contract. Applicants shall not receive retroactive reimbursement for expenses incurred prior to a signed interagency agreement or contract. If approved, applicants are highly encouraged to seek and receive written confirmation from DMAS detailing when funds can be expended.**

**DMAS will not reimburse any offer or for any costs associated with preparing this application and reserves the right to reject any and all applications received.**

**REQUEST FOR APPLICATIONS**  
**RFA 2021-02**

**ISSUE DATE:** January 29, 2021

**Title:** Civil Monetary Penalty Reinvestment Fund

**Period of RFA:** February 1, 2021 – March 31, 2021

**Contact Person:** Courtney Richter, CMP Reinvestment Program Analyst  
Evelyn Hardwick, CMP Reinvestment Program Analyst

All inquiries should be addressed via email to [CMPFunds@dmas.virginia.gov](mailto:CMPFunds@dmas.virginia.gov)

**Deadline for submitting Cover Sheet questions is 2:00pm, Eastern Time, February 5, 2021.**

**DMAS' responses to questions will be delivered by February 12, 2021.**

**Cover Sheet Due Date: Cover Sheets must be submitted via email to [CMPFunds@dmas.virginia.gov](mailto:CMPFunds@dmas.virginia.gov) no later than 2:00pm, Eastern Time, February 26, 2021.**

**Application Due Date: Applications must be submitted electronically via eVA no later than 2:00pm, Eastern Time, Tuesday, March 31, 2021.**

**Facsimile Transmission is not acceptable**

**Note:** This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 6.2.1, e in General Terms and Condition 6.2. Such a request shall be in writing and explain why an exception should be made in that invitation to bid or request for proposal.

In compliance with this Request for Application and to all conditions imposed therein and hereby incorporated by reference, the undersigned proposes and agrees to furnish the services contained in their application.

Firm Name (Print)	F.I. or S.S. Number
Address	Print Name
Address	Title
City, State, Zip Code	Signature
Telephone:	Date Signed
Fax Number:	Email:
State Corporation Commission ID Number <b>(Required):</b> See Special Terms and Conditions	SCC ID #:
Dun & Bradstreet D-U-N-S Number <b>(Required):</b>	DUNS#:
Check Applicable Status Corporation ----- Partnership ----- Proprietorship ----- Individual ----- Woman Owned ----- ----- Minority Owned ----- Small Business ----- If Department of Small Business and Supplier Diversity (DSBSD) certified, provide certification number: _____	

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES  
DIVISION OF AGING AND DISABILITY SERVICES**

**REQUEST FOR APPLICATIONS (RFA) FOR  
USE OF CIVIL MONETARY PENALTY REINVESTMENT FUNDS**

**RFA 2021-02**

**January 29, 2021**

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## **Section I – Introduction**

The purpose for this RFA is for DMAS to solicit applications from qualified nursing facilities and providers for the use of CMP Reinvestment funds to benefit individuals residing in nursing facilities in the Commonwealth of Virginia.

Eligible applicants include licensed and Medicaid-certified nursing facilities, healthcare systems, state agencies, for-profit or non-profit organizations, provider associations, and universities. Individuals are not eligible for CMP Reinvestment funds. If you would like confirmation of your organization’s eligibility to apply for CMP Reinvestment funds, please contact the CMP Reinvestment Program Team at ([CMPFunds@dmass.virginia.gov](mailto:CMPFunds@dmass.virginia.gov)).

DMAS shall conduct an initial review of all applications. DMAS shall review the applications and make decisions on projects that will be recommended for funding to CMS no later than May 3, 2021. While reviewing applications, DMAS may submit to applicants a “Request for Additional Information (RAI)”. *Applicants who receive an RAI shall respond as soon as possible to ensure the review process is not delayed.*

## **Section II – Allowable and Prohibited Uses**

<b>ALLOWABLE</b>	<b>PROHIBITED</b>
<ul style="list-style-type: none"><li>• Assistance to support and protect individuals of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating individuals to home and community-based settings or another facility)</li><li>• Projects that support individual and family councils and other consumer involvement in assuring quality care in facilities</li><li>• Facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary of U.S. Health and Human Services)</li></ul>	<ul style="list-style-type: none"><li>• Making capital improvements to a facility</li><li>• Paying for items or services that are already the responsibility of the nursing home</li><li>• Projects or activities intended to achieve compliance</li><li>• Funding projects, items or services that are not related to improving the quality of life and care of individuals residing in nursing facilities</li><li>• Projects for which a conflict of interest or the appearance of a conflict of interest exists</li><li>• Long term projects (greater than 3 years)</li><li>• Temporary manager salaries [broad use]</li><li>• Supplementary funding of federally required services</li><li>• Ombudsman salaries</li><li>• Salaries of nursing facility staff</li><li>• Nurse aide training (NATCEP)</li></ul>

### **Specific Application Award Requirements:**

DMAS shall submit approved applications and recommendations to CMS. CMS shall provide feedback to DMAS on the status of the CMP Reinvestment project funding recommendations within 45 calendar days of receipt. Recommended applications are reviewed by CMS in the order in which they are received. CMS may approve the request, deny the request, or ask that additional information be provided.

