



CARRIER BUSINESS AGREEMENT 2019

PREAMBLE

The Maryland Health Benefit Exchange (“MHBE”) and _____ **[Insert Carrier name here]**, hereinafter referred to as “Carrier,” enter into this Carrier Business Agreement 2019 as of the Effective Date below to set forth the terms and conditions regarding Carrier’s sale of Qualified Plans through the Maryland Health Connection.

NOW THEREFORE, the Carrier and MHBE agree as follows:

I. DEFINITIONS

- A. “Accreditation” has the meaning set forth in §1311 of the Affordable Care Act and applicable regulatory guidance (45 CFR §156.275).
- B. “Annual Letter to Issuers” has the meaning set forth in COMAR 14.35.16.02.B.(1)
- C. “Board” has the meaning set forth in COMAR 14.35.01.02.B(5).
- D. “Carrier” has the meaning set forth in COMAR 14.35.01.02.B(8).
- E. “Carrier Business Agreement” or “Agreement” shall mean this Carrier Business Agreement 2019, as the same subsequently may be amended and extended from time to time. Where Carrier previously has entered into a Carrier Business Agreement that has not terminated by non-renewal or otherwise, this Carrier Business Agreement 2019 shall constitute an amendment and restatement of such Agreement.
- F. “Carrier Reference Manual” has the meaning set forth in COMAR 14.35.15.02.B(5).
- G. “COMAR” means the Code of Maryland Regulations.
- H. “Covered Persons” means persons enrolled in a Qualified Plan and entitled to coverage thereunder.
- I. “Effective Date” means the date on which this Carrier Business Agreement 2019 is executed by the last of the two Parties.
- J. “Essential Community Provider(s)” has the meaning set forth in COMAR 14.35.16.02.B.(2)..
- K. “Health Benefit Plan” has the meaning set forth in COMAR 14.35.01.02.B(24).
- L. “Individual Exchange” has the meaning set forth in COMAR 14.35.01.02.B(26).
- M. “Level of coverage” has the meaning set forth in §1302 of the Affordable Care Act, and applicable regulatory guidance.
- N. “Maryland Health Benefit Exchange” or “MHBE” has the meaning set forth under Insurance Article §31-101(e), Annotated Code of Maryland.
- O. “Maryland Health Connection” means the State-based insurance exchange operated by MHBE or an MHBE subcontractor, including the Maryland Individual Exchange and the SHOP Exchange.
- P. “MHBE Interim Procedures” means, as revised and supplemented from time to time, the procedures and standards approved by the MHBE Board, including, but not limited to, Dental and Vision Plan Certification; Carrier Requirements Related to Producer Compensation Data; ; and the MHBE

1 | *Support for this resource was provided by a grant from the Robert Wood Johnson Foundation’s State Health Reform Assistance Network program.*

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Appeals Process Interim Procedures for Carrier Appeals; and . The MHBE Interim Procedures are incorporated into and made a part of this Agreement by reference, until such time as they are replaced by MHBE regulations.

- Q.** “Party” means MHBE or Carrier, which, together, are the “Parties”.
- R.** “Provider Directory” has a meaning synonymous with that of “Network directory” set forth under Insurance Article § 15-112(a)(13), Annotated Code of Maryland.
- S.** “Qualified Dental Plan” has the meaning set forth in COMAR 14.35.01.02.B(45).
- T.** “Qualified Employee” has the meaning set forth in COMAR 14.35.01.02.B(46)..
- U.** “Qualified Employer” has the meaning set forth under Insurance Article §31-101, Annotated Code of Maryland.
- V.** “Qualified Health Plan (QHP)”has the meaning set forth in COMAR 14.35.01.02.
- W.** “Qualified Individual” has the meaning set forth in COMAR 14.35.01.02.
- X.** “Qualified Plan” or “QP” has the meaning set forth in COMAR 14.35.01.02.B(47).
 - 1. Qualified Plans include Qualified Dental Plans, Qualified Health Plans, and Qualified Vision Plans.
 - 2. Notwithstanding anything to the contrary herein, Qualified Plans shall be considered QHPs for purposes of the applicability of federal laws and regulations, including but not limited to 45 CFR Part 156 (*See*, in particular, 45 CFR §156.200(a)).
- Y.** “Qualified Vision Plan” has the meaning set forth under Insurance Article §31-101, Annotated Code of Maryland.
- Z.** “Quality Data” means the data collected by the Maryland Health Care Commission under COMAR 10.25.08“Race, Ethnicity, Language, Interpreter Need, and Cultural Competency” or “RELICC”, for purposes of Article §31-119(d)(2)(iii), Annotated Code of Maryland, means a subset of the Quality Data collected by the Maryland Health Care Commission.
- AA.** “SHOP Exchange” has the meaning set forth in COMAR 14.35.01.02.B(50).
- BB.** “State Reinsurance Program” means an MHBE – administered reinsurance program as set forth in COMAR 14.35.17.01 through 14.35.17.09.

