

# REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. MDM0031027115

**Issue Date: June 1, 2016**

**Small Business Health Options Program (SHOP) Administrative Services**

## NOTICE

A Prospective Offeror that has received this document from the Maryland Health Benefit Exchange website or <https://emaryland.buyspeed.com/bsa/>, or that has received this document from 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 addenda 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**

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

**Title: Small Business Health Options Program (SHOP) Administrator Services  
Solicitation No: MDM0031027115**

1. If you have chosen not to respond to this solicitation, 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 Bid/Proposal is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Bid/Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- MBE 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 solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

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Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

E-mail Address: \_\_\_\_\_

**STATE OF MARYLAND  
MARYLAND HEALTH BENEFIT EXCHANGE  
RFP KEY INFORMATION SUMMARY SHEET**

**Request for Proposals:** Small Business Health Options Program (SHOP) Administrative Services

**Solicitation Number:** MDM0031027115

**RFP Issue Date:** **June 1, 2016**

**Procurement Officer:** Michelle Compton, Procurement Officer  
Hix.procurement@maryland.gov  
750 E. Pratt Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202

**Contract Monitor:** Michele Eberle, Chief Operating Officer  
Maryland Health Benefit Exchange  
750 East Pratt Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202

**Proposals are to be sent to (email delivery strongly preferred):**

Maryland Health Benefit Exchange  
750 E. Pratt Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202

Attention: Michelle Compton

Or via email to

[Hix.procurement@maryland.gov](mailto:Hix.procurement@maryland.gov)

A confirmation email will be sent within 24 hours of receipt of the proposal.

**Closing Date and Time:** **June 8, 2016 at 2:00 PM Local Time**

**MBE Subcontracting Goal:** **0%**

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## SECTION 1 - GENERAL INFORMATION

### **1.1 Summary Statement**

The Maryland Health Benefit Exchange (MHBE) is issuing this Request for Proposals (RFP) to procure the services of a qualified Offeror to perform administrative services for the Maryland Small Business Health Options (SHOP) Program.

- 1.1.1 It is the MHBE’s intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror(s) and the MHBE. The anticipated duration of services to be provided under this Contract is one year with two, one-year renewal options. See Section 1.4 for more information.
- 1.1.2 The MHBE intends to make a single award as a result of this RFP. See RFP Section 1.15 for more information.
- 1.1.3 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

### **1.2 Abbreviations and Definitions**

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

Term	Definition
Administrative Cost(s)	Costs of all ongoing SHOP Administrator services, including those relating to shopping, selection, eligibility determinations, enrollment, premium aggregation, billing, collection and carrier distribution functions, preparation and distribution of all required notices, call center services and issue tracking, marketing and outreach services and record retention.
Affordable Care Act (ACA)	The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended, including by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), and all regulations promulgated pursuant thereto.
Accurate Plan Data Quote	Qualified Plan quote provided by the SHOP Administrator that identifies the correct premium assignment based on plan selection, group composition, and the current rates as approved by the Maryland Insurance Administration.
Agency	The Maryland Health Benefit Exchange (MHBE).
Agent or Broker	A person or entity licensed by the State as an agent, broker or insurance producer.
Average Speed to Answer	Average length of time between when a call is dispatched from the SHOP Administrator’s interactive voice response (IVR) system to when a SHOP Administrator’s representative answers.
Authorized Third Party	An individual who has authority to act on someone’s behalf such as an agent or broker.
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).
Carrier or Issuer	An entity that MHBE has authorized to offer qualified plans through SHOP.
COBRA	Consolidated Omnibus Budget Reconciliation Act.
COMAR	Code of Maryland Regulations (available on-line at <a href="http://www.dsd.state.md.us">www.dsd.state.md.us</a> ).

<b>Term</b>	<b>Definition</b>
Contract	The Contract awarded to the successful Offeror pursuant to this RFP, the form of which is attached to this RFP as Attachment A.
Contract Commencement	The date the Contract is signed by the MHBE following execution by a successful Offeror and any required approvals of the Contract, including approval by the MHBE Board of Trustees, if such approval is required. See Section 1.4.
Contract Monitor	The MHBE representative identified in RFP § 1.6 who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring the Contract to ensure compliance with the terms and conditions of the Contract, 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.
Contractor	The successful Offeror awarded the Contract as a result of this RFP.
Coverage Month	A month in which qualified plan coverage is effective.
Employee	Has the meaning provided in 45 C.F.R. § 155.20; includes any individual employed for wages or salary by an employer.
Employer	Has the meaning provided in 45 C.F.R. § 155.20; includes an individual or organization that employs one or more employees.
eMaryland Marketplace (eMM)	Maryland's online procurement system.
Employee Choice Model	The SHOP plan model in which an employer selects one metal level of coverage, then allows employees to choose any QHP offered by any of the SHOP-participating carriers within that metal level.
Employer Choice Model	The SHOP plan model in which an employer selects a menu of QHPs across metal levels offered by one SHOP-participating carrier (or holding company), then allows employees to choose from among the QHPs the employer has selected.
Enrolled Employee	A qualified employee enrolled in a QP through the SHOP (includes, for the avoidance of doubt, COBRA-eligible qualified employees and retirees who are enrolled).
Employee Enrollment File	File containing all data regarding a qualified employee necessary to enroll that person and any dependents in a qualified health plan or a qualified dental plan.
First Call Resolution	Resolves broker, employer, or employee SHOP administration issue(s) within the first call to SHOP Administrator without call back or post-call action.
Group File Submission(s)	Submission from SHOP Administrator to carrier of all information necessary for carrier to set up and implement an employer's group, including but not limited to an employer's premium contribution, premium rates, group demographic information, plan effective date, and group benefits and employee roster information.
Go-Live Date	The date on which the Contractor must begin providing all services required by this solicitation.
Indefinite Quantity Contract	A contract for an indefinite amount of goods or labor to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type, as defined in COMAR 21.06.03.06.A(2).

<b>Term</b>	<b>Definition</b>
Local Time	Time in the Eastern Time zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
Maryland Health Benefit Exchange (MHBE or Exchange or Agency)	The unit of Maryland State government issuing this RFP.
Metal Level(s)	One of four categories of health insurance plans: Bronze, Silver, Gold, and Platinum. These categories reflect the share of qualified plan costs between a carrier and consumer.
NAIC	The National Association of Insurance Commissioners.
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: <a href="http://www.dbm.maryland.gov">www.dbm.maryland.gov</a> – keyword: State Holidays.
Notice to Proceed (NTP)	A written notice from the Procurement Officer that work on the Contract shall begin on a specified date. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
Offeror	An entity that submits a proposal in response to this RFP.
Operational Cost(s)	All costs other than Administrative Costs, including those relating to any System development, enhancement, maintenance and security required by the RFP.
Personally Identifiable Information (PII)	Personally Identifiable Information (PII) as defined by U.S. Office of Management and Budget Memorandum M-07-16 (May 22, 2007) (“PII refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”). PII is a broad category of information that includes subsets of other information, such as Personal Health Information (PHI) and “personal information”, as the latter term is used in the following sections of the Maryland Code Annotated: Section 14-3501(d) of the Commercial Law Article and Section 10-1301(c) of the State Government Article.
Procurement Officer	The MHBE representative identified in RFP § 1.5 who is responsible for the Contract, determining scope issues and is the only MHBE representative that can authorize changes to the Contract.
Proposal	As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
Protected Health Information (PHI)	Has the meaning provided in 45 C.F.R. § 160.103; generally, information transmitted or maintained in any form or medium that is (1) created or received by a health care provider, health plan, employer, or health care clearinghouse and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
Qualified Employee	Has the meaning provided in 45 C.F.R. § 155.710(e). An employee is a qualified employee eligible to enroll in coverage through the SHOP if such employee receives an offer of coverage from a qualified employer.



Qualified Employer	Has the meaning provided in Md. Code Ann., Ins. § 31-101(q). An employer is a qualified employer eligible to purchase coverage through a SHOP if it is a small employer that elects to make its full-time employees and, at the option of the employer, some or all of its part-time employees eligible for one or more qualified health plans offered through the SHOP Exchange, provided that the employer: (1) has its principal place of business in the State and elects to provide coverage through the SHOP Exchange to all of its eligible employees, wherever employed; or (2) elects to provide coverage through the SHOP Exchange to all of its eligible employees who are principally employed in the State.
Qualified Dental Plan (QDP)	Has the meaning described in Md. Code Ann., Ins. § 31-101(p): a dental plan certified by the Exchange that provides limited scope dental benefits, as described in Section 31-108(b)(2) of the Insurance Article, Maryland Code Annotated.
Qualified Health Plan (QHP)	Has the meaning provided in Md. Code Ann., Ins. § 31-101(r) : a health benefit plan that has been certified by the Exchange to meet the criteria for certification described in Section 1311(c) of the Affordable Care Act and Section 31-115 of the Insurance Article, Maryland Code Annotated.
Qualified Plan (QP)	A Qualified Health Plan or a Qualified Dental Plan.
Request for Proposals (RFP) or Solicitation	This Request for Proposals for the MHBE, including any amendments / addenda thereto.
Security or Security Measures	The technology, policy and procedures that a) protect and b) control access to networks, systems, and data.
Service Level Agreement (SLA)	Measurable levels governing Contractor performance and establishing associated liquidated damages for failure to meet those performance standards.
SHOP	Small Business Health Options Program.
SHOP Administrator	An Offeror awarded a Contract as a result of this RFP.
SLA Activation Date(s)	The date(s) on which the SLA requirements shall commence under the Contract; see RFP § 3.3.2
State	The State of Maryland, including the MHBE.
Special Enrollment Period (SEP)	The special enrollment period SHOP must provide pursuant to 45 C.F.R. § 155.725(j) that permits certain qualified employees or a dependent of a qualified employee (if offered coverage) to enroll in QHPs or change QHPs outside of open enrollment period.
Subcontractor	An agent, service provider, supplier, or vendor selected by the Contractor to provide subcontracted services or products under the direction of the Contractor or other Subcontractors, and including any direct or indirect Subcontractors of a Subcontractor.
System	The mission critical information technology systems and applications that encompass the back-end operations and online portal for brokers, employers and employees to browse, shop for, select, purchase and enroll in qualified plans offered in SHOP.
System Availability	The period of time the System is operational and accessible.
System for Electronic Rate and Form Filing (SERFF)	An internet application designed to provide an efficient process for rate and form filing. Filings are created and submitted in a centralized database located at the NAIC.
Technical Safeguards	The technology and the policy and procedures for its use that protect PII and control access to it.

Total Evaluated Price	The Offeror's total evaluated price submitted in response to this solicitation, included in the Financial Proposal with Attachment D – Financial Proposal Form, and used in the evaluation of Proposals (see RFP Section 5.3).
Unit Administrative Cost (Per Enrolled Employee) Per Month	The fixed unit price that the MHBE will pay for Administrative Costs per month for each Enrolled Employee as set forth in the Contractor's Financial Proposal. This unit price is fully loaded and all-inclusive of all direct and indirect Administrative Costs.
Unit Operational Cost (Per Month)	The fixed unit price that the MHBE will pay per month for all Operational Costs as set forth in in the Contractor's Financial Proposal. This unit price is fully loaded and all-inclusive of all direct and indirect Operational Costs.
Working Day(s)	Same as "Business Day(s)".

**1.3 Contract Type**

The Contract resulting from this solicitation shall be an Indefinite Quantity Contract with Fixed Unit Prices in accordance with COMAR 21.06.03.06. The Fixed Unit Prices will be those reflected in the Offerors Financial Proposal, Attachment D. The rates quoted by the Offeror shall remain fixed regardless of actual enrollment.

**1.4 Contract Duration**

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the MHBE following execution by a successful Offeror and any required approvals of the Contract, including approval by the MHBE Board of Trustees, if such approval is required ("Contract Commencement"). The Contractor shall provide services under this Contract as of the Go-Live Date contained in the written Notice to Proceed, beginning on or about July 1, 2016.
- 1.4.2 From this Go-Live Date, the duration of the Contract will be for a base term of one year or the provision of all services required by the Contract and the requirements of this solicitation. The Contract may be extended for two periods of one year each at the sole discretion of the MHBE and at the fixed unit prices quoted in the Financial Proposal for Option Years.
- 1.4.3 The Contractor's obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

**1.5 Procurement Officer**

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

Michelle Compton  
 Procurement Officer  
 (MHBE)  
 750 E. Pratt Street.  
 Baltimore, MD 21202  
 Phone Number: 410-547-8152  
 E-mail: [hix.procurement@maryland.gov](mailto:hix.procurement@maryland.gov)

The MHBE may change the Procurement Officer at any time by written notice.

## 1.6 Contract Monitor

The Contract Monitor is:

Michele Eberle  
Chief Operating Officer, MHBE  
750 E. Pratt Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202

The MHBE may change the Contract Monitor at any time by written notice.

## 1.7 Pre-Proposal Conference

MHBE does not plan to hold a Pre-Proposal Conference.

## 1.8 eMarylandMarketplace

Each Offeror is requested to indicate its eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP.

eMM is an electronic commerce system administered by the Maryland MHBE of General Services. In addition to using the MHBE website <http://www.marylandhbe.com/about-us/procurement/> and possibly other means for transmitting the RFP and associated materials, the solicitation and summary of the Pre-Proposal Conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsc/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

## 1.9 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer. Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address: [hix.procurement@maryland.gov](mailto:hix.procurement@maryland.gov). Please identify in the subject line the Solicitation Number and Title.

Questions should be submitted to the Procurement Officer (**see above email address**) in a timely manner prior to the Proposal due date. Questions are requested to be submitted no later than **June 6, 2016**. 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.