**CMS has the ultimate and final decision for funding. Requests for funding that are denied by DMAS or CMS are not subject to appeal rights.**

### **Section III – Funding Parameters**

Within the scope of allowable uses of CMP Reinvestment funds, DMAS further categorizes projects into the following focus areas:

- Culture Change (e.g., "Culture change" is the common name given to the national movement for the transformation of older adult services, based on person-directed values and practices where the voices of elders and those working with them are considered and respected.)
- Resident or Family Council
- Direct Improvements to Quality of Care
- Consumer Information (e.g., information that is directly useful to nursing home residents and their representatives to become knowledgeable about their rights, nursing home care processes, and other information useful to a resident)
- Transition Preparation for a Nursing Home Resident
- Training

Projects not fitting into one of these areas may be considered “Other”. Applicants shall provide sufficient descriptions of the project to provide reviewers clarity in how it benefits individuals in nursing facilities.

Allowable project periods cannot exceed three (3) years.

Applicants are encouraged to explore opportunities for in-kind or matching contributions to a project. While not required, these reflect an investment on the part of the applicant to commit to the project and all deliverables.

While also not required, applicants are encouraged to partner with other organizations and entities in long-term care. Partnerships allow for an expanded impact and reflect a broader understanding and integration with improving nursing facility care.

### **Section IV - Application Preparation and Submission Requirements**

All data, materials, and documentation originated and prepared for the Commonwealth pursuant to this RFA belong exclusively to the Commonwealth and shall be subject to public inspection in accordance with the Virginia Freedom of Information Act. Confidential information shall be clearly marked in the proposal and reasons the information should be confidential shall be clearly stated.



The applicant assures that information and data obtained as to personal facts and circumstances related to participants shall be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form that does not identify particular individuals. Providers and their employees working on this project shall be required to sign the confidentiality statement in this solicitation.

Trade secrets or proprietary information submitted by an applicant shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the provider must invoke the protections of §2.2-4342F of the *Code of Virginia*, in writing, either before, or at the time, the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary.

The proprietary or trade secret materials submitted must be identified by some distinct method, such as highlighting or underlining, and shall indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. An electronic redacted copy of the application shall have the proprietary and confidential information removed or blocked out in its entirety so the content is not visible. The classification of an entire application, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and, at the sole discretion of DMAS, may result in rejection and return of the proposal. Attachment I of this RFA shall be used for the identification of proprietary or confidential information and submitted with the application.

#### **Submission and Acceptance of Cover Sheets:**

The cover sheet must be completed and returned as required. The cover sheet template may be found at <https://www.dmas.virginia.gov/#/longtermprograms> under the Civil Monetary Penalties tab. Failure to submit an application with the official cover sheet may be cause for rejecting the application for funding. Cover Sheets shall be submitted **via email to [CMPFunds@dmas.virginia.gov](mailto:CMPFunds@dmas.virginia.gov)** no later than **2:00pm ET February 26, 2021**. Late Cover Sheets will not be accepted and will be automatically rejected from further consideration.

#### **Submission and Acceptance of Applications:**

Applications shall be submitted **electronically via eVA** no later than **2:00pm ET March 31, 2021**. The applicant must be registered in eVA in order to submit an electronic application. Applicants must submit one (1) complete copy of the proposal and attachments electronically via eVA. DMAS shall be the sole determining party in establishing the time of arrival of applications. Late applications will not be accepted and will be automatically rejected from further consideration. The following are instructions for submitting an electronic proposal.

- a. Go to [www.eva.virginia.gov](http://www.eva.virginia.gov);
- b. Click on "I Sell to Virginia";
- c. Click on "eVA Vendor Training"; and
- d. Click on "Respond to IFBs-RFPs and more".

If an applicant needs assistance in submitting an electronic response, the applicant must contact eVA Customer Care at (866) 289-7367 or email [eVACustomerCare@dgs.virginia.gov](mailto:eVACustomerCare@dgs.virginia.gov)

**Request preparation:**

The application process involves the submission of a Request for Funding Cover Sheet and a formal Project Application. Project proposals shall be: typed, single-spaced, and in Times New Roman 12-point font. The header of each page shall include the organization name. The footer of each page shall include the page number. The project proposal shall not exceed 10 pages. The Request for Funding Cover Sheet, Letters of Support, Personnel Bios, Federally Negotiated Indirect Cost Agreement, and Line Item Budget Spreadsheet are considered appendices and are not included in the 10 page limit.

**Application Considerations:**

The applicant must clearly and concisely describe why they are submitting an application for the use of CMP Reinvestment Funds and the direct benefit to individuals residing in nursing facilities.

**Description of Potential Applicant:**

Eligible applicants include licensed and Medicaid-certified nursing facilities, healthcare systems, state agencies, for-profit or non-profit organizations, provider associations, and universities. Individuals are not eligible for CMP Reinvestment funds. If you would like confirmation of your organization’s eligibility to apply for CMP Reinvestment funds, please contact the CMP Reinvestment Program Team ([CMPFunds@dmas.virginia.gov](mailto:CMPFunds@dmas.virginia.gov)).