II. REPRESENTATIONS AND WARRANTIES

Carrier represents and warrants the following and shall provide prompt written notice to the MHBE upon becoming aware of any changes in the representations and warranties as stated below.

- A. Corporate Status and License.** Carrier is a corporation licensed and in good standing to offer health insurance coverage in the State of Maryland, and, to the best of its knowledge, is not the subject of any pending actions, investigations or sanctions that it reasonably expects would place Carrier’s licensure in jeopardy.

- B. Obligation to Offer Plans through Maryland Health Connection.** By entering into this Agreement, Carrier conveys its intent to submit plans for approval and certification as QPs, and to offer such QPs for sale through Maryland Health Connection. Carrier acknowledges and agrees that, in accordance with §§ 15-1204.1 and 15-1303 of the Insurance Article, Annotated Code of Maryland, it is required to offer QPs through Maryland Health Connection if it meets certain reported total aggregate annual earned premium thresholds for individual and small group markets, respectively, through its insurance holding company system.
- C. Compliance with Laws.** Carrier warrants it is and agrees to remain in compliance with all applicable State and federal laws and regulations, relating to its performance under this Agreement and its obligations hereunder, including but not limited to the following laws and the applicable regulations promulgated thereunder: the Maryland Health Benefit Exchange Acts of 2011 and 2012; the Maryland Health Progress Act of 2013; the Patient Protection and Affordable Care Act Pub. L. No. 111-148 (as amended, including without limitation, by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, the “Affordable Care Act” or the “ACA”); the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); and the Mental Health Parity and Addiction Equity Act (“MHPAEA”), Pub. L. No. 110-343 (2008). For the avoidance of doubt, Carrier agrees that any reference to State or federal law or regulation shall mean the law or regulation as the same may be amended from time to time.
- D. Compliance with MHBE Policies and Procedures.** Carrier acknowledges and agrees that the MHBE has developed policies and procedures, set forth, without limitation, in the Code of Maryland Regulations, the Carrier Reference Manual, the Annual Letter to Issuers, on MHBE’s web site, and in MHBE Interim Procedures, and that such policies and procedures may be revised from time to time. Carrier shall comply with all MHBE policies and procedures as revised from time to time unless and until superseded by regulations.
1. The process for adopting changes to the policies and procedures, the Carrier Reference Manual and Annual Letter to Issuers will include notice and comment periods.
- E. Qualified Plans through Maryland Health Connection.** Carrier warrants that QPs that will be made available through Maryland Health Connection pursuant to this Agreement will have been approved for sale by the Maryland Insurance Administration (MIA), including rates and forms approval consistent with State and federal laws and regulations.
- F. Indemnification.**
1. Carrier shall hold harmless, indemnify and defend the MHBE from all negligent and detrimental acts of the Carrier, its agents and employees.
 2. The MHBE has no obligation to provide legal counsel or defense to the Carrier or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Agreement against the Carrier or its subcontractors as a result of or relating to the Carrier’s obligations under this Agreement.
 3. The MHBE has no obligation for the payment of any judgments or the settlement of any claims against the Carrier or its subcontractors as a result of or relating to the Carrier’s obligations under this Agreement.
 4. The Carrier shall promptly notify the MHBE of any claim, suit or action made or filed against the Carrier or its subcontractors regarding any matter resulting from, or relating to, the Carrier’s obligations under the Agreement, and in which any such claim, suit or action is also made against the MHBE. In the event that a claim, suit or action is made or filed against the MHBE as a result of or relating to the Carrier’s performance under this Agreement, the Carrier agrees

to assume the defense of any and all such suits and pay the incidental costs and expenses, subject to the right of the MHBE to provide additional legal counsel at the MHBE's own expense. This section shall survive expiration of this Agreement.