## 1.10 Procurement Method

This Contract will be awarded in accordance with the Competitive Expedited Procurement method under Section II.C of MHBE's Procurement Policies and Procedures.

### **1.11 Proposals Due (Closing) Date and Time**

Proposals, in the number and form set forth in Section 4.2 "Proposals" must be received by the Procurement Officer at the address listed on the Key Information Summary Sheet, no later than **2:00 PM Local Time on Wednesday, June 8, 2016** in order to be considered.

Requests for extension of this time or date will not be granted. 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 this section will not be considered.

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in this section for receipt of Proposals.

**To minimize duplication costs, MHBE strongly desires e-mail delivery of Proposals.**

Vendors not responding to this solicitation 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).

### **1.12 Multiple or Alternate Proposals**

Multiple and/or alternate Proposals will not be accepted.

### **1.13 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.

### **1.14 Public Information Act Notice**

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 4.4.3.2 "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.

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

### **1.15 Award Basis**

A Contract shall be awarded to the responsible Offeror submitting the Proposal determined to be the most advantageous to the MHBE, considering price and evaluation factors set forth in this RFP, for providing the goods and services specified in this RFP. See RFP Section 5 for further award information.

### **1.16 Oral Presentation**

Offerors may be required to make oral presentations to State representatives. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

### **1.17 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

### **1.18 Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for Proposals, the MHBE shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the MHBE's procurement web page and through eMM. It remains the responsibility of all prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted a timely Proposal and that remain under award consideration as of the issuance date of the addenda.

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal (see RFP Section 4.4.2.3). Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

### **1.19 Cancellations**

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

### **1.20 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, in providing a demonstration, or in performing any other activities related to submitting a Proposal in response to this solicitation.

### **1.21 Protest/Disputes**

Any protest or dispute related, respectively, to this solicitation or the resulting Contract shall be subject to the provisions of Section VII of the MHBE Procurement Policies & Procedures and the Dispute provisions of the Contract resulting from this RFP (Refer to RFP Attachment A).

### 1.22 Offeror Responsibilities

The selected Offeror 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. By submitting a proposal in response to this RFP, the Offeror represents that it is not a member of the same controlled group of corporations (or under common control with) as a health insurance issuer. *See* 45 C.F.R. § 155.110(a)(1)(iii).

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.

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.

### 1.23 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 A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **The volume and severity of exceptions to the Contract terms, including the terms of the RFP, will be considered in the evaluation process, and may be grounds for finding an Offeror not reasonably susceptible for award.**

### 1.24 Bid/Proposal Affidavit

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

### 1.25 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State MHBE of Assessments and Taxation), note that a business entity that is organized outside of the State of Maryland is considered to be a "foreign" business.

## **1.26 Compliance with Laws/Arrearages**

By submitting a Proposal in response to this RFP, the Offeror, 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.

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

## **1.27 Verification of Registration and Tax Payment**

Before a business entity can do business in the State it must be registered with the State MHBE of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://sdatcert3.resiusa.org/ucc-charter/>.

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.

## **1.28 False Statements**

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

1.29.1 In connection with a procurement contract a person may not willfully:

- (a) Falsify, conceal, or suppress a material fact by any scheme or device;
- (b) Make a false or fraudulent statement or representation of a material fact; or
- (c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

1.29.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.

1.29.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

## **1.29 Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Bidder/Offeror 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 Bidder/Offeror 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/gadx-10.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf)

## **1.30 Electronic Procurements Authorized**

- A. Unless otherwise prohibited by law, the MHBE may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bso/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.29 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
  - 1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
    - (a) the solicitation (e.g., the IFB/RFP);
    - (b) any amendments;
    - (c) pre-Bid/Proposal conference documents;
    - (d) questions and responses;
    - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
    - (f) notices of award selection or non-selection; and
    - (g) the Procurement Officer's decision on any Bid protest or Contract claim.
    - (h) Contract award
    - (i) Contract Modifications
  - 2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
    - (a) submission of initial Bids or Proposals
    - (b) ask questions regarding the solicitation;
    - (c) 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;
    - (d) submit a "No Bid/Proposal Response" to the solicitation.
    - (e) submit a Pre-Proposal Conference Response Form
    - (f) submit a signed Contract, Contract Affidavit, Non-Exchange Entity Agreement, Non-Disclosure Agreement or other attachment required to be returned with an executed Contract or within five days of award
    - (g) submit a signed Contract Modification
  - 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.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:



1. filing of Bid Protests;
2. filing of Contract Claims; or
3. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder/Offeror be provided in writing or hard copy.

F. 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 solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

G. MHBE requires original signatures on all submissions that this RFP or the document form requires to be signed, including but not limited to all Transmittal Letters, Proposals, the Contract or Contract Modifications resulting from this RFP. However, the Contractor may scan and submit electronically any document containing such original signature(s), provided that document is among those this RFP permits to be submitted electronically. The Contract and other contractual documents each may be signed by the Parties in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Contract.

### **1.31 Minority Business Enterprise Goals**

There is no MBE subcontractor participation goal for this procurement.

### **1.32 Federal Funding Acknowledgement**

This Contract does not contain Federal funds.

### **1.33 Conflict of Interest Affidavit and Disclosure**

Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (RFP **Attachment F**) and submit it with their Proposal. All Offerors are advised that if a Contract is awarded as a result of this solicitation, 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 RFP **Attachment F** 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, which is hereby incorporated into this RFP by reference.

### **1.34 Non-Disclosure Agreement**

All Offerors are advised that this solicitation and any resultant Contract is subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as RFP **Attachment G**. 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.

### **1.35 Non-Exchange Entity Agreement**

Based on the MHBE's determination that the Contract awarded as a result of this RFP will involve the Contractor's Access to PII protected under 45 C.F.R. § 155.260, the Contractor shall be considered a Non-Exchange Entity under 45 C.F.R. § 155.260(b)(1). Therefore, pursuant to 45 C.F.R. § 155.260(b)(2), the recommended awardee shall execute a Non-Exchange Entity Agreement as set forth in RFP **Attachment H**. 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. Should the Non-Exchange Entity Agreement not be

submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Executive Director, may withdraw the recommendation for award to any Offeror that is not in compliance with this Section 1.35. Should MHBE withdraw a recommendation for award to any Offeror, MHBE may make an award to the responsible Bidder/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

### **1.36 Nonvisual Access**

By submitting a Bid/Proposal, the Bidder/Offeror warrants that the information technology offered under the Bid/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 Bidder/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 solicitation and resulting Contract, the phrase “equivalent access” means the ability to receive, use, and manipulate information and to 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](http://www.doit.maryland.gov), keyword: NVA.

### **1.37 Mercury and Products That Contain Mercury**

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

### **1.38 Conflict Mineral Notice**

Offerors are advised that Md. Ann. Code, State Finance and Procurement Article § 14-413 provides as follows:

- (a) (1) In this section the following words have the meanings indicated.
- (2) (i) “Conflict mineral” means a mineral or mineral derivative determined under federal law to be financing human conflict.
- (ii) “Conflict mineral” includes columbite-tantalite (coltan), cassiterite, gold, wolframite, or derivatives of these materials.
- (3) “Noncompliant person” means a person:
  - (i) that is required to disclose under federal law information relating to conflict materials that originated in the Democratic Republic of the Congo or its neighboring countries; and
  - (ii) for which the disclosure is not filed, is considered under federal law to be an unreliable determination, or contains false information.
- (b) A unit may not knowingly procure supplies or services from a noncompliant person.

By submitting a response to this solicitation, the Bidder/Offeror represents that it is in compliance with the disclosure requirements related to conflict materials, as set forth in § 14-413 of the State Finance and Procurement Article.

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## **SECTION 2 – MINIMUM QUALIFICATIONS**

### **2.1 Offeror Minimum Qualifications**

There are no Offeror Minimum Qualifications for this procurement.

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## **SECTION 3 – SCOPE OF WORK**

### **3.1 Background and Purpose**

The goal of the MHBE is to make health coverage affordable and more accessible for the citizens of Maryland. MHBE is responsible for the Maryland Health Connection (MHC), the State’s health insurance marketplace under the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended, including by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), and all regulations promulgated pursuant thereto (the “ACA”).

The Maryland Health Benefit Exchange (MHBE) is soliciting responses from qualified firms that are able to provide technical and operational solutions for the administration of the Small-business Health Options Program (SHOP), Maryland’s small business Marketplace.

The MHBE began offering Exchange certified plans to the small group market in Maryland in April 2014 through a direct enrollment process with SHOP authorized carriers. Beginning in January 2015, employers were able to purchase qualified health and dental plans through SHOP administrators contracted by the MHBE. Employers were offered the option of selecting one carrier and offering multiple plans from that carrier to its employees (Employer choice) or one metal level with all carriers and their products offered (Employee choice). The Employer choice option continued to be administered through a direct enrollment process, while the Employee choice option was administered solely through the SHOP Administrators. MHBE intends to ensure *all* SHOP-certified plans, Employer choice and Employee choice, are purchased through and administered by a contracted SHOP Administrator.

The MHBE is issuing this solicitation to procure SHOP Administration services. The requested full service enrollment and renewal functions include but are not limited to: online electronic plan comparison and selection capabilities to include Employer and Employee choice selection models, employer and employee eligibility determinations, enrollment of qualified employees , premium aggregation, billing, collection and carrier distribution functions, preparation and distribution of all required notices, call center services and issue tracking, marketing and outreach services and record retention.

### **3.2 Scope of Work - Requirements**

The Scope of Work of this RFP is to procure administrative technical and operational support services for the successful operations of the Maryland Small Business Health Options Program, the Exchange’s small-business marketplace, referred to as SHOP. The successful Contractor shall provide SHOP services from the Go-Live Date through the term of the Contract, including any option years, in compliance with all applicable State and federal law in effect at the time the services are offered, including (a) the ACA and its SHOP regulations, promulgated at 45 C.F.R. § 155.700 *et seq.* and (b) Titles 15 and 31 of the Insurance Article of the Maryland Code Annotated, together with any regulations promulgated thereunder. The successful Offeror also shall provide SHOP services in compliance with applicable forms, schedules, transmittals, and guidelines issued by the Maryland Health Benefit Exchange and the Maryland Insurance Administration (MIA), including in MIA bulletins and the latest version of the Small Business Health Options Program (SHOP) Reference Manual, attached for informational purposes as Appendix A.

Further, the successful Contractor shall provide all applications, notices, attestations and other documents required by the Contract resulting from this RFP in the format specified by MHBE. Samples of such MHBE-required applications, notices, attestations, forms and templates are in Appendix A.

Any Contractor awarded a Contract as a result of this RFP certifies that it shall comply with Section 1557 of the Affordable Care Act (42 U.S.C. § 18116) and any regulations promulgated thereunder. Section 1557 prohibits

discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. Specifically, Section 1557 provides that, except as provided in Title I of ACA, an individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any health program or activity, any part of which is receiving federal financial assistance or any program or activity that is administered by any entity (such as MHBE) established under Title I of the ACA.

**3.2.1 SHOP Administrator Requirements**

ID #	Task	Requirement
3.2.1.1	Web-based on-line small business marketplace portal	<p>The contractor must supply a fully functional, web-based, on-line small business marketplace portal that provides functions that include but are not limited to:</p> <ul style="list-style-type: none"> <li>a) Employer and Employee SHOP eligibility determination. Specifically, a SHOP Administrator must:               <ol style="list-style-type: none"> <li>1. Determine that the employer or individual who requests coverage is eligible in accordance with the requirements of §155.710</li> <li>2. Accept and process an employer application from employers and an employee application from employees wishing to purchase and elect coverage through the SHOP</li> <li>3. Verify that an individual applicant is identified by the employer as an employee to whom the qualified employer has offered coverage and must otherwise accept the information attested to within the application unless the information is inconsistent with the employer-provided information</li> <li>4. Provide an employer requesting eligibility to purchase coverage and their designated broker with a notice of approval or denial and the employer’s right to appeal such eligibility determination where required pursuant to 45 C.F.R. § 155.715(e)</li> <li>5. Notify an employee seeking to enroll in a QHP offered of the determination whether the individual is eligible and the employee’s right to appeal such determination</li> <li>6. Provide employer and employee eligibility determination notice in the form specified by MHBE as further detailed in 3.2.1.4</li> </ol> </li> <li>b) Employer Choice and Employee Choice model and Qualified Dental Plan selection functionality that includes but is not limited to:               <ol style="list-style-type: none"> <li>1. Providing the capability for a qualified employer to select a menu of QHPs across metals levels offered by one carrier, and the capability for qualified employees to choose from among the QHPs selected by the employer</li> <li>2. Providing the capability for a qualified employer to select one metal level of coverage on or after the Go Live Date, and two or more metal levels of coverage within six months after MHBE notifies Offerors it has finalized the requirement for two or more metal levels of coverage, whereby qualified employees may choose any QHP offered by any of the carriers within that metal level</li> </ol> </li> </ul>