**Application Requirements:**

APPLICATION ITEM	ADDITIONAL ELEMENTS
<b>Title</b>	
<b>Abstract (250 words or less)</b>	
<b>Project Purpose and Summary</b>	<ul style="list-style-type: none"> <li>• Background and Project Need</li> <li>• Goals and Objectives</li> <li>• Project Design and Approach</li> <li>• Benefits to Individuals</li> <li>• Non-Supplanting</li> </ul>
<b>Expected Outcomes</b>	<ul style="list-style-type: none"> <li>• Outcomes</li> <li>• Deliverables and Dissemination</li> <li>• Sustainability</li> </ul>
<b>Results Measurement</b>	<ul style="list-style-type: none"> <li>• Specific Measures</li> <li>• Methods for Measurement</li> </ul>
<b>Personnel &amp; External Involvement</b>	<ul style="list-style-type: none"> <li>• Consumer and Stakeholder Involvement in the Project</li> <li>• Involved Organizations</li> <li>• Defined Roles and Qualifications for Project Members</li> </ul>
<b>Timeline</b>	
<b>Budget</b>	

## Title

Give your project an appropriate and clear title.

## Abstract

Include an abstract for your project that is 250 words or less. Note that the abstract may be used to share information with the public about your project.

## Project Purpose and Summary

### Background and Project Need

- Briefly present what the project aims to accomplish, for whom, and in collaboration with which partners.
- Highlight the mission of the applicant for which this request originates and how the applicant is positively contributing to the nursing facility community.
- Discuss the need for the project, identifying the relevant service gap areas for individuals in nursing facilities, and how individuals, families or caregivers will be served from this intervention.
- If applicable, provide a brief statement on the impact of previous projects that have improved the lives of individuals residing in nursing home facilities.
- As appropriate, briefly showcase how this project will optimize the use of partnerships and propose a method for expanding the range of collaborations to ensure that the program is reaching the greatest number of individuals as possible. Demonstrate that the proposed partnerships are relevant and appropriate.

### Goals and Objectives

- Identify/list appropriate goals for the project and highlight/list expected outcomes from the project implementation.

### Project Design and Approach

- Link the identified objectives with the project activities, describing how the project activities will result in fulfilled objectives.
- Detail how the project will specifically enhance the lives of individuals residing in nursing facilities in Virginia.
- Articulate the approach to implementing the program
- Discuss potential difficulties and obstacles that may impact the success of the project and how the applicant will overcome these challenges.
- Discuss how your project approach is person-centered and evidence-informed or evidence-based.
- Detail the service delivery plan and program development.
- State the instruments and methods to be used in measuring and evaluating outcomes.
- Outline the timeline and lay out a work plan this is clear and comprehensive and that covers all years of the proposed project.

## Benefits to Individuals

- Specify how the project and its goals directly benefit the lives and quality of care of individuals residing in nursing facilities.
- Be explicit about why this intervention is important and the unmet needs that will be addressed through the project implementation.
- Address the expected impact on caregivers and how project efforts will positively affect the nursing facility community as a whole.

## Non-Supplanting

- Ensure that the project will not supplant existing responsibilities of the nursing facility to meet CMS requirements or other statutory and regulatory requirements.
- Indicate and attest to how the project efforts, with regards to the use of personnel and time commitments, will not interfere with the care obligations and oversight expected of normal everyday facility activities.

## Expected Outcomes

### Outcomes

- Identify/list the measureable outcomes that are expected to result from the implementation and completion of this project.
- Detail how the anticipated final outcomes will contribute to the field as a whole.

### Deliverables and Dissemination

- List project deliverables expected to be accomplished given the success of the project.
- Describe the means in which the project results are to be disseminated and to what target audience the information would be useful.
- Identify project material to be used in disseminating project information (i.e. conference presentations, web-based methods, media outreach, etc.).
- Will the information be used to further educate state and local partners? Does the project aim to use the results to inform state regulation and best practices, program and policy development?

### Sustainability

- Describe the plan for further development and/or continuation of the program after the grant period.
- Identify resources and avenues through which program activities can continue after CMP Reinvestment funding has ended.

## Results Measurement

- Design and detail the plans and procedures for gathering the necessary information to be used to evaluate and measure the success of the goals and outcomes. The plan and procedures shall be practical in approach and designed to determine the effectiveness of the project. It shall also provide evidence for discussion in the program evaluation, interim reporting and final reporting.
- Plan and procedures shall:

- Identify how each specific outcome will be measured for success.
- Identify measurement instruments or various metrics to be used in determining impact of program outcomes.
- Describe how the data will be analyzed and how it manageable for the applicant.
- Include information on any required Institutional Review Board (IRB) approvals.

*Note:* Outcomes are different from outputs. Outputs are often a simple reflection of the number of people served or number of trainings conducted. Outcomes are measurable, observable impacts that go farther than outputs or result in the development of a new and successful model of services, training, or other tangible product. Outputs can be noted and included in a project proposal, but shall not be used in place of outcomes.

## Personnel and External Involvement

### Consumer and Stakeholders

Consumers and stakeholders should be a part of the project planning and evaluation plan, as appropriate.

- Identify the involvement consumers and stakeholders will have with the project.
- Detail the responsibilities these groups will have throughout the project and be sure to specify decisions that require their input. .

### Involved Organizations

- Identify the organizations, groups, or individuals with whom this intervention intends to collaborate and define the roles and responsibilities of those entities. (If applicable)
- Be sure to include letters from participating organizations, as appropriate, that express their clear commitment to their agreed upon responsibilities.
- Applicants that are not nursing facilities must provide letters of support from involved nursing facilities.