- G. Litigation.** Carrier represents and warrants that there is no outstanding litigation, arbitrated matter or other dispute to which Carrier is a party which, if decided unfavorably to the Carrier, would reasonably be expected to have a material adverse effect on Carrier's ability to fulfill its obligations under this Agreement.

III. CARRIER OBLIGATIONS

In addition to its other specific obligations provided elsewhere in this Agreement, including but not limited to the Carrier Reference Manual, Carrier agrees to the following terms and conditions:

- A. Certification.** Carrier agrees to meet State and federal Exchange certification requirements applicable to a QP issuer, including but not limited to those set forth in 45 CFR Part 156, Insurance Article §31-115, Annotated Code of Maryland, the Carrier Reference Manual, the Annual Letter to Issuers, COMAR 14.35.15 and any other applicable State regulations. Such requirements include, but are not limited to, provisions governing metal level participation, rate and form filing, cost sharing, premium rates, cancellation fees, network adequacy, and Accreditation.
- B. Accreditation.** Carrier agrees to comply with the Carrier Reference Manual, COMAR 14.35.15.03.B(2), the Annual Letter to Issuers and applicable State and federal laws and regulations as to Accreditation, including but not limited to requirements for the accreditation of stand-alone dental plans.
- C. Network Adequacy.** Carrier shall comply with network adequacy policies set forth in State and federal laws and regulations, including, but not limited to, 45 CFR §156.230, COMAR 14.35.15.09, and the Carrier Reference Manual.
- D. Benefits.**
1. QPs offered through the MHBE must meet applicable State and federal laws, regulations and guidance regarding Essential Health Benefits and any other benefit or plan certification requirements of the MIA, the State or federal government and the MHBE Board. These include, but are not limited to, those in 45 CFR 156 and COMAR 14.35.16. Carrier acknowledges that such Essential Health Benefits may be modified from time to time in accordance with State and federal laws, regulations and guidance.
- E. Essential Community Providers (ECPs).** Carrier shall comply with the essential community provider requirements set forth in State and federal laws and Plan Certification Standards approved by the MHBE Board, and regulations, including, but not limited to, 45 CFR §156.235 and COMAR 14.35.16.07, as well as the Carrier Reference Manual, and the Annual Letter to Issuers.
- F. Data Requirements.**
1. Transparency Data. Carriers must report information on key policies, practices, and data, including cost sharing data, set forth in State and federal laws, regulations, including COMAR 14.35.15.05K, 14.35.15.09A, 14.35.17.03C, and 14.35.17.05, and guidance applicable to exchanges, and the Carrier Reference Manual, the Annual Letter to Issuers.
 2. Quality Data. Carrier shall provide quality data as required of QP Issuers by State and federal laws and regulations, including COMAR 14.35.15.05K, 14.35.15.09A, 14.35.17.03C, and 14.35.17.05, the Carrier Reference Manual, and the Annual Letter to Issuers.

3. Operational Data. Carrier shall report information related to enrollment status, premium billing and collection data, grace periods, terminations, and other information as required by COMAR 14.35.15.05K, 14.35.15.09A, 14.35.17.03C, and 14.35.17.05, the Carrier Reference Manual, the Annual Letter to Issuers, and in the form and manner indicated in the Carrier Reference Manual and by MHBE in separate guidance.

G. Prior approval of premium rates and contracts. Carriers must obtain prior approval of premium rates and contracts from the MIA consistent with State and federal laws and regulations.

1. Carrier agrees to submit to the MIA initial rates, rate changes, and contract/certificate forms intended for use on Maryland Health Connection.
 - a. Carriers must provide the MIA with a justification as described in State and federal laws and regulations for any rate changes pursuant to the Carrier Reference Manual.
 - b. Changes to contracts must be approved by the MIA and certified by the MHBE prior to use on Maryland Health Connection.
2. In order to be eligible for sale on the Exchange, Carrier must submit rates and contracts to the MIA for prior approval according to the deadlines in the Carrier Reference Manual, Annual Letter to Issuers, and consistent with State and federal laws and regulations.