		<p>3. Providing the capability for a qualified employer to select qualified dental plan(s) and for qualified employees to choose from among the QDPs selected by the employer</p> <p>c) Ability to load, test and reconcile qualified plan data provided by the MHBE and validate and display:</p> <ol style="list-style-type: none"> <li>1. Qualified Plan rate data and changes from SERFF tables. The SHOP Administrator must reconcile errors with participating carriers and confirm and attest to the accuracy of information collected and displayed</li> <li>2. Qualified Plan benefits and changes as provided by the MHBE. The SHOP Administrator must reconcile errors with participating carriers and confirm and attest to the accuracy of information collected and displayed</li> <li>3. Summaries of Benefits and Coverage forms and changes. The SHOP Administrator must reconcile errors with participating carriers and confirm and attest to the accuracy of information collected and displayed</li> </ol> <p>d) Ability to calculate accurate employer / employee premiums including accommodation for membership in a federally recognized tribe, member-level rating and composite rating where applicable</p> <p>e) Provide capability to display and generate a side-by-side benefit and cost comparison of plans available for purchase and election by employers and employees; display only health plans and dental plans that MHBE has certified as qualified plans and that are available in the employer's geographic area.</p> <p>f) Provide the capability for brokers and employers to request and generate a plan quote/proposal</p> <p>g) Self-serve functions for an employer to plan shop, select funding contribution methodology, generate a proposal, make demographic changes on behalf of employees, make and manage payment for services, cancel or renew services and send applicable notices to employers and employees</p> <p>h) Self-service functions for an employee to plan shop, select a plan for purchase, manage family and demographic information, cancel, renew or add members to health plan and send applicable notices to employees and employers</p> <p>i) Ability for authorized third parties to complete self-service functions on behalf of an employer or employee</p> <p>j) Provide the capability for employers to update their online application and employee roster and to submit changes as part of the renewal process</p> <p>k) Provide enrollment process information to employers and employees</p> <p>l) Provide the capability to generate open enrollment invitation emails with key dates to all eligible employees on an employer's roster, and to resend those invitations if needed</p> <p>m) Provide display tools and links including but not limited to:</p> <ol style="list-style-type: none"> <li>1. A cost calculator tool to estimate monthly and annual plan cost for employer or employee</li> <li>2. A full-time equivalent SHOP eligibility calculator tool</li> <li>3. Accessible links to participating carrier network provider directories</li> </ol>
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		<ul style="list-style-type: none"> <li>4. Accessible link to the current SHOP-authorized brokers directory</li> <li>5. A link to Internal Revenue Service website and tools for additional information regarding the Small Business Health Care Tax Credit</li> <li>6. A link to carrier/plan websites</li> <li>n) Ability to upload and download documents to web portal</li> <li>o) Provide the capability to track the application-related activities of qualified employees who have been offered employer-sponsored coverage including but not limited to waiver of coverage, elections for coverage and non-participation</li> <li>p) Review and process eligibility changes including but not limited to special enrollment events such as birth of a child, death, marriage, divorce, adoption, or loss of employment (COBRA)</li> <li>q) Provide functions related to the management of employer / employee terminations, whether voluntary or involuntary, including but not limited to: <ul style="list-style-type: none"> <li>1. Updating employer and employee accounts</li> <li>2. Applicable termination notifications to carrier(s), employer and/or employee(s)</li> <li>3. Ensuring termination of the relevant coverage of the employer/qualified employees</li> </ul> </li> <li>r) Allow notices about eligibility and renewal to be displayed online on employer/employee portal as well.</li> <li>s) Produce two separate notifications to employees to notify them of either pending or actual termination of coverage</li> <li>t) Electronically generate email communications to employers, employees or third party representatives</li> <li>u) Accommodate plan selection changes during open enrollment period</li> <li>v) Ability to create and download an employee census on-line that includes but is not limited to name, SSN, date of birth, and email</li> <li>w) Ability to track and report system user access, transactions, enrollment transactions and enrollment change transactions and website transactions and visits</li> <li>x) Website must be marketed and labeled as Maryland Health Connection Small Business Marketplace</li> <li>y) Provide accurate plan data quotes that identify the correct premium assignment based on plan selection, group composition and the current rates</li> <li>z) Capability to provide, track and report group and eligibility changes and user activity</li> </ul>
3.2.1.2	Enrollment and Payment Data Interface	<p>The Contractor shall follow MHBE standards and comply with the requirements in the Non-Exchange Entity Agreement attached to this RFP for the secure electronic transfer of all data including enrollment and payment data (See Section 3.2.1.8, below) to the MHBE, carriers or any other entity where electronic data transfer is required. This includes but is not limited to:</p> <ul style="list-style-type: none"> <li>a) Sending nightly enrollment data and changes to carrier in batch</li> <li>b) Processing electronic confirmation / acknowledgement of receipt of enrollment changes received from the carrier in batch nightly via TA1 / 999.</li> <li>c) Produce an automated, nightly electronic batch transmission of data to</li> </ul>



		<p>notify carriers of plan selected when payment received</p> <ul style="list-style-type: none"> <li>d) Utilize the HIPAA X12 EDI transaction standards</li> <li>e) Support the ability to verify and validate system identity via public key certificates for secure transactions</li> <li>f) Reconciliation of SHOP Administrator and carrier enrollment data on a monthly basis</li> <li>g) Send and coordinate initial and renewal group, plan set-up and implementation submissions with carriers</li> <li>h) Provide timely and accurate processing of group file submissions and required group notices</li> <li>i) Provide timely and accurate processing of employee enrollment file submissions and required notices</li> <li>j) Provide timely and accurate processing of enrollment and eligibility changes.</li> <li>k) Transmit, via a secure method compliant with RFP § 3.7 and Attachment H: the Non-Exchange Entity Agreement, to the SHOP and the MHBE Appeals Unit, within 2 business days of receipt: (i) an employer or employee request for an eligibility appeal or desk review, or documentation that may be considered a request for an appeal or desk review, that was initially submitted to the SHOP Administrator; (ii) the eligibility record of the employer or employee that is requesting the appeal or desk review; and (iii) any additional documentation pertaining to the appeal or desk review requested by SHOP or MHBE.</li> </ul>
3.2.1.3	Consumer Support Service	<p>The Contractor must provide program administrative services that include but are not limited to the following:</p> <ul style="list-style-type: none"> <li>a) Provide a dedicated phone number for SHOP administration questions from employers, employees and brokers</li> <li>b) Provide dedicated resources to answer questions relating to SHOP administration, during Normal State Business Hours, from brokers, employers and employees meeting the following sub requirements: <ul style="list-style-type: none"> <li>1. Provide a sufficient number of SHOP knowledgeable employees to answer all SHOP calls within an average speed to answer of 30 seconds.</li> <li>2. Provide training for staff sufficient to ensure first call resolution</li> <li>3. Offer to refer employer questions regarding application content to a broker.</li> </ul> </li> <li>c) Record and track SHOP consumer complaints including employer and employee appeals via a ticketing system. Complaint data will include: consumer name, preferred follow-up contact info, type of complaint, priority (urgency/severity), and subject matter of complaint</li> <li>d) Provide capability for reports to be generated through a reporting system to include but not be limited to open and closed ticket reports and status reports</li> </ul>
3.2.1.4	Notice Administration	<p>The Contractor must produce MHBE approved, required notices and notifications for the SHOP in the form specified by MHBE, examples of which are provided in the SHOP Reference Manual attached as Appendix A. The SHOP Administrator shall supply all required notices in multiple formats, including electronic and PDF, which can be printed and mailed, with the ability to be viewed online. Required notices shall include but not</p>

		<p>be limited to:</p> <ul style="list-style-type: none"> <li>a) Employer Eligibility Determination Notice</li> <li>b) Employee Eligibility Determination Notice</li> <li>c) Employer Notice of Annual Election Period</li> <li>d) Employee Notice of Annual Open Enrollment Period</li> <li>e) Employee Termination Notice</li> <li>f) Employer Withdrawal Notice</li> <li>g) Employee Notice of Termination of Coverage</li> <li>h) Employer Incomplete Application Notification</li> <li>i) Employer Closing of Application Notification</li> <li>j) Employer Late Payment Notifications</li> <li>k) Employer Notice of Termination of Coverage</li> </ul>
3.2.1.5	Audit Compliance	<p>The Contractor shall provide reports, including but not limited to, operational documents, statistics and performance metrics as directed by the Contract Monitor. The Contractor must also:</p> <ul style="list-style-type: none"> <li>a) Provide an auditable method to ensure money from QHPs in SHOP is not mixed with existing small business market insurance market</li> <li>b) Ensure access for users is auditable, secure and limited to the minimum necessary functions for which a particular user has the authority to use the System</li> <li>c) Retain access logs for users, as well as books, records, documents, and other evidence of accounting procedures and practices of the premium aggregation program for each benefit year in auditable form for at least 10 years</li> <li>d) Provide necessary documents and access for on-site and desk review audits to be conducted by MHBE and the U.S. Department of Health and Human Services and to ensure Contractor compliance with applicable Marketplace-and contract specific requirements, guidelines, policies, procedures and administrative, technical and operational standards.</li> <li>e) Provide access to records, systems and documents as requested by the Contract Monitor to conduct audits of SLA compliance.</li> </ul>
3.2.1.6	System Monitoring and Performance	<p>The Contractor shall ensure that the on-line portal is operational for brokers, employers and employees, at all times. To achieve this, the Contractor must:</p> <ul style="list-style-type: none"> <li>a) Provide 7x24 systems monitoring with automatic notification of on-call support personnel based on configurable alert conditions (e.g. system heartbeat, application-level error messages).</li> <li>b) Provide timely patching and serving of the system and application within planned maintenance time period.</li> <li>c) Provide the ability to recover lost or deleted data from backup. Restoring whole databases or file systems, and restoring only selected records or files must both be supported (via contractor's technical support). Backups will be kept at a minimum, daily for 7 days, weekly for a month, monthly for a year, yearly for 10 years.</li> <li>d) Store backup data apart from the production data center at a sufficient distance to prevent simultaneous loss of production and backup data stores.</li> </ul>

		e) Provide a phone number for 7x24 reporting of a software emergency, e.g. major web pages down.
3.2.1.7	Education	The Contractor shall provide educational programs for brokers to ensure that brokers are up to date on the latest guidance issued by the MIA and/or the Exchange for the operation of the SHOP Marketplace and to ensure that brokers have a solid understanding of the SHOP program.
3.2.1.8	Premium Management	The Contractor must be able to collect, record, distribute and reconcile premium payments from employers that are payable to carriers for insurance coverage. These activities include but are not limited to: <ul style="list-style-type: none"> <li>a) Provide the capability for the employer to set a specified contribution amount (percentage) for employees</li> <li>b) Provide the capability to recalculate the employer's total cost based on changes to employee enrollments</li> <li>c) Produce and send an accurate invoice for each Qualified Employer by the 10<sup>th</sup> of the month prior to coverage month. The invoice should include employee enrollment data including effective date, plan coverage, dependent information, the employer contribution, employee contribution, total amount due to each carrier, due date, monthly balance due and any outstanding premium payments due as well as employer identifying information.</li> <li>d) Process timely and accurate payments to carriers</li> <li>e) Process late payment notifications to employers.</li> <li>f) Process and coordinate termination of coverage for non-payment of premium.</li> <li>g) Process and coordinate reinstatement of coverage.</li> </ul>
3.2.1.9	Reporting	The Contractor must provide weekly and monthly reports to the MHBE in a form approved by MHBE, including but are not limited to: (See Appendix A and for report samples; Section 3.2.2.2 for related Deliverables Requirements ) <ul style="list-style-type: none"> <li>a) Weekly Application Activity Report</li> <li>b) Monthly Enrollment Report</li> <li>c) Weekly Summary Report</li> <li>d) Monthly Summary Report</li> <li>e) Monthly Service Level Metrics Report</li> </ul>
3.2.1.10	Transition Out Activities	The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this solicitation to any subsequent contract for similar services or, if no such contract is entered into, to SHOP services offered directly by the State or federal government. The Contractor shall: <ul style="list-style-type: none"> <li>a) Work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor.</li> <li>b) Cooperate in the transition of qualified employers and enrolled employees, particularly qualified employees enrolled through Employee Choice, to SHOP services offered by a subsequent Contractor or government.</li> <li>c) Follow any additional instructions to meet specific transition requirements prior to the end of Contract.</li> </ul>

**3.2.2 Deliverables**

**3.2.2.1 Deliverables Submission Process**

The Contractor shall submit each deliverable to the Contract Monitor in the format, content, and due date/timeframe as specified in RFP Section 3.2.2.2, or at another due date and time specified in writing by the Contract Monitor. Samples of certain templates required by MHBE are attached in Appendix A (see report templates at back of SHOP Reference Manual) to this RFP. MHBE reserves the right to add additional reporting deliverables related to the requirements listed in RFP Section 3: Scope of Work. To be considered timely, the deliverable must be received by the Contract Monitor by the date and time noted in Section 3.2.2.2, or at another due date and time specified in writing by the Contract Monitor. A deliverable shall be considered received upon written notification of receipt of the deliverable from the Contract Monitor to the Contractor. The Contractor shall submit each deliverable electronically to the Contract Monitor in final form in compliance with this section and RFP Section 3.2.2.2.

Upon completion of a deliverable, the Contractor shall document each deliverable in final form to the Contract Monitor for acceptance. Upon receipt of a final deliverable, the Contract Monitor shall commence a review of the deliverable as required to validate the completeness and quality in meeting requirements. Upon completion of validation, the Contract Monitor shall issue to the Contractor notice of acceptance or rejection of the deliverables (refer to RFP Attachment I - Agency Deliverable Acceptance Form). In the event of rejection, the Contractor shall correct the identified deficiencies or non-conformities and resubmit the deliverable to the Contract Monitor. Once the deficiencies have been addressed and the resolution(s) are accepted by the Contract Monitor, the Contractor shall incorporate the resolutions into the deliverable and resubmit the deliverable for acceptance.

A written deliverable shall satisfy the scope, requirements, and criteria for that deliverable in the sole discretion of the Contract Monitor. Final written deliverables shall be complete and shall not contain structural errors such as poor grammar, misspellings or incorrect punctuation.

The Agency required deliverables are defined in Section 3.2.2.2. Within the scope of this RFP, the Contractor Monitor may suggest other subtasks or deliverables to improve the quality and success of the project/task.