### Defined Roles and Qualifications of Project Members

- Detail the roles and responsibilities of project staff, consultants, and partners, and how they relate to specific project objectives and tasks.
- Highlight the capabilities of proposed project directors and key staff members and how their background and experience working with nursing facilities deems them qualified to carry out their designated roles.
- State the necessary time commitments key project members are required to allocate toward the success of the project.

### Timeline

- Include a timeline and work plan based on the total number of years the project expects to receive funding.
- Detail the phases to take place throughout the project.
- The timeline shall be logical and realistic for completing the project.
- Timeline shall include a breakdown of monthly activities and who is responsible for each activity.

## Budget

- The budget shall be presented in line-item format using Microsoft Excel detailing each project use of the funds. The line-item budget is not included in the 10 page limit.
- Use of the CMS CMP Budget Template, located on the CMP-RP page on the DMAS website <https://www.dmas.virginia.gov/#/longtermprograms>, is encouraged but not required.
- Be sure to include a Budget Narrative justifying the indirect costs and cost-sharing amounts included in the spreadsheet. Explain the cost calculation and methodologies. The Budget Narrative is included in the 10 page limit of the formal application.

## **Section V - Evaluation and Award Criteria**

Applications will be evaluated by a committee selected by DMAS.

### **Evaluation Criteria and Weights**

Applications shall be scored using the rubric found below.

#### **Criteria:**

	<b>Strengths</b>	<b>Weaknesses</b>	<b>Comments</b>	<b>Score</b>
<b>Abstract</b>				___/5
<b>Project Purpose and Summary</b> Background and Project Need Goals and Objectives Project Design and Approach Benefits to Individuals Non-Supplanting				___/20
<b>Expected Outcomes</b> Outcomes Deliverables and Dissemination Sustainability				___/20
<b>Results Measurement</b>				___/20
<b>Personnel and External Involvement</b> Consumers and Stakeholders				___/15

Involvement Organizations Defined Roles and Qualifications of Project Members				
<b>Timeline</b>				___/10
<b>Budget</b>				___/10
<b>Total Score</b>				___/100

**Important Dates:**

Deadline for receipt of questions: **2:00pm**, Eastern Time, **February 5, 2021**.

Deadline for receipt of Cover Letters: **2:00pm**, Eastern Time, **February 26, 2021**.

Deadline for receipt of Formal Applications: **2:00pm**, Eastern Time, **March 31, 2021**.

## **Section VI - GENERAL TERMS AND CONDITIONS**

**6.1 APPLICABLE LAWS AND COURTS:** This RFA and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. DMAS and the Provider are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). The Provider shall comply with all applicable federal, state and local laws, rules and regulations.

**6.2 ANTI-DISCRIMINATION:** By submitting their applications, applicants certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in number one (1) and number two (2) below apply:

1. During the performance of this contract, the Applicant agrees as follows:
  - a. The Applicant will not discriminate against any employee or applicant for employment because of race, religion, color, sexual orientation, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the provider. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The Applicant in all solicitations or advertisements for employees placed by or on behalf of the applicant, will state that such Applicant is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  - d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a



conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.

e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Applicant violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the applicant, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.

2. The applicant will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Faith-based organizations may request an exemption from subparagraph 1.e. above prior to the close date and time for receipt of applications. Such a request should be in writing and explain how subparagraph 1.e. violates the organization's written religious or moral convictions or policies. The request should be sent to the Contract Officer for the solicitation. For the purposes of this provision, a "faith-based organization" is (1) an entity organized for purposes of engaging in religious practice or (2) a charitable or educational organization affiliated with such an entity.

**6.3 ETHICS IN PUBLIC CONTRACTING:** By submitting their applications, Applicants certify that their applications are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Applicant, supplier, manufacturer or subcontractor in connection with their application, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**6.4 IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia (COV), the Applicant certifies that the Applicant does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

**6.5 DEBARMENT STATUS:** By submitting their applications, Applicants certify that they are not currently debarred by the Commonwealth of Virginia or any other federal, state or local government from submitting bids or proposals on any type of contract, nor are they an agent of any person or entity that is currently so debarred. If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

**6.6 ANTITRUST:** By entering into a contract, the Applicant conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

**6.7 MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS:** Failure to submit an application on the official state form, in this case the completed and signed RFA Cover Sheet may be a cause for rejection of the application. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the application; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such an application.

**6.8 CLARIFICATION OF TERMS:** If any prospective Offerors have questions about the specifications or other solicitation documents, the prospective Offeror should contact the individual whose name appears on the face of the solicitation no later than **2:00 pm, March 31, 2021**. Any revisions to the solicitation will be made only by an addendum issued by the contact person. Offerors must check the DMAS website at <https://www.dmas.virginia.gov/#/procurement> for any addendums or notices regarding this RFA. Questions regarding the RFA may be submitted on their own or along with the Cover Sheet but no later than February 5, 2021.

**6.9 PAYMENT:**

1. To the Selected Applicant:

A. Invoices for items ordered, delivered and accepted shall be submitted by the Applicant directly to the payment address shown on the purchase order/contract. All invoices shall show the state provider number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

B. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days however.