H. System for Electronic Rates and Form Filing Portal (“SERFF”). Carrier shall submit approved plans and data to the MHBE for final certification through a carrier administration portal in accordance with the process described in the Carrier Reference Manual and Annual Letter to Issuers. Carrier shall have a reasonable amount of time to verify the accuracy of the data as displayed for public use prior to public release. Carrier shall notify MHBE promptly of any errors, and MHBE shall correct such errors pursuant to MHBE’s Change Request policy.

I. Maryland Health Connection Plan Submissions.

1. Levels of coverage. Carrier agrees to comply with MHBE policies governing carrier QP offering limits for each level of coverage consistent with applicable State and federal laws and regulations, including COMAR 14.35.15.08C, 14.35.15.08D, 14.35.08E, and as reflected in the Carrier Reference Manual, and the Annual Letter to Issuers.
2. QP termination or amendment. In addition to State and federal laws and regulations applicable to terminating or amending QPs, and minimum participation standards through Maryland Health Connection, Carrier shall comply with MHBE policies and procedures governing the termination or amendment of a QP that is being offered for sale through Maryland Health Connection.

J. Premiums. In establishing a premium rate for a QP, Carrier shall use a rating methodology that complies with State and federal laws and regulations, and applies only the permissible rating factors set forth in §2701(a) of the Affordable Care Act, Maryland Health Benefit Exchange Act, and any payments from the State Reinsurance Program under COMAR 14.35.17.04.

1. Rates must be approved by the MIA in accordance with State law and the Carrier Reference Manual prior to being offered through Maryland Health Connection.
2. Carrier shall provide its MIA-approved rates to the MHBE in accordance with the format and procedures for submitting rates set forth in the Carrier Reference Manual, and the Annual Letter to Issuers.

3. Carrier shall charge the same premium rate for each Qualified Plan regardless of whether that Qualified Health Plan is offered through Maryland Health Connection consistent with COMAR 14.35.15.08E(3) and State and federal laws and regulations, through a producer outside, through an MHBE subcontractor, or directly from Carrier.
 4. Carrier acknowledges and agrees that the Carrier Reference Manual may set forth rating policies that differ for the individual and SHOP exchanges consistent with State and federal laws and regulations.
- K. Premium Increases.** In accordance with the requirements of 45 CFR §156.210 and §31-115 of the Maryland Health Benefit Exchange Act, and in addition to any other applicable rate filing requirements under State and federal law or regulation, Carrier shall provide the MHBE with prior notice of any QP premium increase, and post notice of such increase on Carrier Web site in accordance with State and federal laws and regulations.
- L. Plan and Network Data.** Carriers must provide plan and network data to the MHBE in a manner described in the Carrier Reference Manual, and/or Annual Letter to Issuers.
- M. Nondiscrimination.** Carrier shall not discriminate against enrollees and shall comply with State and federal requirements, including but not limited to those set forth in 45 CFR §155.120 regulating discrimination in benefit design.
- N.** Carrier must comply with COMAR 14.35.15.05 and shall not exclude any person from coverage under its QPs because of race, color, religion, national origin, disability, sex, gender identity, sexual orientation, marital status, health status, personal appearance, political affiliation, source of income, or age.
- O.** Carrier shall not treat persons enrolled in its QPs differently than persons enrolled in the same health benefit plans offered in the Maryland marketplace outside Maryland Health Connection, except as permitted by applicable laws and regulations or this Agreement.
- P. Service Area.** Carrier shall comply with service area policies set forth in State and federal laws and regulations, including, but not limited to, 45 CFR §155.1055, COMAR 14.35.16.05, the Carrier Reference Manual, and Annual Letter to Issuers.
- Q. Provider Directory.** Carrier shall make a Provider Directory available to Covered Persons and prospective Covered Persons on its Web site and in print format if requested by the member, as required by applicable State and federal laws and regulations, including COMAR 14.35.16.06, and the Carrier Reference Manual and Annual Letter to Issuers. The Provider Directory must be current, accurate and complete. Such Provider Directory shall consist, at minimum, of a current, accurate and complete list of providers participating, including participating Essential Community Providers, in its QPs, including providers who are accepting new patients, at least as often as required by Insurance Article, §15-112(p)(2)(ii), Annotated Code of Maryland. Current data must be submitted every 15 days in the form and manner specified in the Carrier Reference Manual, COMAR 14.35.16.06D, and Annual Letter to Issuers.
1. Provider information included in the Provider Directory must be submitted to the MHBE or its designee for analysis and verification pursuant to the Carrier Reference Manual.
 2. In accordance with §15-112(o), Carrier shall take action to investigate any reported omissions, errors, and inaccuracies in Provider Directory data reported by MHBE to the carrier and take corrective action, if necessary, to update the Provider Directory within 45 working days after receiving the notification.