**3.2.2.2 Deliverables**

<b>Task</b>	<b>Deliverable</b>	<b>Description</b>	<b>Frequency/ Due Date</b>
Reporting	Weekly Application Activity Report	Comprehensive weekly report of Employer SHOP application and eligibility determination data and activity. The report, to be submitted on the template specified by MHBE, includes detailed employer and contact information, broker name and NPN information, application receipt, processing and status information, employer eligibility determination results, eligibility determination generation information, choice model selected, name of health plans and dental plans selected and being offered by employer and if dependent coverage is being offered.	Submit so MHBE receives by 5pm on Friday including data reported for the week ending on Thursday.
Reporting	Monthly Enrollment Report	Comprehensive and cumulative monthly report, to be to be submitted on the template specified by MHBE, of employer data, enrolled employee and dependent demographic and carrier subscriber data, corresponding carrier and plan information, coverage effective dates and termination dates, total billed amount, employee and employer contribution amounts and designated broker and SHOP Administrator information.	Submit so MHBE receives by the 20th of the month

Reporting	Weekly Summary Report	Weekly report, to be to be submitted on the template specified by MHBE, including number of completed, incomplete and closed employer applications, number of enrolled groups, employees and dependents, average number of employees per participating group and average employer contribution % amount.	Submit so MHBE receives by 5pm on Friday including data reported for the week ending on Thursday.
Reporting	Monthly Summary Report	Monthly summary report, to be to be submitted on the template specified by MHBE, includes application data, cumulative enrollment data for enrolled groups, employees and dependents, total enrollment, group size and employer geographic region by county data.	Submit so MHBE receives by the 20th of the month.
Reporting	Monthly Service Level Metrics Report	Monthly report of SLA metrics to be submitted on the template specified by the MHBE.	Submit so MHBE receives by the 5 <sup>th</sup> of the month following the monthly reporting period

**3.3 Service Level Agreements**

**3.3.1 SLA Liquidated Damages**

Time is an essential element of the Contract and it is important that the work be vigorously performed until completion. For services that are not provided in accordance to the metrics specified in RFP Section 3.3.5 Service Level Measurements below, the Contractor shall be liable for liquidated damages in the amount provided for in this RFP, specifically RFP Section 3.4.

The parties agree that any assessment of liquidated damages shall be construed and treated by the parties not as imposing a penalty upon the Contractor, but as liquidated damages to compensate the MHBE for the Contractor’s failure to timely complete any Contract work,.

**3.3.2 SLA Activation Date**

The SLAs set forth herein shall commence on the follow dates:

1. SLA requirements for System Availability shall commence under the Contract on the Go-Live Date.
2. SLA requirements for SLAs other than System Available shall commence under the Contract 90 days after the Go-Live Date.

The Contractor shall be responsible for complying with all performance measurements, and shall also ensure compliance by all Subcontractors.

**3.3.3 SLA Reporting**

The Contractor shall provide a monthly report, via email, to the Contract Monitor evidencing the attained level for each SLA set forth herein.

**3.3.4 Credit for failure to meet SLA**

Contractor’s failure to meet an SLA will result in assessment of liquidated damages (refer to RFP Section 3.4 Liquidated Damages) and not as a penalty, to the contracted payment for the month payable by the MHBE during the

month that the Contractor fails to meet an SLA. The MHBE, at its option for amount due the MHBE as liquidated damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

### 3.3.5 Service Level Metrics and Measurements

The Contractor shall comply with the following metrics and measurements:

SLA ID	Scope of Work Section	Requirement	Metric/Calculation	Minimum Service Level Required per month
3.3.5.1		System Availability required from 6 AM to 12 AM daily.	Monthly report of System Availability	≥97% (excluding system unavailability related to planned system maintenance)
3.3.5.2	Web-based on-line small business marketplace portal	Accurate Plan Data Quotes	The MHBE shall conduct a random audit, using a methodology to be selected by the MHBE, of 5% of plan quotes generated by the SHOP Administrator in the month	≥99% Accuracy
3.3.5.3		Average Speed to Answer calls from brokers, employers and employees must be within 30 seconds	Response time as reflected on the SHOP Administrator’s call report or other MHBE-approved documentation, as provided to the MHBE.	≥97%
3.3.5.4	Customer Service and Enrollment	First Call Resolution	The MHBE shall conduct a random audit, using a methodology to be selected by the MHBE, of 5% of calls handled by the SHOP Administrator.	≥65%
3.3.5.5	Enrollment and Payment Data Interface	Group File Submission(s) (shall be deemed accurate if the information submitted by the group matches the information	The MHBE shall conduct a random audit , using a methodology to be selected by the MHBE 5% of group	≥95% shall be accurate

SLA ID	Scope of Work Section	Requirement	Metric/Calculation	Minimum Service Level Required per month
		submitted to the carrier)	submissions processed in the month	
3.3.5.6		Employee Enrollment Files submissions (accurate if the information submitted by the employee matches the information submitted to the carrier)	The MHBE shall conduct a random audit , using a methodology to be selected by the MHBE 5% of member enrollment submissions processed in the month	≥95% shall be accurate
3.3.5.7		Enrollment change processing, including changes related to special enrollments, shall be completed within 2 business days of the SHOP Administrator's receipt of notification of the change.	The MHBE shall conduct a random audit , using a methodology to be selected by the MHBE 5% of change events received in month	≥95% shall be accurate
3.3.5.8		SHOP Administrators shall send monthly premium invoices to all employers with enrolled employees by the 10 <sup>th</sup> of the month preceding the coverage month.	The MHBE shall conduct a random audit, using a methodology to be selected by the MHBE 5% of monthly premium invoices sent.	≥97% shall be accurate
3.3.5.9	Premium Management	SHOP Administrators' premium invoices shall accurately reflect all employee enrollment data including; plan coverage, premium amount, employer and employee contributions and number of covered dependents.	The MHBE shall conduct a random audit , using a methodology to be selected by the MHBE 5% of monthly bills processed	≥97% shall be accurate
3.3.5.10		SHOP Administrators shall send monthly premium payment to carriers by the 10 <sup>th</sup> of the coverage month.	The MHBE shall conduct a random audit , using a methodology to be selected by the MHBE 5% of payments processed	97% of bulk payments received transmitted by due date

### **3.4 Liquidated Damages**

It is agreed by the MHBE and Contractor that:

- a) If the Contractor does not provide or perform the requirements referred to or listed in RFP Section 3.3.5, damage(s) to the MHBE will result.
- b) Proving such damage(s) will be costly, difficult, and time consuming.
- c) The damage figures listed below in RFP Section 3.4.4 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 such liquidated damages are not considered a penalty.
- d) Nothing in this provision shall be construed as relieving the Contractor from performing all Contract requirements whether listed herein or not, nor is the MHBE's right to enforce or to seek other remedies for failure to perform under any other Contract duty hereby diminished.
- e) Remedies of the MHBE 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 MHBE under the Contract; under any statute or regulation; or at law or in equity. All rights, powers and remedies shall be cumulative and concurrent. Any failure of MHBE to exercise a remedy shall not be a waiver of any breach or non-performance by the Contractor nor shall it prevent MHBE from later exercising that or any other remedy.
- f) The Contract will be used by MHBE to monitor Contractor performance and will provide the basis for determining liquidated damages.

#### **3.4.1 Liquidated Damages Assessment: Collections, Withholds**

- a) Once MHBE has determined that liquidated damages are to be assessed, MHBE shall notify the Contractor of the assessment (or assessments). At MHBE'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 MHBE. If MHBE determines that any damage was caused in part by MHBE or another Contractor, MHBE may reduce damage assessment against the Contractor proportionately.
- b) Any liquidated damages assessment may also be collected, at MHBE's discretion, by withholding the funds from any payment (or payments) due the Contractor after the date of assessment.

#### **3.4.2 Conditions for Termination of Liquidated Damages**

As determined appropriate by the MHBE, 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 MHBE, no liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the MHBE, as acceptable in the sole discretion of the MHBE, 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 MHBE; the MHBE is the sole judge of the accuracy of any such documentation provided.



- c) The Contractor shall certify that each SLA breach is corrected.

### 3.4.3 Severability of Individual Liquidated Damages Clauses

If any portion of any provision on liquidated damages in the Contract, including as set forth in this RFP incorporated into it, 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.

### 3.4.4 Assessment of Liquidated Damages

MHBE will not pay 100% of the contracted amount due to the Contractor in a month if SLA measures achieved for the month are less than the percentages specified in the RFP Section 3.3.5. For months in which SLA measures are not met, the contracted payment for the month will be deducted in the percentages specified in the table below. The percentage deductions correspond to the specific SLA ranges achieved by the Contractor for the various requirements. Notwithstanding the percentages set forth below, MHBE shall not assess the Contractor Liquidated Damages in any one month that exceed 20% of the total amount MHBE otherwise would owe Contractor under the Contract, inclusive of any bonus calculated pursuant to RFP § 3.5.

SLA ID	Scope of Work Section	Requirement	SLA Measurement	Liquidated Damages Deduction
3.3.5.1	Web-based on-line small business marketplace portal	System Availability 6 AM to 12 AM Daily	≥97%	5% of monthly invoice
3.3.5.2		Accurate Plan Data Quotes	≥99% Accuracy	10% of monthly invoice
3.3.5.3	Customer Service and Enrollment	Average Speed to Answer calls from brokers, employers and employees must be within 30 seconds	≥97%	5% of monthly invoice
3.3.5.4		First Call Resolution	≥65%	5% of monthly invoice
3.3.5.5	Enrollment and Payment Data Interface	Group File Submissions (shall be deemed accurate if the information submitted by the group matches the information submitted to the carrier).	≥95% shall be accurate	10% of monthly invoice
3.3.5.6		Employee Enrollment Files (shall be deemed accurate if the information submitted by the employee matches the information submitted to the carrier).	≥95% shall be accurate	10% of monthly invoice
3.3.5.7		Enrollment change processing, including changes related to special enrollments, shall be completed within 2 business days of the SHOP	≥95% shall be accurate	5% of monthly invoice

SLA ID	Scope of Work Section	Requirement	SLA Measurement	Liquidated Damages Deduction
		Administrators receipt of notification of the change.		
3.3.5.8	Premium Management	SHOP Administrators shall send monthly premium invoices to all employers with enrolled employees by the 10 <sup>th</sup> of the month preceding the coverage month.	≥97% shall be accurate	5% of monthly invoice
3.3.5.9		SHOP Administrators' premium invoices shall accurately reflect all employee enrollment data including; plan coverage, premium amount, employer and employee contributions and number of covered dependents.	≥97% shall be accurate	10% of monthly invoice
3.3.5.10		SHOP Administrators shall send monthly premium payment to carriers by the 10 <sup>th</sup> of the coverage month.	97% of bulk payments received transmitted by due date	5% of monthly invoice

### 3.5 Bonus Structure

Subject to funding availability (Contract § 18), the MHBE will provide a bonus payment based on the number of enrolled employees for which each SHOP Administrator is providing SHOP administrative services. Specifically, for each month that a particular SHOP Administrator provides services for 1,000 or more enrolled employees, MHBE will pay a bonus to the SHOP Administrator as follows:

Number of enrolled employees	Percent added to monthly Unit Price (Per Enrolled Employee) Per Month
< 1,000	none
1,000 – 1,500	10%
1,501 – 2,500	15%
2,501 +	20%

### 3.6 Problem Escalation Procedure

3.6.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must 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 State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel, as directed should the Contract Monitor not be available.

3.6.2 The Contractor must 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:

- The process for establishing the existence of a problem;
- Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- 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;
- Expedited escalation procedures and any circumstances that would trigger expedited escalation procedures;
- The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- 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 State which may be allowed by the Contract or applicable law.

## **3.7 Security Requirements**

### **3.7.1 Criminal Background Check**

The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and shall provide the Contract Monitor with completed checks on all new employees prior to assignment. The Contractor may not assign an employee with a criminal record to work under this Contract unless prior written approval is obtained from the Contract Monitor.

### **3.7.2 Information Security Requirements**

For purposes of this solicitation and the resulting Contract:

- a) "Relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles PII, 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 PII, and/or assisting with any related implemented system.
- b) 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 such as those listed below, and shall 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.

- c) 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 at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.

To ensure appropriate data protection safeguards are in place, the Contractor and any relevant subcontractor(s) shall at a minimum implement and maintain the following information technology controls at all times throughout the life of the Contract, as well as any additional controls set forth in the Non-Exchange Entity Agreement attached as Attachment H to this RFP. The Contractor and any relevant subcontractor(s) may augment this list with additional information technology controls.

- a) The Contractor shall remain compliant with Minimum Acceptable Risk Standards for Exchanges (MARS-E), as the same may be updated from time to time, Department of Health and Human Services regulations set forth in 45 CFR Parts 155, 156, and 157 including but not limited to 45 C.F.R. § 155.260, and Internal Revenue Code (IRC), 26 U.S.C. §6103, and IRS Publication 1075, which establish criteria and procedures for handling Federal Tax Information (FTI).
- b) Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in the test and/or training environment unless it has been previously anonymized or otherwise modified to protect the confidentiality of PII.
- c) Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subcontractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of unnecessary services, the removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor/subcontractor's system configuration files.
- d) Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the Contractor's and/or subcontractor's Security policy. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The MHBE shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- e) Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subcontractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subcontractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The MHBE shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.

- f) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation.
- g) Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>) (the "DoIT Security Policy") including specific requirements for password length, complexity, history, and account lockout. User authentication and password control measures shall be considered consistent with the DoIT Security Policy if they are substantially compliant, in the sole discretion of the MHBE chief security officer, with the DoIT Security Policy at Contract Go-Live Date and fully compliant within three months of the Contract Go-Live Date.
- h) Ensure State data, including any PII, under this service is not processed, transferred, or stored outside of the United States and is not subject to Access outside the United States
- i) Ensure that State data is not comingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization Security Measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's Access or security level.
- j) Apply data encryption to protect State data, especially PII, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the System, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2.  
  