C. All goods or services provided under this contract or purchase order, that are to be paid with public funds, shall be billed by the applicant at the contract price, regardless of which public agency is being billed.

D. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

E. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, applicants should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance

until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the provider, in writing, as to those charges which it considers unreasonable and the basis for the determination. An Applicant may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

A. Applicant awarded a contract under this RFA is hereby obligated:

- (1) To pay the subcontractor(s) within seven (7) days of the Applicants receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- (2) To notify the agency and the subcontractor(s), in writing, of the Applicants intention to withhold payment and the reason.

B. The applicant is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the provider that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier provider performing under the primary contract. An Applicants obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each applicant who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

**6.10 PRECEDENCE OF TERMS:** The following General Terms and Conditions Applicable Laws and Courts, Anti-Discrimination, Ethics in Public Contracting, Immigration Reform and Control Act of 1986, Debarment Status, Antitrust, Mandatory Use of State form and Terms and Conditions, Clarification of Terms, payment shall apply in all instances. In the event there is a conflict between any of the General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

**6.11 QUALIFICATIONS OF APPLICANTS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the applicant to perform the services/furnish the goods and the provider shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect the applicants physical facilities prior to award to satisfy questions regarding the applicants capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such applicants fails to satisfy the Commonwealth that

such applicant is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

**6.12 TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

**6.13 ASSIGNMENT OF CONTRACT:** A contract shall not be assigned by the Applicant in whole or in part without the written consent of the Commonwealth. Any assignment made in violation of this section will be void

**6.14 CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract. **In any such change to the resulting contract, no increase to the contract price shall be permitted without adequate consideration, and no waiver of any contract requirement that results in savings to the Provider shall be permitted without adequate consideration. Pursuant to Code of Virginia § 2.2-4309, the value of any fixed-price contract shall not be increased via modification by more than 25% without the prior approval of the Division of Purchases and Supply of the Virginia Department of General Services.**
2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the provider. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The provider shall comply with the notice upon receipt, unless the provider intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the provider shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the provider shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
  - A. By mutual agreement between the parties in writing; or
  - B. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Provider accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the provider's records and/or to determine the correct number of units independently; or

C. By ordering the Provider to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Provider shall present the Department with all vouchers and records of expenses incurred and savings realized. The Department shall have the right to audit the records of the Provider as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Department within thirty (30) days from the date of receipt of the written order from the Department. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Provider from promptly complying with the changes ordered by the Department or with the performance of the contract generally.

**6.15 DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the provider responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

**6.16 INSURANCE:** By signing and submitting an application under this RFA, the applicant certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The provider further certifies that the provider and any subcontractors will maintain insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:**

1. Workers' Compensation: Statutory requirements and benefits: Coverage is compulsory for employers of three or more employees, to include the employer. Providers who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability: \$100,000.
3. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability: \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Provider must assure that the required coverage is maintained by the Provider (or third party owner of such motor vehicle.)

- 6.17 ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a grant over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the on the DGS/DPS eVA VBO ([www.eva.virginia.gov](http://www.eva.virginia.gov)) and the.DMAS website at <https://www.dmas.virginia.gov/#/longtermprograms> for a minimum of 10 days.
- 6.18 DRUG-FREE WORKPLACE:** During the performance of this contract, the applicant agrees to (i) provide a drug-free workplace for the applicant's employees; (ii) post a statement regarding a drug free work place in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the provider's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the applicant that the applicant maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a provider, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- 6.19 NONDISCRIMINATION OF APPLICANTS:** An Applicant shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- 6.20 AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- 6.21 AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** The Provider organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with

a business entity if the business entity fails to remain in compliance with the provisions of this section.

**6.22 CIVILITY IN STATE WORKPLACES:** The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor’s (and any subcontractor’s) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, “State workplace” includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic , but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

## **Section VII - SPECIAL TERMS AND CONDITIONS**

**7.1 ACCESS TO PREMISES:** The provider shall allow duly authorized agents or representatives of the State or Federal Government, during normal business hours, access to provider’s and subcontractors’ premises, to inspect, audit, monitor or otherwise evaluate the performance of the provider’s and subcontractor’s contractual activities and shall forthwith produce all records requested as part of such review or audit. In the event right of access is requested under this section, the provider and subcontractor shall, upon request, provide and make available staff to assist in the audit or inspection effort, and provide adequate space on the premises to reasonably accommodate the State or Federal personnel conducting the audit or inspection effort. All inspections or audits shall be conducted in a manner as will not unduly interfere with the performance of the provider or subcontractor’s activities. The provider will be given thirty (30) calendar days to respond to any preliminary findings of an audit before the Department shall

finalize its findings. All information so obtained will be accorded confidential treatment as provided under applicable law.

The Department, the Office of the Attorney General of the Commonwealth of Virginia (including the Medicaid Fraud Control Unit or MFCU), the Auditor of Public Accounts of the Commonwealth of Virginia, the U.S. Department of Health and Human Services, and/or their duly authorized representatives shall be allowed access to evaluate through inspection or other means, the quality, appropriateness, and timeliness of services performed under this Contract.

**7.2 ACCESS TO AND RETENTION OF RECORDS:** In addition to the requirements outlined below, the Provider shall comply, and shall require compliance by its subcontractors with the security and confidentiality of records standards with respect to the Department's confidential records.