- R. Recertification.** Carrier agrees to comply with a corrective action plan based on issues identified during the recertification process as described in the Carrier Reference Manual.
1. Nothing in this section limits Carrier’s right to seek appropriate remedies under State and federal laws and regulations.
- S. Marketing.** QPs offered through Maryland Health Connection shall comply with all State and federal marketing requirements, including, but not limited to those set forth in 45 CFR §156.225, Insurance Article §§27.202 – 27.205, Annotated Code of Maryland, and COMAR 31.12.01.09, 31.10.32.04, 14.35.15.05C and 14.35.15.05.D and those statewide marketing standards jointly developed by MIA and the MHBE for communications related to market reforms that are published as regulations, bulletins, or in the Carrier Reference Manual . Carrier shall not discourage enrollment of individuals with significant health needs. Carrier acknowledges and agrees that MIA and the MHBE statewide marketing standards shall require use of standardized text and protocols for communicating with transitioning enrollees; Carrier shall comply with all such communication requirements and protocols.
- T. Cooperation with State or Federal Agencies.** Carrier shall fully cooperate with any State or federal agencies necessary to fulfilling its obligations under this Agreement to the same extent to which Carrier would cooperate with the MHBE if the MHBE were performing its responsibilities directly.
- U. Cooperation with Other Entities.** Carrier shall fully cooperate with any MHBE subcontractors, including any contracted administrators, in fulfilling its obligations under this Agreement to the same extent to which Carrier would cooperate with the MHBE if the MHBE were performing its responsibilities directly.
- V. Appeals and Grievance.** Carrier shall have an appeals and grievance procedure for Covered Persons that complies with State and federal laws and regulations, including interim final rules for internal claims and appeals and external review process set forth in 45 CFR Part 147.136, as amended through regulation or technical guidance.
- W. Inspection and Retention of Records.** Carrier shall permit the MHBE or its designee, during regular business hours and upon reasonable notice, to examine and copy such Carrier records as may be necessary to carry out the purposes of this Agreement, as determined by the MHBE and permitted by State and federal laws and regulations. Records shall also be available for governmental regulatory agencies having authority to review such records. All records maintained by Carrier in connection with this Agreement shall be retained for a period of no less than 10 years as outlined in COMAR 14.35.15.03.B(5).
- X. Eligibility Determinations.** Carrier acknowledges and agrees that the MHBE, directly or through permissible contracting arrangements, shall make eligibility determinations, in accordance with applicable State and federal law, including but not limited to 45 CFR Parts 155, 156 and 157; §1311 of the Affordable Care Act; the Maryland Health Benefit Exchange Act; and COMAR 14.35.07, as well as the Carrier Reference Manual.
1. Eligibility Determinations shall be made with respect to:
 - a. Individuals seeking to purchase individual policies through Maryland Health Connection.
 - b. Employers seeking to offer coverage to their employees through the SHOP Exchange. Employer size for purposes of SHOP eligibility through Maryland Health Connection shall be determined in accordance with applicable State and federal laws, regulations and guidance.

Y. Eligibility Redeterminations.

1. Mid-benefit year. The MHBE shall redetermine eligibility of Qualified Individuals during the plan year in accordance with 45 CFR §155.330, State laws and regulations, including but not limited to COMAR 14.35.07. In the event that Carrier becomes aware of changes in a Qualified Individual's circumstance during a plan year that could lead to a change in such Qualified Individual's eligibility status, Carrier shall notify the MHBE within a reasonable time thereafter and the MHBE shall conduct an eligibility redetermination.
2. Annual Eligibility Redeterminations. Annual redeterminations shall be conducted in accordance with 45 CFR §155.335 and other applicable State and federal laws.