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>  
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- k) Enable appropriate logging parameters on Systems supporting services provided under this Contract to monitor user Access activities, authorized and failed Access attempts, System exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information Security standards including the current State of Maryland Department of Information Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- l) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The MHBE shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.
- m) Ensure System and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of PII from unauthorized Access as well as the separation of production and non-production environments.
- n) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating Systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
- o) Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.

- p) Ensure that the Contractor's and any subcontractor's personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.

### **3.7.3 Incident Response Requirement**

- a) By submitting a Proposal in response to this RFP, the Offeror agrees that it shall execute a Non-Exchange Entity Agreement in the form attached to this RFP as Attachment H. By submitting its offer, the Offeror further agrees that it will and abide by all provisions therein, including all Incident and Breach reporting requirements. Execution of the Non-Exchange Entity Agreement is a condition precedent to final award.
- b) All Offerors who submit a Proposal in response to this RFP shall be presumed to have read the Non-Exchange Entity Agreement and familiarized themselves with its requirements, including the one-hour Incident reporting requirement mandated by the Centers for Medicare and Medicaid Services in its Computer Matching Agreement with MHBE.
- c) By submitting a Proposal in response to this RFP, the Offeror further agrees that, should it be awarded a Contract under the RFP and become a Contractor, it shall notify MHBE's Chief Compliance Officer and Chief Information Security Officer 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. Such notification shall be made to each of the Chief Compliance Officer and the Chief Information Security Officer within one (1) hour of the discovery of the unintended Access or attack by either interactive verbal communication or electronic correspondence.

This Section shall survive expiration or termination of the Contract.

## **3.8 Insurance Requirements**

- 3.8.1 The Contractor shall maintain Commercial General liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 3.8.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
- 3.8.3 The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.
- 3.8.4 Within five (5) Business Days of execution of a Contract with the State, the Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time 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 a minimum the following:
- (1) 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.
  - (2) Commercial General Liability as required in Section 3.8.1

- (3) Errors and Omissions/Professional Liability as required in Section 3.8.2
- (4) Employee Theft Insurance as required in Section 3.8.3

- 3.8.5 Cyber Security/Data Breach Insurance - The Contractor shall maintain Cyber Security / Data Breach Insurance in the amount of ten million dollars (\$10,000,000) per occurrence. The coverage must be valid in at all locations where work is performed or data or other information concerning the State's claimants and/or employers is processed or stored.
- 3.8.6 The Contractor shall maintain a Fidelity Bond of \$500,000.
- 3.8.7 The State shall be listed as an additional insured on the policies with the exception of Worker's Compensation Insurance and Employee Theft Insurance. For the Employee Theft Insurance Policy, the Contractor shall include the State as a Loss Payee. 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 45 days' advance notice of any non-renewal, cancellation, or expiration except in the case of cancellation for non-payment of premiums. 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 to provide such policies. Such insurance coverage shall be maintained at all times during the term of the Contract. Such insurance coverage shall be with an insurance company with a Best's Rating of "A" or greater. If the Errors and Omissions insurance carrier is Lloyd's of London, include the Lloyd's of London syndicate(s) Best Rating also
- 3.8.8 The Contractor shall require that any subcontractor providing 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.

<b>3.9 Invoicing</b>
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**3.9.1 General**

- a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor with any backup documentation specified by the MHBE within 30 days of delivery of services. At a minimum, invoices submitted to MHBE shall attach backup documentation comprising the SHOP Administrator's monthly billing statements to employers. Contractor's invoices to MHBE also shall include, at the minimum, the following information:
- Contractor name
  - Remittance address
  - Federal taxpayer identification number
  - Invoice period
  - Invoice date
  - Invoice number
  - State assigned Contract number
  - State assigned Purchase or Blanket Purchase Order number(s)
  - Services provided with supporting documentation providing details
  - Amount due

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

- b) The MHBE reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the MHBE with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.

### **3.10 SOC 2 Type 2 Audit Report**

This section applies to the Contractor and any relevant subcontractor who provides services for the MHBE's identified critical functions, handles PII, and/or hosts any related implemented system for the State under the Contract. For purposes of this section, "relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles PII a, 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 PII, and/or assisting with any related implemented system.

The Contractor shall have an annual audit performed, by an independent audit firm of the Contractor's choosing, of the Contractor's and any relevant subcontractor's handling of PII and the MHBE's critical functions, which are the mission critical information technology systems and applications that encompass the back-end operations and online portal for brokers, employers and employees to browse, shop for, select, purchase and enroll in qualified plans offered in SHOP, as well as Call Center or Help Desk Services, Printing and Mailing Processing Services, and Records Retention Services . These services provided by the Contractor and any relevant subcontractor that shall be covered by the audit will collectively be referred to as the "Information Functions and/or 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 MHBE, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

- 3.10.1 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"). The initial SOC 2 Audit shall be scheduled and completed within a timeframe to be specified by the Contract Monitor. All subsequent SOC 2 Audits that are arranged after this initial audit shall be performed on annual basis and submitted to the Contract Monitor not later than June 30 for the preceding State fiscal year.
- 3.10.2 The SOC 2 Audit shall report on the Contractor's and any relevant subcontractor's system(s) and the suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes to meet the requirements of the Contract, including the Security Requirements identified in Section 3.7, relevant to the following trust principles: Security, Confidentiality, and Privacy as defined in the aforementioned Guidance.
- 3.10.3 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, Confidentiality, Processing Integrity, and/or Privacy) to accommodate any changes to the Contractor's and any relevant subcontractor's environment since the previous SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and/or Processes through modifications to the Contract, or due to changes in information technology or operational infrastructure implemented by the Contractor and/or subcontractor. The Contractor and any relevant subcontractor 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.



- 3.10.4 The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the Contractor for the Information Functions and/or Processes for the services provided to the MHBE under the Contract. The Contractor shall ensure the audit includes all subcontractors operating in performance of the Contract.
- 3.10.5 All SOC 2 Audits, including those of the Contractor and any relevant subcontractor, shall be performed at no additional expense to the MHBE.
- 3.10.6 The Contractor and all relevant subcontractors shall promptly provide a complete copy of the final SOC 2 Report(s) to the Contract Monitor upon completion of each SOC 2 Audit engagement.
- 3.10.7 The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a documented corrective action plan which addresses each audit finding or exception contained in a SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or subcontractor(s) along with the date(s) when each remedial action is to be implemented.
- 3.10.8 If the Contractor, including any relevant subcontract, currently has an annual information security assessment performed that includes the operations, systems, and repositories of the Information Functions and/or Processes being provided to the MHBE under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the MHBE will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's and any relevant subcontractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- 3.10.9 If the Contractor and any relevant subcontractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in RFP Section 3.9.1, the MHBE 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/or Processes utilized or provided by the Contractor and any relevant subcontractor under the Contract. The Contractor and any relevant subcontractor 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 MHBE will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.

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## **SECTION 4 – PROPOSAL FORMAT**

### **4.1 Proposal Submission**

- A. **To minimize duplication costs, MHBE strongly desires e-mail delivery of Proposals.**
- B. The Proposal shall be submitted to the Procurement Officer electronically via one unencrypted e-mail at [hix.procurement@Maryland.gov](mailto:hix.procurement@Maryland.gov). The subject line in the e-mail shall state “Small Business Health Options Program (SHOP) Administrative Services RFP # MDM0031027115 Proposal” including the Offeror’s name.
- C. The e-mail shall provide the following attachments:
1. One attachment labeled “Small Business Health Options Program (SHOP) Administrative Services RFP # MDM0031027115 Technical Proposal” containing the Technical Proposal contents and all required signed Attachments (see Section 4.4.3 below), in PDF format.
  2. A second attachment labeled “Small Business Health Options Program (SHOP) Administrative Services RFP # MDM0031027115 Financial” containing the Financial Proposal contents, signed and in Excel and PDF format.
  3. A third attachment labeled “Small Business Health Options Program (SHOP) Administrative Services RFP # MDM0031027115”, including Volumes I and II in searchable Adobe .pdf format for Public Information Act (PIA) requests (this copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 1.14 “Public Information Act Notice”). If an Offeror chooses to submit its Proposal without identifying any information that is confidential/proprietary, it should still provide the third attachment required here and label it “PIA”, even though no information therein will be redacted.

### **4.2 Proposals**

- 4.2.1 Beginning with Tab B (see RFP Section 4.4.2.3), 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 4.4.2.1 and 4.4.2.2), should be numbered using small Roman numerals (ex. i, ii, iii, iv, v, etc).
- 4.2.5 Proposals are subject to the Maryland Public Information Act.

### **4.3 Electronic Delivery**

Offerors shall e-mail their Proposals as instructed in RFP Section 4.1 above to the Procurement Officer listed in the Key Information Summary Sheet.

Bidders choosing to provide paper submissions shall email the Procurement Officer at the email address specified in the Key Information summary sheet for submission instructions.

### **4.4 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).**

#### **4.4.1 Format of Technical Proposal**

Inside a sealed package described in Section 4.2 “Proposals,” the unbound original, five (5) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 4.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 4.4.2.1 “Title and Table of Contents,” Section 4.4.2.2 “Claim of Confidentiality,” Section 4.4.2.3 “Transmittal Letter,” Section 4.4.2.4 “Executive Summary,” etc. This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 5.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

**4.4.2 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:

##### **4.4.2.1 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.

##### **4.4.2.2 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 1.14 “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.

##### **4.4.2.3 Transmittal Letter (Submit under TAB B)**

A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

- Name and address of the Offeror;
- Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- Solicitation Title and Solicitation Number that the Proposal is in response to;
- Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual’s Social Security Number (SSN);
- Offeror’s eMM number;
- Offeror’s MBE certification number (if applicable);
- Acceptance of all State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.2.4); and
- Acknowledgement of all addenda to this RFP.

#### 4.4.2.4 **Executive Summary (Submit under TAB C)**

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.” The Summary shall identify the Service Category(ies) and Region(s) for which the Offeror is proposing to provide services (if applicable). 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 (see RFP Section 1.22 for more information).

The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

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

#### 4.4.2.5 **Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB D)**

- a. The Offeror shall address each Scope of Work requirement (Section 3.2) 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 (Section 3.2) 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.
- b. 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 and techniques to be used by the Offeror in providing the required services as outlined in RFP Section 3, 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.
- c. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the MHBE’s Contract Monitor should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner.
- d. The Offeror shall include a description of the documentation it shall make available monthly to the MHBE to satisfy the random audit requirements in Section 3.3.5 of the RFP: Service Level Metrics and Measurements.

#### 4.4.2.6 **Experience and Qualifications of Proposed Staff (Submit under TAB E)**

The Offeror shall identify the number and types of staff 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 provide an Organizational Chart outlining personnel and their related duties.

#### 4.4.2.7 **Offeror Qualifications and Capabilities (Submit under TAB F)**

The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- a. The number of years the Offeror has provided the similar services;
- b. The number of clients/customers and geographic locations that the Offeror currently serves;
- c. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- d. The Offeror's process for resolving billing errors; and
- e. An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror. Include information sufficient to demonstrate that the Offeror is not "a member of the same controlled group of corporations (or under common control with) as a health insurance issuer. *See* 45 C.F.R. § 155.110(a)(1)(iii).

#### 4.4.2.8 **References (Submit under TAB G)**

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Offeror Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and shall include the following information:

- a. Name of client organization;
- b. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- c. Value, type, duration, and description of services provided.

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

#### 4.4.2.9 **List of Current or Prior State Contracts (Submit under TAB H)**

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:

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;

- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- f. 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.

#### **4.4.2.10 Financial Capability (Submit under TAB I)**

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:

- a. Dunn and Bradstreet Rating;
- b. Standard and Poor's Rating;
- c. Lines of credit;
- d. Evidence of a successful financial track record; and
- e. Evidence of adequate working capital.

#### **4.4.2.11 Certificate of Insurance (Submit under TAB J)**

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 3.8. See Section 5.5 for the required insurance certificate submission for the recommended Offeror.

#### **4.4.2.12 Legal Action Summary (Submit under TAB K)**

This summary shall include:

- a. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- b. A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- c. 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; and
- d. In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

#### **4.4.3 Additional Required Technical Submissions (Submit under TAB L)**

- 4.4.3.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB L that follows the material submitted in response to Section 4.4.2.

- a. Completed Bid/Proposal Affidavit (**Attachment B**).
- b. Completed Conflict of Interest Affidavit and Disclosure (**Attachment F**)

#### **4.5 Volume II – Financial Proposal**

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 4.2 “Proposals,” the Offeror shall submit an original unbound copy, five (5) copies, and an electronic version in PDF and Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment D**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

Please note that the Unit Administrative Cost (Per Enrolled Employee) Per Month is the fixed unit price that the MHBE will pay for Administrative Costs per month for each Enrolled Employee as set forth in the Contractor’s Financial Proposal. The Unit Administrative Cost (Per Enrolled Employee) Per Month is fully loaded and all-inclusive of all direct and indirect Administrative Costs. Administrative Costs are defined in the Definitions section of the RFP.

Please also note that the Unit Operational Cost (Per Month) is the fixed unit price that the MHBE will pay per month for all Operational Costs as set forth in the Contractor’s Financial Proposal. The Operational Cost (Per Month) is fully loaded and all-inclusive of all direct and indirect Operational Costs. Operational Costs are defined in the Definitions section of the RFP and include all costs other than Administrative Costs.

**Note: Information which is claimed to be confidential is to be clearly identified in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be included.**

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## **SECTION 5 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE**

### **5.1 Evaluation Committee**

Evaluation of Proposals will be performed in accordance with Section II.C of MHBE's Procurement Policies and Procedures by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer.