**7.2.1 ACCESS TO RECORDS:** The Department, the Office of the Attorney General of the Commonwealth of Virginia (including the Medicaid Fraud Control Unit or MFCU), the Auditor of Public Accounts of the Commonwealth of Virginia, the Centers for Medicare and Medicaid Services (CMS), state and federal auditors, or any of their duly authorized representatives shall have access to any books, fee schedules, documents, papers, and records of the Provider and any of its subcontractors.

The Department, the Office of the Attorney General of the Commonwealth of Virginia (including the Medicaid Fraud Control Unit or MFCU), the Auditor of Public Accounts of the Commonwealth of Virginia, the Centers for Medicare and Medicaid Services, state and federal auditors, or any of their duly authorized representatives, shall be allowed to inspect, copy, and audit any of the above documents, including, medical and/or financial records of the Provider and its subcontractors.

**7.2.2 RETENTION OF RECORDS:** The Provider shall retain all records and reports relating to this Application for a period of six (6) years after final payment is made under this Application or in the event that this Application is renewed six (6) years after the renewal date. When an audit, litigation, or other action involving records is initiated prior to the end of said period, however, records shall be maintained for a period of six (6) years following resolution of such action or longer if such action is still ongoing. Copies on electronic media or other appropriate media of the documents contemplated herein may be substituted for the originals provided that the media or other duplicating procedures are reliable and are supported by an effective retrieval system which meets legal requirements to support litigation, and to be admissible into evidence in any court of law. The records, regardless of format, remain the property of DMAS.

**7.3 CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The Applicant assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Applicants who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Applicants shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting.



Applicants and their employees working on this project may be required to sign a confidentiality statement.

- 7.4 AUDIT:** The Provider shall retain all books, records, and other documents relative to this contract for six (6) years after final payment, or longer if audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- 7.5 STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, an Applicant or applicant agency organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or application the identification number issued to it by the State Corporation Commission (SCC). Any Applicant or applicant agency that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or application a statement describing why the Applicant or applicant agency is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the Applicant or applicant agency was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance..
- 7.6 TERMINATION:** This Contract may be terminated in whole or in part:
- a. By the Department, for convenience with not less than thirty (30) days prior written notice, which notice shall specify the effective date of the termination;
  - b. By the Department, in whole or in part, if funding from Federal, State, or other sources is withdrawn, reduced, or limited;
  - c. By the Department if the Department determines that the instability of the applicant's financial condition threatens delivery of services and continued performance of the Applicant's responsibilities; or
  - d. By the Department if the Department determines that the applicant has failed to satisfactorily perform its contracted duties and responsibilities.

The Applicant shall not terminate this contract in part.

Each of these conditions for contract termination is described in the following paragraphs.

**A. TERMINATION FOR CONVENIENCE**

1. The Department may terminate this contract at any time without cause, in whole or in part, upon giving the applicant notice of such termination. Upon such termination, the applicant shall immediately cease work and remove from the project site all of its labor forces and such of its materials as owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the applicant shall take such steps as owner may require assigning to the owner the provider's interest in all subcontracts and purchase orders designated by owner. After all such steps have been taken to owner's satisfaction; the applicant shall receive as full compensation for termination and assignment the following:

- a. All amounts then otherwise due under the terms of this contract,
  - b. Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,
  - c. Reasonable compensation for the actual cost of demobilization incurred by the applicant as a direct result of such termination. The applicant shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, owner shall have no further obligations to the applicant of any nature.
2. In no event shall termination for the convenience of DMAS terminate the obligations of the applicants surety on its payment and performance bonds.

**B. TERMINATION FOR AVAILABLE FUNDS:** The Applicant understands and agrees that the Department shall be bound only to the extent of the funds available or which may become available for the purpose of this resulting Contract. When the Department makes a written determination that funds are not adequately appropriated or otherwise unavailable to support continuance of performance of this Contract, the Department shall, in whole or in part, cancel or terminate this Contract.

The Department's payment of funds for purposes of this Contract is subject to and conditioned upon the availability of funds for such purposes, whether Federal and/or State funds. The Department may terminate this Contract upon written notice to the applicant at any time prior to the completion of this Contract, if, in the sole opinion of the Department, funding becomes unavailable for these services or such funds are restricted or reduced. In the event that funds are restricted or reduced, it is agreed by both parties that, at the sole discretion of the Department, this Contract may be amended. If the applicant shall be unable or unwilling to provide covered services at reduced rates, the Contract shall be terminated.

No damages, losses, or expenses may be sought by the applicant against the Department, if, in the sole determination of the Department, funds become unavailable before or after this Contract between the parties is executed. A determination by the Department that funds are not appropriated or is otherwise inadequate or unavailable to support the continuance of this Contract shall be final and conclusive.

**C. TERMINATION BECAUSE OF FINANCIAL INSTABILITY:** In the event DMAS determines that the applicant has become financially unstable to the point of threatening the ability of the Department to obtain the services provided for under the Contract, ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, or suffers or permits the appointment of a receiver for its business or assets, the Department may, at its option, immediately terminate this Contract effective at the close of business on a date specified by the Department. In the event the Department elects to terminate the Contract under this provision, the applicant shall be notified in writing, by either certified or registered mail, specifying the date of termination. The applicant shall submit a written waiver of the licensee's rights under the Federal bankruptcy laws.