Z. Enrollment. Carrier agrees to abide by MHBE enrollment periods and coverage effective dates consistent with State and federal laws and regulations. With respect to Qualified Employer coverage, Carrier agrees to enroll all Qualified Employees consistent with the applicable employer plan year.

1. Carrier shall process enrollment in accordance with standards set forth in 45 CFR §156.265, applicable State laws and regulations, including but not limited to COMAR 14.35.07, as well as the Carrier Reference Manual and eligibility information supplied by the MHBE.
 - a. Carrier shall accept eligibility and enrollment information electronically using the data exchange formats, methods, and frequency, specified in the Carrier Reference Manual, and the 834 companion guide.
 - b. Carrier shall be responsible for notifying employees and individuals of their applicable coverage effective dates in accordance with 45 CFR §156.260 and 45 CFR §155.720.
 - c. Carrier shall comply with MHBE policies and procedures on re-enrollment, as set forth, without limitation, in the Carrier Reference Manual.

AA. Terminations. Carrier agrees to process enrollee coverage termination in a QP and provide grace periods and notices for such termination in accordance with applicable State and federal laws and regulations, including 45 CFR §§155.430, 156.270, 156.285 and COMAR 14.35.14.

1. In accordance with Insurance Article §31-108(d), Annotated Code of Maryland, Carrier shall not charge any enrollee a termination fee or penalty upon terminating coverage and enrolling in another type of minimum essential coverage, if the enrollee has become newly eligible for that coverage, or employer sponsored coverage has become affordable under the standards of §36b(c)(2)(C) of the Internal Revenue Code.

BB. Premium Billing and Collection.

1. Individual. Carrier agrees to accept payment of premiums by Qualified Individuals directly from a Qualified Individual for all payments in accordance with 45 CFR §155.240, State laws and regulations, including but not limited to COMAR 14.35.15.06, and the Carrier Reference Manual.
2. SHOP. In accordance with 45 CFR § 156.286, Carrier agrees to accept payment from a qualified employer or an enrollee, or a SHOP on behalf of a qualified employer or enrollee, in accordance with applicable SHOP requirements. The MHBE shall establish policies and procedures as to nonpayment grace periods and associated effective termination dates; the Carrier shall be responsible for terminating employers for nonpayment of premium.

- a. Carrier acknowledges and agrees that the MHBE may contract with other entities to perform some or all of the SHOP administrative functions. These contracts are solely for the purposes of administering SHOP and are not entered into for the benefit of any Carrier.
3. Carrier acknowledges and agrees that the MHBE is not responsible for pursuing unpaid individual premiums on behalf of Carrier.
4. Carrier shall participate in the premium billing and reconciliation process established by the MHBE, without limitation, pursuant to the Carrier Reference Manual and applicable State and federal laws and regulations, including COMAR 14.35.15.06.
5. Carrier may not impose a surcharge on an individual who uses a credit card or debit card in lieu of payment by cash, check or similar means.
 - a. For purposes of this section, “surcharge” means any means of increasing the regular price to a cardholder that is not imposed on a customer paying by cash, check or similar means. A discount or reduction from the regular price is not a surcharge.
6. Third Party Payers. Carrier agrees to accept third party payments on behalf of Qualified Individuals from third parties as set forth in 45 CFR § 156.1250.

CC. Reconciliation of Advance Premium Tax Credits and Out-of-Pocket Cost-Sharing Reduction. Carrier agrees to comply with State and federal laws and regulations regarding reduction of premiums charged and cost sharing, and notices associated with such reductions.

1. The Parties acknowledge and agree that the ACA provides for the Secretary of Treasury to reimburse Carrier for costs associated with reduced enrollee cost sharing, and to make advance payment of premium tax credits to Carrier on a monthly basis. Notwithstanding anything to the contrary herein, the MHBE will not participate in Carrier’s relationship with the IRS, but will provide timely and accurate information to Carrier and IRS regarding an enrollee’s eligibility for cost sharing reductions and federal premium tax credits.