### **5.2 Technical Proposal Evaluation Criteria**

The 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.

#### **5.2.1 Offeror's Technical Response to RFP Requirements**

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.

#### **5.2.2 Offeror Qualifications and Capabilities**

#### **5.2.3 Experience and Qualifications of Proposed Staff**

### **5.3 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 Evaluated Price within the stated guidelines set forth in this RFP and as submitted on **Attachment D - Financial Proposal Form**.

### **5.4 Selection Procedures**

#### **5.4.1 General**

The Contract will be awarded in accordance with the Expedited Procurement method found at Section II.C of MHBE's Procurement Policies and Procedures and with this RFP. The Expedited Procurement method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the MHBE 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 MHBE 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.

#### **5.4.2 Selection Process Sequence**

- 5.4.2.1 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 MHBE's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the MHBE. Offerors will be contacted by the State as soon as any discussions are scheduled.
- 5.4.2.2 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.
- 5.4.2.3 The Financial Proposal of each Qualified Offeror (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.
- 5.4.2.4 When in the best interest of the MHBE, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The MHBE may make an award without issuing a request for a BAFO.

#### **5.4.3 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 Contractor that submitted the Proposal determined to be the most advantageous to the MHBE. In making this most advantageous Proposal determination, technical factors will receive greater weight than financial factors.

## **5.5 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 one (1) copy of each of the following documents:

- a. Contract (**Attachment A**),
- b. Contract Affidavit (**Attachment C**),
- c. Non-Disclosure Agreement (**Attachment G**); \*see Section 1.34,
- d. Non-Exchange Entity Agreement (**Attachment J**); \*see Section 1.35,
- e. Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.8 “Insurance Requirements,” listing the State as an additional insured; \*see Section 3.8.

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## **RFP ATTACHMENTS**

### **ATTACHMENT A – Contract**

This is the sample contract used by the MHBE. 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.

### **ATTACHMENT B – Bid/Proposal Affidavit**

This Attachment must be completed and submitted with the Technical Proposal (refer to RFP Section 1.25).

### **ATTACHMENT C – 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 (refer to RFP Section 1.26).

### **ATTACHMENT D – Financial Proposal Instructions and Form**

The Financial Proposal Form must be completed and submitted in the Financial Proposal package (refer to RFP Section 4.5).

### **ATTACHMENT E – Pre-Proposal Conference Response Form**

It is requested that this form be completed and submitted as described in RFP Section 1.7 by those potential Offerors that plan on attending the Pre-Proposal Conference.

### **ATTACHMENT F – Conflict of Interest Affidavit and Disclosure**

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

### **ATTACHMENT G – Non-Disclosure Agreement**

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 H – Non-Exchange Entity Agreement**

This Attachment is to 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 I – Agency Acceptance of Deliverable Form (refer to RFP Section 3.2.2.1)**

## ATTACHMENT A – CONTRACT

### Small Business Health Options Program (SHOP) Administrative Services

THIS CONTRACT (the “Contract”) is made as of the Effective Date defined below by and between \_\_\_\_\_ [Contractor’s name] (the “Contractor”) and the MARYLAND HEALTH BENEFIT EXCHANGE, a unit of the STATE OF MARYLAND (the “MHBE”). The Contractor and the MHBE each are a “Party” and, together, are the “Parties”.

In consideration of the premises and the covenants herein contained, the Parties agree as follows:

#### 1. Definitions

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

- 1.1 “ACA” means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), together with regulations promulgated pursuant thereto.
- 1.2 “Agency” or “MHBE” means the Maryland Health Benefit Exchange.
- 1.3 “COMAR” means Code of Maryland Regulations.
- 1.4 “Contract Monitor” means the MHBE employee identified in Section 1.6 of the RFP as the Contract Monitor or a successor designated by the MHBE.
- 1.5 “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].
- 1.6 “Effective Date” means the date on which the last of the two Parties signs this Contract.
- 1.7 “eMM” means eMaryland Marketplace.
- 1.8 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_, as supplemented and revised by the best and final offer dated \_\_\_\_\_.
- 1.9 “RFP” means the Request for Proposals for Small Business Health Options Plan (SHOP) Administrative Services, Solicitation # MDM0031027115, and any addenda thereto issued in writing by the MHBE.
- 1.10 “Procurement Officer” means the MHBE employee identified in Section 1.5 of the RFP as the Procurement Officer or a successor designated by the MHBE.
- 1.11 “Proposal(s)” means, as appropriate, either or both of the Contractor’s Technical or Financial Proposal.
- 1.12 “State” means the State of Maryland and includes the MHBE.
- 1.13 “Technical Proposal” means the Contractor’s Technical Proposal, dated \_\_\_\_\_, as supplemented and revised by the best and final offer dated \_\_\_\_\_.

## **2. Scope of Contract**

2.1 The Contractor shall provide services as described in the RFP for the Small Business Health Options Program (SHOP) Administrative Services awarded in accordance with Exhibits A-F listed in this section and hereby 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 \_\_\_\_\_.

Exhibit C – The Non-Exchange Entity Agreement

Exhibit D – The Non-Disclosure Agreement Exhibit E – The Contractor’s Technical Proposal

Exhibit E – The Contractor’s Financial Proposal

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 required approvals are obtained.

2.4 Contracts awarded in violation of the MHBE Procurement Policies and Procedures are voidable at the election of MHBE.

## **3. Period of Performance.**

3.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the MHBE following execution by the Contractor and any required approvals of the Contract, including approval by the MHBE Board of Trustees, if such approval is required (“Contract Commencement”). The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed, beginning on or about July 1, 2016.

3.2 From this Go-Live date, the duration of the Contract will be for a base term of one year or the provision of all services required by the Contract and the requirements of this solicitation. The Contract may be extended for two periods of one year each at the sole discretion of the MHBE and at the fixed unit prices quoted in the Financial Proposal for Option Years.

3.3 The Contractor’s obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

#### **4. Consideration and Payment**

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the MHBE shall pay the Contractor in accordance with the terms of this Contract and at the unit prices in RFP Attachment D – Financial Proposal, which is incorporated into this Contract as Exhibit E, plus any bonus due to Contractor as determined by MHBE pursuant to RFP § 3.5.

4.2 Payments to the Contractor shall be made no later than thirty (30) days after the MHBE's receipt of a proper invoice for services provided by the Contractor, acceptance by the MHBE of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice 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-], as well as all backup documentation required by MHBE pursuant to the RFP. 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 at hbe.finance@maryland.gov. Electronic funds transfer shall be used by the MHBE to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

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

4.4 Payment of an invoice by the MHBE is not evidence that services were rendered as required under this Contract.

4.5 Contractor's eMarylandMarketplace vendor ID number is (Contractor's eMM number).

#### **5. Rights to Records**

5.1 The Contractor agrees that all documents and materials other than software including, but not limited to, 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 MHBE and shall be available to MHBE at any time. MHBE 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, only those documents, materials and other deliverables created or developed by Contractor specifically and exclusively for MHBE pursuant to the Contract will be considered the sole property of MHBE or "work made for hire" as that term is interpreted under U.S. copyright law and exclusively owned by MHBE (collectively, "Work Product"). The term "Work Product", for purposes of this Contract, does not include software.

5.3 To the extent that any products other than software created as a deliverable under this Contract are not Work Product, the Contractor hereby relinquishes, transfers, and assigns to MHBE all of its rights, title, and interest to all such products created under this Contract, and will cooperate reasonably with MHBE in effectuating and registering any necessary assignments.

- 5.4 The Contractor shall report to MHBE, 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.
- 5.5 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to MHBE hereunder and if such markings are affixed, MHBE shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.6 Notwithstanding anything to the contrary in the Contract, Contractor will retain all patent, copyright and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience (collectively, "Intellectual Property") owned or possessed by Contractor before the commencement of, or acquired by Contractor during or after, the performance of the Services. Contractor will grant to MHBE a nonexclusive, non-transferable, royalty-free license to use the Intellectual Property for its internal use, but solely in connection with and to the extent necessary for use as contemplated by the Contract.
- 5.7 Notwithstanding anything to the contrary in the Contract, Contractor will retain all patent, copyright and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience (collectively, "Contractor's Intellectual Property") owned or possessed by Contractor before the commencement of, or acquired by Contractor during or after, the performance of the services described in the RFP. Contractor shall grant to MHBE a nonexclusive, non-transferable, royalty-free license to use the Contractor's Intellectual Property for its internal use, but solely in connection with and to the extent necessary for use as contemplated by the Contract. Unless Contractor provides its prior written consent, MHBE will not use, or disclose to any third party, Contractor's advice or Work Product other than as mutually contemplated by the parties when Contractor first was retained to provide such advice or Work Product or as required by law.
6. **Exclusive Use.** MHBE 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.
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 MHBE to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against MHBE alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret; provided, however, that Contractor's indemnity obligations under this Section should not apply to any claim for infringement or misappropriation of intellectual property rights to the extent any such infringement or misappropriation is caused by: (i) information or materials provided by MHBE or a third party other than Contractor's subcontractors resources, if any, (ii) modifications made by MHBE or a third party other than Contractor's subcontractors resources to Services, Work or Contractor's other materials provided to MHBE in connection with the Services, or any parts, thereof, or (iii) MHBE's use of services, Work Product or such other materials or any parts thereof, in a manner inconsistent with the terms of the Contract. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend MHBE against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided MHBE (i) promptly

notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for MHBE 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. Indemnification**

- 8.1 Contractor shall indemnify, defend, and hold the State, its directors, officers, employees and agents harmless from third-party liability for tangible property damage, bodily injury and death, and for fraud or willful misconduct of Contractor, including all related defense costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) arising from or relating to the performance of the Contractor or its Subcontractors under this Contract.
- 8.2 The State has no obligation to provide legal counsel or defense to the Contractor or its Subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 8.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 8.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its Subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.
- 8.5 Section 8 shall survive expiration 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 (any failures to act when Contractor has a duty to act) 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. Exclusive Use and Ownership**

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 Agency 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 or Agency's confidential information is to be disclosed shall be advised by Contractor of and bound by the confidentiality and intellectual property terms of this Contract.

## **11. Confidentiality**

11.1 Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law, including the ACA and 45 C.F.R. § 155.260, the Non-Exchange Entity Agreement referenced in Section 11.2, below, and the Non-Disclosure Agreement incorporated into this Contract pursuant to Section 2.1, above. 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.

11.2 More particularly, the Contractor agrees that its access to Personally identifiable Information under the Contract shall make it a "Non-Exchange Entity", as that term is defined in 45 C.F.R. § 155.260(b)(1). The Contractor therefore shall keep information obtained in the course of this Contract confidential in compliance with the ACA, including, without limitation, 45 C.F.R. § 155.260, and the Non-Exchange Entity Agreement incorporated into this Contract pursuant to Section 2.1, above. The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health, personally identifiable, and financial information. This obligation includes providing training and information to employees regarding confidentiality obligations as to personally identifiable, and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Agency for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health, personally identifiable, and financial information.

11.3 Section 11 shall survive expiration or termination of this Contract.

## **12. Parent Company Guarantee (If Applicable)**

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

## **13. 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.

#### **14. Disputes**

- 14.1 As used herein, a “claim” means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or relating to this Contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to claim for the purpose of this clause.
- 14.2 Within thirty (30) days of when the Contractor knows or should have known of the basis for a claim relating to the Contract, it shall file a written notice of claim on its letterhead to the Procurement Officer. Contemporaneously with, or within sixty (60) days after filing the notice of claim, the Contractor shall submit the written claim to the Procurement Officer. The Procurement Officer shall issue a final, written decision on the claim as expeditiously as possible. Any final decision of the Procurement Officer may award a Contract claim only for those expenses incurred not more than thirty (30) days before the contractor initially filed its notice of claim.
- 14.3 If the final decision of the Procurement Officer grants the claim in part and denies the claim in part, the MHBE shall pay the Contractor the undisputed amount. Payment of the partial claim will not be construed as an admission of liability by the MHBE and does not preclude the MHBE from recovering the amount paid if a subsequent determination modifies the final decision.
- 14.4 Within thirty (30) days of receipt of the final decision of the Procurement Officer, the Contractor may file an appeal to the Executive Director of the MHBE for claims for monetary amounts less than \$75,000, and to the Board of Trustees for either claims for monetary amounts over \$75,000 or for claims involving non-monetary relief. If submitted to the Executive Director, a final decision resolving the appeal will be issued by the Executive Director. If submitted to the Board of Trustees, the Board of Trustees may determine that a hearing would assist in the resolution of any appeal. The Board of Trustees may elect to hold the hearing itself or may refer the matter for a hearing to a panel consisting of two or more members of the Board of Trustees or may refer the matter to a neutral decision maker. A final decision resolving the appeal will be issued by a vote of the Board of Trustees. The Contractor’s timely appeal to the Executive Director or the Board of Trustees shall be a strict condition precedent to the contractor pursuing any legal rights which it alleges or which may exist in any other forum.
- 14.5 Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer’s decision.
- 14.6 Nothing in this section shall be construed to limit the MHBE’s right to withhold payments from the Contractor, assess liquidated damages against the Contractor, direct the Contractor to perform pursuant to the terms of the Contract or any written change order, or to exercise any other rights allowed by Contract or at law.

#### **15. Maryland Law**

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

- 15.2 The Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.
- 15.3 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.

#### **16. Nondiscrimination in Employment**

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

#### **17. 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.

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

#### **19. Termination for Cause**

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

#### **20. 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).

## **21. Suspension of Work**

The Procurement Officer 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.

## **22. Delays and Extensions of Time**

22.1 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.