In the event of the filing of a petition in bankruptcy by a principal network provider or subcontractor, the Applicant shall immediately advise the Department. The applicant shall ensure that all tasks that have been delegated to its subcontractor(s) are performed in accordance with the terms of this Contract.

**D. TERMINATION FOR DEFAULT:** The Department may terminate the Contract, in whole or in part, if the Department determines that the applicant has failed to satisfactorily perform its duties and responsibilities under this Contract and is unable to resolve such failure within a reasonable period of time as specified in writing by the Department, taking into consideration the gravity and nature of the default. Such termination shall be referred to herein as “Termination for Default.”

Upon determination by the Department that the applicant has failed to satisfactorily perform its duties and responsibilities under this Contract, the applicant shall be notified in writing, by either certified or registered mail, of the failure and of the time period which has been established to cure such failure. If the applicant is unable to resolve the failure within the specified time period, the Department will notify the applicant in writing within thirty (30) calendar days of the last day of the specified time period that the Contract, has been terminated in full or in part, for default. This written notice will identify all of the applicant responsibilities in the case of the termination, including responsibilities related to enrollee notification, network applicant notification, refunds of advance payments, return or destruction of Department data and liability for medical claims.

In the event that DMAS determines that the applicants failure to perform its duties and responsibilities under this contract results in a substantial risk to the health and safety of Medicaid recipients, DMAS may terminate this contract immediately without notice.

If, after notice of termination for default, it is determined by the Department or by a court of law that the applicant was not in default or that the applicants failure to perform or make progress in performance was due to causes beyond the control of and without error or negligence on the part of the applicant or any of its subcontractors, the notice of termination shall be deemed to have been issued as a termination for the convenience of the Department, and the rights and obligations of the parties shall be governed accordingly.

In the event of termination for default, in full or in part, as provided for under this clause, the Department may procure from other sources, upon such terms and in such manner as is deemed appropriate by the Department, supplies or services similar to those terminated, and the provider shall be liable for any costs for such similar supplies and services and all other damages allowed by law. In addition, the provider shall be liable to the Department for administrative costs incurred to procure such similar supplies or services as are needed to continue operations. In the event of a termination for default prior to the start of operations, any claim the provider may assert shall be governed by the procedures defined by the Department for handling contract termination. Nothing herein shall be construed as limiting any other remedies that may be available to the Department.

In the event of a termination for default during ongoing operations, the provider shall be paid for any outstanding payments due less any assessed damages.

**7.7 REMEDIES FOR VIOLATION, BREACH, OR NON-PERFORMANCE OF CONTRACT:** Upon receipt by the Department of evidence of substantial non-compliance by the provider with any of the provisions of this Contract or with State or federal laws or regulations the following remedies may be imposed.

1. Procedure for Provider Noncompliance Notification

In the event that the Department identifies or learns of noncompliance with the terms of this contract, the Department will notify the Provider in writing of the nature of the noncompliance. The Provider must remedy the noncompliance within a time period established by the Department and the Department will designate a period of time, not less than ten (10) calendar days, in which the Provider must provide a written response to the notification. The Department may develop or may require the Provider to develop procedures with which the Provider must comply to eliminate or prevent the imposition of specific remedies.

## 2. Remedies Available To the Department

The Department reserves the right to employ, at the Department's sole discretion, any and all remedies available at law or equity including but not limited to, payment withholds and/or termination of the contract.

**7.8 PAYMENT:** The provider shall be prepared to provide the full range of services requested under this RFA and resultant contract, on site and operationally ready to begin work by the implementation date established by DMAS. DMAS will provide adequate prior notice of the implementation date. Upon approval of the provider's operational readiness and a determined start date, DMAS shall make payments as described in the PACE Program Agreement.

**7.10 INDEMNIFICATION:** The provider agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the provider/any services of any kind or nature furnished by the provider, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Provider on the materials, goods or equipment delivered.

**7.11 SWAM BUSINESSES SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the provider is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses.

**7.12 PRIME PROVIDER RESPONSIBILITIES:** The prime provider shall be responsible for completely supervising and directing the work under this contract and all subcontractors that may be utilized, using skill and attention to the work performed. Subcontractors who perform work under this contract shall be responsible to the prime provider. The provider agrees to full responsibility for the acts and omissions of subcontractors and of persons employed by the subcontractor.