DD. SHOP Exchange. Carrier shall comply with State and federal laws, regulations and guidance governing SHOP participation, including but not limited to the SHOP obligations set forth in the Carrier Reference Manual and Annual Letter to Issuers.

EE. Producer Requirements. Carrier shall comply with State and federal laws, regulations and guidance, including but not limited to COMAR 14.35.04, MHBE Interim Procedures, and the Carrier Reference Manual, governing producer appointment and compensation.

FF. Non-Exchange Entity Agreement. Carriers that do not have a current Non-Exchange Entity Agreement in place with MHBE shall execute, contemporaneously with this Carrier Business Agreement 2019, a Non-Exchange Entity Agreement in the form attached hereto as **Exhibit A** and incorporated herein.

GG. State Reinsurance Program. Carrier shall comply with all requirements of the State Reinsurance Program, including, but not limited to, State regulations, including COMAR 14.35.17, as well as those in the Carrier Reference Manual, as a condition precedent to participation in the State Reinsurance Program.

IV. MHBE OBLIGATIONS

In addition to obligations required under the Affordable Care Act and State law, and its other specific obligations provided elsewhere in this Agreement, the MHBE's obligations, rights, and responsibilities under this Agreement shall be as follows:

- A. Qualified Plans.** The MHBE will make Qualified Plans available to Qualified Individuals and Qualified Employers through Maryland Health Connection in a manner consistent with State and federal laws and regulations, including COMAR 14.35.16, the Carrier Reference Manual, and the Annual Letter to Issuers . Qualified plans must meet all applicable requirements in State and federal laws and regulations, including but not limited to §1311(d) of the Affordable Care Act and the Maryland Health Benefit Exchange Act.

 - 1. The MHBE shall allow Carrier to offer a Qualified Dental Plan through Maryland Health Connection that provides limited scope dental benefits as provided in the Maryland Health Benefit Exchange Act. Carrier may offer a QP without pediatric dental benefits provided the requirements of Insurance Article §31-115(c), Annotated Code of Maryland, are satisfied.
 - 2. The MHBE may not make available:
 - a. Any health benefit plan that is not a Qualified Health Plan; or
 - b. Any dental plan that is not a Qualified Dental Plan.
- B. Certification.** The MHBE shall certify health benefit plans submitted by Carrier as Qualified Health Plans if they meet the requirements described in Insurance Article §31-115, Annotated Code of Maryland, the Carrier Reference Manual, the Annual Letter to Issuers, and COMAR 14.35.16, the requirements of 45 CFR Part 156, and any other applicable State and federal laws or regulations.
- C. Accreditation.** The MHBE requires Accreditation for all participating carriers as described in COMAR 14.35.15.03B(2).
- D. Recertification.** The MHBE will review Carrier's performance and make recommendations on areas of improvement as described in the Carrier Reference Manual. MHBE shall maintain procedures for the recertification of health benefit plans as Qualified Health Plans, consistent with Maryland State law, the Carrier Reference Manual, the Annual Letter to Issuers, and COMAR 14.35.15.

 - 1. Nothing in this section limits Carrier's right to seek appropriate remedies under State and federal laws and regulations.
- E. Decertification.** The MHBE may decertify any plan that fails to meet the required certification standards, requirements for recertification or fails to comply with a corrective action plan. MHBE shall maintain procedures for the decertification of health benefit plans as Qualified Health Plans, consistent with State and federal law and regulations, including the Maryland Health Benefit Exchange Act and COMAR 14.35.16.11, as well as the Carrier Reference Manual.

 - 1. Carrier has the right to appeal decertification decisions in the manner developed by the MHBE.
- F. Privacy and Security.** The MHBE agrees to comply with all requirements relating to privacy and security policies set out in applicable State and federal laws and regulations.
- G. Data Standards.** The MHBE will provide Carrier with details and requirements for submitting and receiving data required in the Carrier Reference Manual.
- H. Carrier Participation.** Pursuant to Insurance Article Title 31, Annotated Code of Maryland, the MHBE will allow all willing licensed carriers to offer plans for certification through Maryland

Health Connection, as long as the carrier meets federal requirements and market participation rules established under State law.