22.2 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.

## **23. 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.

## **24. 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: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

## **25. Documents Retention and Inspection Clause**

- 25.1 The Contractor and Subcontractors shall retain and maintain all records and documents relating to this Contract for a period of ten (10) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, and the U.S. Department of Health and Human Services 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.
- 25.2 This Section 25 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**

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.

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. Insurance Requirements**

The Contractor shall maintain workers' compensation coverage, and property and casualty insurance as required in the RFP. The minimum limits of such policies must meet any minimum requirements established by law and the limits of insurance required by the RFP, and shall cover losses resulting from or arising out of Contractor action or inaction in the performance of services under the Contract by the Contractor, its agents, servants, employees or Subcontractors. Effective no later than the date of execution of the Contract, and continuing for the duration of the Contract term, and any applicable renewal periods, the Contractor shall maintain such insurance coverage and shall report such insurance annually or upon Contract renewal, whichever is earlier, to the Procurement Officer. The Contractor is required to notify the Procurement Officer in writing, if policies are cancelled or not renewed 35 days in advance of such cancellation and/or nonrenewal. Certificates of insurance evidencing this coverage shall be provided within five (5) days of notice of recommended award. All insurance policies shall be issued by a company properly authorized to do business in the State of Maryland. The State shall be named as an additional named insured on the property and casualty policy and as required in the RFP.

### **30. Liability**

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

- 30.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
- 30.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 30.3 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 per claim shall be limited to two (2) times the total dollar amount paid under the Contract up to the date of settlement or final award of any such claim. Third party claims arising under Section 8 ("Indemnification") of this Contract are included in this limitation of liability only if MHBE is immune from liability. Contractor's liability for third-party claims arising under Section 8 of this Contract shall be unlimited if MHBE is not immune from liability for claims arising under Section 8.

### **31. Commercial Nondiscrimination**

- 31.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for Subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 31.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the MHBE, in all subcontracts.

31.3 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 Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, 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 to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

**32. 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.

**33. Notices**

Unless otherwise expressly specified elsewhere in the RFP, Non-Exchange Entity Agreement or other provision incorporated into this Contract, 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: Michelle Compton  
Procurement Officer  
750 E. Pratt Street, 16th Floor, Baltimore, MD 21202  
410-547-8152  
hix.procurement@maryland.gov

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**34. Miscellaneous**

34.1 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.

34.2 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.

**35. Prompt Pay Requirements**

35.1. If the Contractor withholds payment of an undisputed amount to its subcontractors resources, MHBE, at its option and in its sole discretion, may take one or more of the following actions:  
i. Not process further payments to the Contractor until payment to the subcontractors resources is verified;

- ii. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- iii. Pay or cause payment of the undisputed amount to the subcontractors resources from monies otherwise due or that may become due;
- iv. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- v. Take other or further actions as appropriate to resolve the withheld payment.

35.2 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: (i) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractors resources, due to be distributed to the subcontractors resources; and (ii) in amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

35.3 An act, failure to act, or decision of a Procurement Officer or a representative of MHBE, concerning a withheld payment between the Contractor and a subcontractor’s resources under this provision, may not (i) affect the rights of the contracting parties under any other provision of law; (ii) be used as evidence on the merits of a dispute between MHBE and the Contractor in any other proceeding; or (iii) result in liability against or prejudice the rights of MHBE.

35.4 This Section 35 shall survive expiration or termination of the Contract.

[Signatures on next page(s)]



[Signature page to Small Business Health Option Program (SHOP) Administrative Services]

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

CONTRACTOR

MARYLAND HEALTH BENEFIT  
EXCHANGE

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

\_\_\_\_\_  
By: Carolyn Quattrocki, Executive Director  
Or designee:

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_  
Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 2016.

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

## ATTACHMENT B – BID/PROPOSAL 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 REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all 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, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Offeror herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/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. Bidder/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 Bidder/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 Bid/Proposal and:

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

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

### .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) §7205, 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):

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**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).

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to 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 Bid/Proposal that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/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, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

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. I FURTHER AFFIRM THAT:**

Any claims of environmental attributes made relating to a product or service included in the Bid or Proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §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.

**N. ACKNOWLEDGEMENT**

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

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

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

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

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

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**



**ATTACHMENT C – 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: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 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 Bid/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 Bid/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 D – FINANCIAL PROPOSAL INSTRUCTIONS

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, 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 Financial Proposal Form is used to calculate the Offeror's TOTAL EVALUATED PRICE. 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 21.05.03.03E and 21.05.02.12, and may cause the Proposal to be rejected.
- H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and will 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 solicitation. 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 MHBE 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.

**ATTACHMENT D – FINANCIAL PROPOSAL FORM**

Small Business Health Options Program (SHOP) Administrative Services RFP #MDM0031027115

Contract Term	Unit Operational Cost* (Per Month) (A)	Estimated Quantity of Enrolled Employees (B)	Unit Administrative Cost (Per Enrolled Employee) Per Month** (C)	Months Per Year (D)	Total Cost Per Year (B x C x D) + (A x D)
Base Year (Commencing with Go-Live Date)	\$	1000	\$ -	12	\$ -
Option Year 1	\$	1000	\$ -	12	\$ -
Option Year 2	\$	1000	\$ -	12	\$ -
<b>Total Evaluated Cost</b>					\$ -

\*Please note that the Unit Operational Cost (Per Month) is the fixed unit price that the MHBE will pay per month for all Operational Costs. The Operational Cost (Per Month) is fully loaded and all-inclusive of all direct and indirect Operational Costs. Operational Costs are defined in the Definitions section of the RFP and include all costs other than Administrative Costs.

\*\*Please note that the Unit Administrative Cost (Per Enrolled Employee) Per Month is the fixed unit price that the MHBE will pay for Administrative Costs per month for each Enrolled Employee.. The Unit Administrative Cost (Per Enrolled Employee) Per Month is fully loaded and all-inclusive of all direct and indirect Administrative Costs. Administrative Costs are defined in the Definitions section of the RFP.

Submitted By:

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

Printed Name and Title:

\_\_\_\_\_

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

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

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

Bidder Contact Information: Telephone: (\_\_\_\_) \_\_\_\_-- \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_-- \_\_\_\_\_

E-mail: \_\_\_\_\_

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

[Intentionally Deleted]

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

**Reference COMAR 21.05.08.08, Incorporated Herein**

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 Bidder/Offeror, Contractor, consultant, or Subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Bidder/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 Bidder/Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder/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 Bidder/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 BID/PROPOSAL**



## ATTACHMENT G – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the Maryland Health Benefit Exchange (“MHBE”), and \_\_\_\_\_ (the “Contractor”).

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Small Business Health Option Program (SHOP) Administrative Services, Solicitation # MDM0031027115 (the “RFP”); and

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

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the 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, State Govt. §10-1301), PII protected under 45 C.F.R. § 155.260 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. Contractor shall not, without the MHBE’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. 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 G-1. Contractor shall update ATTACHMENT G-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 who 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. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all

or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information, including those set forth in the Non-Exchange Entity Agreement between the Parties pursuant to the above RFP (the “Non-Exchange Entity Agreement”). For the avoidance of doubt, should any provisions of this Non-Disclosure Agreement conflict with those in the Non-Exchange Entity Agreement, the provisions of the Non-Exchange Entity Agreement shall control.

5. Contractor shall promptly advise the MHBE 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). Should the Confidential Information constitute PII, as that term is defined in the Non-Exchange Entity Agreement, Contractor shall follow the procedures set forth therein for notifying the MHBE. Should the Confidential Information be other than PII, the Contractor shall notify the MHBE in writing.
6. Contractor shall, at its own expense, return to the MHBE all copies of the Confidential Information in its care, custody, control or possession upon request of the MHBE or on termination of the Contract. Should the Confidential Information constitute PII, the Contractor shall comply with the provisions of the Non-Exchange Entity Agreement regarding preservation, return or deletion of the Confidential Information. Unless otherwise instructed by the MHBE’s Chief Compliance Officer, Contractor shall complete and submit ATTACHMENT I-2 when returning the Confidential Information to the MHBE. Contractor agrees it shall cooperate with the MHBE’s Chief Compliance Officer with respect to whether to delete or retain, for the period specified in the Contract or required by applicable law, any Confidential Information stored electronically or otherwise held by the Contractor.
7. A breach of this Agreement by the Contractor or by the Contractor’s Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor’s Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State’s rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor’s Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys’ fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor’s Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor’s Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, 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 MHBE;
  - 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: _____	(MHBE)
By: _____ (SEAL)	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**NON-DISCLOSURE AGREEMENT - ATTACHMENT G-1**

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

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

**NON-DISCLOSURE AGREEMENT – ATTACHMENT G-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 Maryland Health Benefit Exchange and \_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”) is attached hereto and is hereby returned to the MHBE 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 H – NON-EXCHANGE ENTITY AGREEMENT**

This Non-Exchange Entity Agreement (this “Agreement”) is made by and between the Maryland Health Benefit Exchange, a public corporation and independent unit of the government of the State of Maryland (“MHBE”) and \_\_\_\_\_ (the “Non-Exchange Entity”), as of the Effective Date defined below. Each of MHBE and the Non-Exchange Entity is a “Party” to this Agreement and shall collectively be known as the “Parties”.

**RECITALS**

WHEREAS, MHBE is a state-based exchange established pursuant to the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152) (together with regulations promulgated pursuant thereto, the “ACA”), and particularly pursuant to 45 C.F.R. § 155.110, as well as pursuant to Title 31 of the Insurance Article of the Maryland Code Annotated, and

WHEREAS, the Non-Exchange Entity submitted a Proposal in response to that certain Maryland Health Benefit Exchange Request for Proposals: Small Business Health Options Program (SHOP) Administration Services, Solicitation No. MDM0031027115 (the “RFP”); and

WHEREAS, the Non-Exchange Entity has been notified of award or awarded a contract (the “Underlying Agreement”) pursuant to the RFP; and

WHEREAS, the execution of this Agreement is required pursuant to the RFP, which is incorporated into the Underlying Agreement and is a part thereof; and

WHEREAS, MHBE and the Non-Exchange Entity enter into this Agreement effective as of the effective date of the Underlying Agreement (the “Effective Date”), pursuant to which the Non-Exchange Entity shall provide services to perform the functions set forth in the Underlying Agreement, as well as in any subsequent Task Orders issued pursuant to the Underlying Agreement; and

WHEREAS, the contractual relationship between MHBE and the Non-Exchange Entity set forth in the Underlying Agreement may involve Access to Personally Identifiable Information (“PII”), as that term is defined herein, for purposes authorized under the ACA and, more particularly, under 45 C.F.R. § 155.200; and

WHEREAS, the Non-Exchange Entity’s Access to PII submitted to the Exchange shall make the entity a “Non-Exchange Entity”, as that term is defined in 45 C.F.R. § 155.260(b)(1); and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, MHBE and the Non-Exchange Entity each acknowledge and agree that they enter into this Agreement for the purposes, among others as may be detailed herein, of ensuring the confidentiality, privacy and security of data accessed by the Non-Exchange Entity or exchanged between the Parties under this Agreement and compliance with the requirements of the ACA, including 45 C.F.R. § 155.260(b)(2) and, regardless of whether otherwise applicable to the Non-Exchange Entity, 45 C.F.R. § 155.270(a); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements, Trading Partner Agreements or Non-Exchange Entity Agreements the Non-Exchange Entity and MHBE may have entered into prior to the date hereof;

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

**AGREEMENT**

A. **Recitals.** The Recitals are true and correct in all respects, are incorporated into this Agreement and form a part of this Agreement.

B. **Definitions.** For purposes of this Agreement, the Parties agree that the following definitions apply, regardless of whether the identified word is capitalized herein:

1. “**Breach**” shall mean the compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, loss of control, or any similar term or phrase that refers to situations where persons other than authorized users or for an other than authorized purpose have access or potential access to Personally Identifiable Information, whether physical or electronic.

2. “**Incident**” shall mean the act of violating an explicit or implied Security policy, which includes attempts (either failed or successful) to gain unauthorized Access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for processing or storage of data; and changes to system hardware, firmware, or software characteristic’s without the owner’s knowledge, instruction or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction. While certain adverse events (e.g., floods, fires, electrical outages, excessive heat, etc.) can cause system crashes, they are not considered incidents. An Incident becomes a Breach when there is the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.

3. “**Personally Identifiable Information**” or “**PII**” shall mean Personally Identifiable Information as defined by OMB Memorandum M-07-16 (May 22, 2007) (“PII refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”).

4. “**Unsecured PII**” shall include, but not be limited to, electronic PII that is not encrypted by use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.

C. **Permitted Uses and Disclosure of PII by the Non-Exchange Entity.**

1. Non-Exchange Entity may only use or disclose PII as necessary to perform the services set forth in the Underlying Agreement or as required by law.

2. Non-Exchange Entity agrees to make uses and disclosures and requests for PII consistent with MHBE’s policies and procedures regarding minimum necessary use of PII.

3. Non-Exchange Entity shall not use or disclose PII in a manner that would violate 45 C.F.R. § 155.260 if done by MHBE.

4. Except as otherwise limited in this Agreement, Non-Exchange Entity agrees to disclose PII for the proper management and administration, or legal responsibilities of the Non-Exchange Entity only when (i) such disclosures are required by law, or (ii) Non-Exchange Entity obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as

required by law or for the purpose for which it was disclosed to the person, and the person notifies the Non-Exchange Entity of any instances of which it is aware in which the confidentiality of the information has been breached.

5. Non-Exchange Entity shall not directly or indirectly receive remuneration in exchange for any PII of an individual. For the avoidance of doubt, this provision shall not preclude Non-Exchange Entity from receiving payment for the provision of services set forth in the Underlying Agreement or that are required by law.