- 7.13 CONFIDENTIALITY INFORMATION:** By submitting an application, the provider agrees that information or data obtained by the provider from DMAS during the course of determining and/or preparing the application may not be used for any other purpose than determining and/or preparing the provider's application. Such information or data may not be disseminated or discussed for any reasons not directly related to the determination or preparation of the application. This paragraph does not apply to public records that would be required to be disclosed in response to a request pursuant to the Virginia Freedom of Information Act.
- 7.14 BUSINESS ASSOCIATE AGREEMENT (BAA):** If required, the Applicant shall be required to enter into a DMAS-supplied Business Associate Agreement (BAA) with DMAS to comply with regulations concerning the safeguarding of protected health information (PHI) and electronic protected health information (ePHI). The Applicant shall comply, and shall ensure that any and all subcontractors comply, with all state and federal laws and regulations with regards to handling, processing, or using the Department's PHI and ePHI. This includes but is not limited to 45 C.F.R. Parts 160 and 164 Modification to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule, January 25, 2013 and related regulations as they pertain to this agreement. The Provider shall keep abreast of any future changes to the regulations. The Applicant shall comply with all current and future HIPAA regulations at no additional cost to DMAS. The current DMAS BAA template is available on the DMAS website at <https://www.dmas.virginia.gov/#/procurement> .
- 7.15 OBLIGATION OF PROVIDER:** By submitting an application, the provider covenants and agrees that it has satisfied itself of the conditions to be met, and fully understands its obligations, and that it will have no right to cancel this application or to relief of any other nature because of its misunderstanding or lack of information.
- 7.16 INDEPENDENT PROVIDER:** Any provider awarded a contract under this RFA will not be considered an independent provider, and the provider, nor personnel employed by the provider is to be considered an employee or agent of DMAS.
- 7.17 OWNERSHIP OF INTELLECTUAL PROPERITY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the applicant shall promptly provide an acknowledgement or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.
- 7.18 SUBSIDIARY-PARENT RELATIONSHIP:** In the event the Provider is a subsidiary or division of a parent organization, the Provider must include in the application, a signed statement by the chief executive officer of the parent organization pledging the full resources of the parent organization to meet the responsibilities of the subsidiary organization under contract to the Department. DMAS must be notified within ten (10) calendar days of any change in ownership as well as a letter explaining how the changes affect the Provider's relationship with the Department. Any change in ownership will not relieve the original parent of its obligation of pledging its full resources to meet the obligations of the contract with DMAS without the expressed written consent of the DMAS Director.

**7.19 COMPLIANCE WITH VIRGINIA INFORMATION TECHNOLOGY**

**ACCESSIBILITY STANDARD:** The provider will comply with all State laws and Regulations with regards to accessibility to information technology equipment, software, networks, and websites used by blind and visually impaired individuals. This accessibility standards are State law see § 2.2-3502 and § 2.2-3503 of The Code of Virginia. Since this is a State law and the regulations apply to accessibility to information technology equipment, software, networks, and websites used by blind and visually impaired individuals, the provider will comply with the Accessibility Standards at no additional cost to DMAS. The provider must also keep abreast of any future changes to The Virginia Code as well as any subsequent revisions to the Virginia Information Technology Standards. The current Virginia Information Technology Accessibility Standards are published on the Internet at <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/it-accessibility-and-website-standards/>

**7.20 FEDERAL EXCLUDED PARTIES LIST**

This contract is being funded in whole or in part by funds granted to grantee by the US Government. Under Federal Executive Order 12549, all contractors receiving individual awards, using federal funds of \$25,000 or more, and all sub-recipients, certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from doing business with the federal government. By submitting an application, the applicant represents that neither the applicant nor any of its principal officers are on the Federal Excluded Parties List.

**7.21 SEVERABILITY:** Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. DMAS and Provider further agree that in the event any provision is deemed an invalid part of this Contract, they shall immediately begin negotiations for a suitable replacement provision to this RFP.

**7.22 E-VERIFY PROGRAM: EFFECTIVE 12/1/13.** Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer’s registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

**7.23 BUSINESS TRANSACTION REPORTING:** The Provider shall also notify the Department within ten (10) calendar days after any publicly announced acquisition agreement, pre-merger agreement, or pre-sale agreement impacting the Providers ownership. Business transactions to be disclosed include, but are not limited to:

- a. Any sale, exchange, or lease of any property between the Provider and a Party in Interest;
- b. Any lending of money or other extension of credit between the Provider and a Party in Interest;

and

- c. Any furnishing for consideration of goods, services (including management services) or facilities between the Provider and a Party in Interest. Business transactions for purposes of this section do not include salaries paid to employees for services provided in the normal course of employment by the Provider

The Provider shall advise the Department, in writing, within five (5) business days of any organizational change or major decision affecting its Medicaid business in Virginia or other states. This includes, but is not limited to, sale of existing business to other entities or a complete exit from the Medicaid market in another state or jurisdiction.

### **Section VIII - Schedule for Review**

- Applications filed in response to this RFA shall be in accordance with the provisions of 12VAC30-50-320 - 12VAC30-50-360. The review schedule below will apply. Letters of intent and applications must be received by the Virginia Department of Medical Assistance Services, Division of Long-Term Care by the dates shown below in order to qualify for consideration.
- Cover Sheet must be received by **2:00pm, Eastern Time, February 26, 2021.**
- Application must be received by **2:00pm, Eastern Time, March 31, 2021.** Review of applications will begin on **April 1, 2021.**





**ATTACHMENT II:  
STATE CORPORATION COMMISSION FORM**

**Virginia State Corporation Commission (SCC) registration information. The Offeror:**

- is a corporation or other business entity with the following SCC identification number: \_\_\_\_\_ **-OR-**
  
- is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**
  
- is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from Offeror's out-of-state location) **-OR-**
  
- is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned Offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the *Code of Virginia*.

**\*\*NOTE\*\*** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):

**To Be Completed by Offeror and Returned with Your Technical Proposal**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date