6. Non-Exchange Entity shall not use or disclose PII for the purposes of marketing a product or service unless necessary to perform the services set forth in the Underlying Agreement or required by law. For the purposes of this provision, “marketing” shall mean a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

**D. Duties of the Non-Exchange Entity Relative to PII.**

1. The Non-Exchange Entity shall not use or disclose PII other than as permitted or required by the Agreement or as required by law.

2. The Non-Exchange Entity shall use appropriate administrative, technical and physical safeguards to protect the privacy of PII including, without limitation, by storing electronic PII in encrypted format.

3. Non-Exchange Entity shall use privacy and security standards at least as protective as MHBE has established and implemented for itself. For example, and without limitation, Non-Exchange Entity shall comply with the standards, implementation specifications, operating rules, and code sets adopted in 45 C.F.R. Parts 160 and 162, regardless of whether otherwise made applicable to Non-Exchange Entity pursuant to 45 C.F.R. § 155.270(a), to provide for the secure exchange of PII and to prevent use or disclosure of PII other than as provided in the Agreement. Further, Non-Exchange Entity shall:

- a. Comply with the Minimum Acceptable Risk Standards for Exchanges (MARS-E) as published in the following suite of documents: (1) Harmonized Security and Privacy Framework – Exchange Reference Architecture Supplement; (2) Minimum Acceptable Risk Standards for Exchanges – Exchange Reference Architecture Supplement; (3) Catalog of Minimum Acceptable Risk Controls for Exchanges – Exchange Reference Architecture Supplement; (4) ACA System Security Plan Procedures; (5) ACA System Security Plan Template; (6) ACA System Security Plan Workbook; and (7) IRS ACA Safeguard Procedures Report Template.
- b. Implement administrative, physical and technical safeguards to protect PII accessed pursuant to this Agreement and the Underlying Agreement from loss, theft or inadvertent disclosure.
- c. Safeguard PII at all times, regardless of whether or not the Non-Exchange Entity’s employee, contractor, or agent is at his or her regular duty station.
- d. Ensure that laptops and other electronic devices/media containing PII are encrypted and/or password protected.
- e. Send emails containing PII only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
- f. Limit disclosure of the information and details relating to a PII loss only to those with a need to know.
- g. Restrict access to PII only to those authorized employees, contractors, and agents who need such data to perform their official duties in connection with purposes identified in this Agreement and the Underlying Agreement; such restrictions shall include, at a minimum, role-based access that limits access to those individuals who need it to perform their official



duties in connection with the uses of data authorized in this Agreement and the Underlying Agreement (“authorized users”). Further, the Non-Exchange Entity shall advise all users who will have access to the data provided under this Agreement and the Underlying Agreement of the confidential nature of the data, the safeguards required to protect the data, and the civil and criminal sanctions for noncompliance contained in the applicable State and federal laws.

4. Non-Exchange Entity shall monitor, periodically assess, and update its Security controls and related system risks, to ensure the continued effectiveness of those controls.

5. Non-Exchange Entity shall inform MHBE of any change in its administrative, technical or operational environments to the extent any are material in the Underlying Agreement.

6. Non-Exchange Entity shall require any agents or downstream entities to which access to PII is granted in connection with the Underlying Agreement to adhere to the same privacy and Security standards and obligations to which Non-Exchange Entity hereby agrees.

7. Non-Exchange Entity shall report to MHBE any use or disclosure of PII not permitted by this Agreement or required by law, including any Breaches of PII of which it becomes aware. Non-Exchange Entity further agrees to report to MHBE any Incident of which it becomes aware without unreasonable delay, and in no case later than five (5) calendar days after the Incident. Further, Non-Exchange Entity shall report all suspected or confirmed Incidents involving loss or suspected loss of PII to MHBE within *one* (1) hour of discovery.

8. If the use or disclosure amounts to a Breach of Unsecured PII, the Non-Exchange Entity shall ensure its report:

- a. Is made to MHBE without unreasonable delay and in no case later than fifteen (15) calendar days after the Incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For the avoidance of doubt, Non-Exchange Entity must notify MHBE of an incident involving the acquisition, access, use or disclosure of PII in a manner not permitted under 45 C.F.R. § 155.260 or this Agreement within five (5) calendar days after an Incident even if Non-Exchange Entity has not conclusively determined within that time that the Incident constitutes a Breach as defined by this Agreement;
- b. Includes the names of the individuals whose unsecured PII has been, or is reasonably believed to have been, the subject of a Breach;
- c. Is in substantially the same form as **EXHIBIT 1** attached hereto; and
- d. Includes a draft letter for MHBE to review and approve prior to Non-Exchange Entity’s notification of the affected individuals that their unsecured PII has been, or is reasonably believed to have been, the subject of a Breach. The notification must include, to the extent possible:
  - i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - ii) The types of Unsecured PII that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, or other types of information that were involved);

- iii) Any steps the affected individuals should take to protect themselves from potential harm resulting from the Breach;
- iv) The toll-free telephone numbers and addresses for the major consumer reporting agencies;
- v) The toll-free telephone numbers, addresses and web site addresses for (1) the Federal Trade Commission; and (2) the Maryland Office of the Attorney General;
- vi) A brief description of what MHBE and the Non-Exchange Entity are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
- vii) Contact procedures for the affected individuals to ask questions or learn additional information, which shall include a telephone number, toll-free telephone number if one is maintained and postal address and may include an email address and web-site address.

9. To the extent permitted by the Underlying Agreement, Non-Exchange Entity may use agents and Subcontractors. The Non-Exchange Entity shall ensure that any Subcontractors or agents that create, receive, maintain, or transmit PII on behalf of Non-Exchange Entity agree to the same restrictions, conditions and requirements that apply to Non-Exchange Entity with respect to such information.

10. Non-Exchange Entity agrees to maintain and make available the information required to prove an accounting of disclosures of PII to MHBE or, as directed by MHBE, to an individual.

11. Non-Exchange Entity agrees to make its internal practices, books, and records, including PII, available to MHBE and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance with the ACA's privacy and security regulations as well as with the standards MHBE has established pursuant to 45 C.F.R. § 155.260, as set forth in 45 C.F.R. § 155.280(a).

12. Non-Exchange Entity agrees to mitigate, to the extent practicable, any harmful effect known to Non-Exchange Entity of a use or disclosure of PII by Non-Exchange Entity in violation of the requirements of this Agreement.

#### E. **Term and Termination.**

1. **Term.** The Term of this Agreement shall be effective as of the Effective Date defined above and shall terminate when all of the PII provided by MHBE to the Non-Exchange Entity, or the PII created or received by Non-Exchange Entity on behalf of MHBE, is destroyed or returned to MHBE, in accordance with the termination provisions in this Section E, or on the date MHBE terminates for cause as authorized in paragraph (2) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PII provided by MHBE to Non-Exchange Entity, or the PII created or received by Non-Exchange Entity on behalf of MHBE, Non-Exchange Entity's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with MHBE.

2. **Termination.** Upon MHBE's knowledge of a material breach of this Agreement by Non-Exchange Entity, MHBE:

- a. Shall provide an opportunity for Non-Exchange Entity to cure the breach or end the violation and, if Non-Exchange Entity does not cure the breach or end the violation within the time specified by MHBE, may terminate this Agreement; or

- b. May immediately terminate this Agreement if Non-Exchange Entity has breached a material term of this Agreement and MHBE determines or reasonably believes that cure is not possible.

3. Effect of Termination.

- a. Upon termination of this Agreement, for any reason, Non-Exchange Entity shall return or, if agreed to by MHBE, destroy all PII received from MHBE, or created, maintained, or received by Non-Exchange Entity on behalf of MHBE, which the Non-Exchange Entity maintains in any form. Non-Exchange Entity shall retain no copies of the PII. This provision shall apply to PII that is in the possession of Subcontractors or agents of Non-Exchange Entity.
- b. Should Non-Exchange Entity make an intentional or grossly negligent Breach of PII in violation of this Agreement or applicable law, MHBE shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

4. Survival. The obligations of Non-Exchange Entity under this Section shall survive the termination of this Agreement.

F. **Consideration.** Non-Exchange Entity recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by MHBE in choosing to continue or commence a business relationship with Non-Exchange Entity.

G. **Remedies in the Event of Breach.** Non-Exchange Entity hereby recognizes that irreparable harm will result to MHBE, and to the business of MHBE, in the event of breach by Non-Exchange Entity of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections C or D above, MHBE shall be entitled to enjoin and restrain Non-Exchange Entity from any continued violation of Sections C or D. Furthermore, in the event of breach of Sections C or D by Non-Exchange Entity, MHBE is entitled to reimbursement and indemnification from Non-Exchange Entity for MHBE's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Non-Exchange Entity's breach. The remedies contained in this Section G shall be in addition to, not in lieu of, any action for damages and/or any other remedy MHBE may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to MHBE at law or in equity.

H. **Modification; Amendment.** This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for MHBE to comply with the requirements of the ACA and, were it to become or imminently be applicable, the Health Insurance Portability and Accountability Act of 1996, as amended, together with all regulations promulgated thereto, and any other applicable law.

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

J. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, including, without limitation, Title 12 of the State Government Article of the Annotated Code of Maryland, but without regard to its choice of law provisions. This Agreement is not intended to modify the Parties' respective obligations to comply with all applicable federal, state and local laws, rules, and regulations, including but in no way limited to any and all laws, rules, and regulations related to privacy protection and confidentiality.

K. **Miscellaneous.**

1. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit MHBE to comply with the ACA and its provisions with respect to the privacy and security of PII.
2. Regulatory References. A reference in this Agreement to a section in the ACA, including any regulations promulgated thereto, means the section as in effect or as amended.
3. Notice to MHBE. Any notice required under this Agreement to MHBE shall be made in writing to:

Caterina Pañgilinan  
Chief Compliance Officer  
Maryland Health Benefit Exchange  
750 E. Pratt Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202  
Phone: (410) 547-1838  
Email: [caterina.pangilinan@maryland.gov](mailto:caterina.pangilinan@maryland.gov)

And:  
Greg Yaculak  
Chief Information Security Officer  
Maryland Health Benefit Exchange  
750 E. Pratt Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202  
Phone: (410) 409-8717  
Email: [greg.yaculak@maryland.gov](mailto:greg.yaculak@maryland.gov)

With a copy to:  
Sarah W. Rice, Counsel  
Office of the Attorney General  
Maryland Health Benefit Exchange Division  
300 West Preston Street, Ste. 302  
Baltimore, MD 21201  
Phone: (410) 547-1279; (410) 767-8670  
Email: [sarah.rice@maryland.gov](mailto:sarah.rice@maryland.gov)

4. Notice to Non-Exchange Entity. Any notice required under this Agreement to be given Non-Exchange Entity shall be made in writing to:

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

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

5. Method of Notice. Notices shall be sufficient if made by email and acknowledged within 24 hours by reply email, or delivered by a nationally recognized overnight carrier, such as FedEx, or via U.S. Mail-Certified Delivery, Return Receipt Requested.

6. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.

7. Severability. If any term contained in this Agreement 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 Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

8. Terms. All of the terms of this Agreement are contractual and not merely recital and none may be amended or modified except by a writing executed by all parties hereto.

9. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof. For the avoidance of doubt, such null and void prior agreements do not include the Underlying Agreement.

[Signatures next page(s)]

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

**MHBE:**

**NON-EXCHANGE ENTITY:**

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

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

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

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

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

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

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

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

Approved as to form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 2016

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

\_\_\_\_\_  
Assistant Attorney General  
Maryland Health Benefit Exchange

EXHIBIT 1  
**EXHIBIT 1 TO ATTACHMENT H - NON-EXCHANGE ENTITY AGREEMENT  
FORM OF NOTIFICATION TO MHBE OF  
BREACH OF UNSECURED PII**

This notification is made pursuant the Non-Exchange Entity Agreement between the MARYLAND HEALTH BENEFIT EXCHANGE, a public corporation and independent unit of State government (“MHBE”) and \_\_\_\_\_ (the “Non-Exchange Entity”).

Non-Exchange Entity hereby notifies MHBE that there has been a Breach of unsecured Personally Identifiable Information (“PII”) that Non-Exchange Entity has used or has had access to under the terms of the Non-Exchange Entity Agreement.

Description of the Breach:

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Date of the Breach: \_\_\_\_\_ Date of discovery of the Breach: \_\_\_\_\_

Does the Breach involve 500 or more individuals? Yes/No

If yes, do the people live in multiple states? Yes/No

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

Names of individuals affected by the Breach: (attach list)

List the types of unsecured PII that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number or other number):

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Description of what Non-Exchange Entity is doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches:

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Contact information to ask questions or learn additional information:

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

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

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

\_\_\_\_\_

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

Phone Number: \_\_\_\_\_



**ATTACHMENT I – AGENCY DELIVERABLE ACCEPTANCE FORM**

Agency Name: Maryland Health Benefit Exchange  
RFP Title: Small Business Health Options Program (SHOP) Administrative Services  
Contract Monitor: <<Name of Contract Manager>> and <<Phone Number >>

To: Contractor Name

The following deliverable, as required by Project Number (RFP #):MDM0031027115 has been received and reviewed in accordance with the RFP.

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

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

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

This deliverable:

Is accepted as delivered.

Is rejected for the reason(s) indicated below.

REASON(S) FOR REJECTING DELIVERABLE:

OTHER COMMENTS:

\_\_\_\_\_  
Contract Monitor Signature

\_\_\_\_\_  
Date Signed

**APPENDICIES TO THE RFP**

Attached as a separate document to the RFP:

**Appendix A – Small Business Health Options Program (SHOP) Reference Manual Version 3.0**