- I. Contracts with Other State Agencies and Entities.** MHBE reserves the right to delegate certain responsibilities to other State agencies or non-State entities under memoranda of understanding or contractual agreements where permitted by State and federal law.
 - 1. MHBE shall take reasonable steps to ensure that State agencies and other contractors comply with the requirements of applicable State and federal laws and regulations, the Carrier Reference Manual and the MHBE Interim Procedures without any additional costs or obligations to Carrier.
- J. Additional Information.** Additional information to be provided by the MIA under its agreement with the MHBE to carry out obligations under this Agreement shall be provided through bulletins and regulations as appropriate, consistent with State and federal laws and regulations, the Carrier Reference Manual and MHBE Interim Procedures.
- K. SHOP Exchange.** In accordance with Insurance Article §31-111, Annotated Code of Maryland, the MHBE shall establish a SHOP Exchange through which Qualified Employers may access coverage for their employees at specified coverage levels and meet the standards for the federal qualified employer tax credit.
- L. State Reinsurance Program.** The MHBE shall administer the State Reinsurance Program pursuant to Insurance Article §31-117, Annotated Code of Maryland, COMAR 14.35.07 and any other applicable law or regulation.

V. TERM AND TERMINATION

- A. Term of Agreement.** This Agreement shall terminate on December 31, 2020 and shall automatically renew for successive one year terms unless: (1) there has been a change in applicable State or federal law that frustrates the purpose of the Agreement or renders it incapable of performance; (2) MHBE amends its Carrier contracting strategy as authorized by Insurance Article §31-110, Annotated Code of Maryland, or (3) the Agreement is otherwise terminated as provided herein.
- B. Termination.**
 - 1. Nonrenewal by Carrier. To the extent Carrier no longer meets the mandatory participation requirements set forth in the Maryland Insurance Code, Carrier may terminate this Agreement with the MHBE, by giving written notice of non-renewal delivered at least 120 days prior to the expiration of the Initial Term or the then calendar year. Written notice shall be delivered to small employers and individuals consistent with State and federal laws and regulations, including without limitation COMAR 14.35.15.07, and the Carrier Reference Manual.
 - 2. Termination for Cause. Either Party may terminate this Agreement upon breach by the other of any material terms or representation in this Agreement, subject to the following notice and cure requirements:
 - a. In the event either Party wishes to terminate this Agreement for cause, that Party shall give the alleged breaching Party 45 days (“Cure Period”) prior written notice, which notice shall include a description of the breach. If the alleged breaching Party does not provide a reasonable cure to the breach and within the Cure Period, the terminating Party shall provide the other Party with notice of termination. This Agreement shall then terminate

upon receipt of the written notice of termination or such later date or under such circumstances as may be specified in such notice.

- b. In the event the MHBE is the terminating Party, following the Cure Period, it may cease marketing Carrier's Qualified Plans, discontinue new enrollments, notify existing Covered Persons and small groups that the arrangement with Carrier is terminating, and arrange for appropriate transition of Covered Persons and small groups in accordance with MIA and MHBE requirements, consistent with State and federal laws and regulations. This Agreement shall not be terminated until the Cure Period expires, and notice shall not be sent to Covered Persons unless and until the Cure Period has expired without resolution of the matter.
 - i. MHBE reserves the right to suspend marketing and new enrollments, and notify Covered Persons and small groups of termination prior to the end of the Cure Period if the matter could cause harm to consumers.
 - c. Notwithstanding anything to the contrary herein, Carriers terminating for cause remain subject to the mandatory Maryland Health Connection participation requirements set forth in §§15-1204.1 and 15-1303 of the Insurance Article, Maryland Annotated Code.
3. Termination Upon Certain Events. The MHBE may, by giving written notice to the Carrier, terminate this Agreement immediately upon the occurrence of any of the events below:
- a. Carrier's license or Accreditation required to be maintained in order to carry out its obligations under this Agreement expired or are suspended, revoked or restricted so as to prevent Carrier from legally fulfilling its obligations under the Agreement.
4. Non-Availability of Funding. If the General Assembly fails to appropriate funds or if funds are not otherwise made available for the continued performance for any fiscal period of the MHBE operations, this Agreement shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the MHBE's rights or the Carrier's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both the Carrier and the MHBE from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The MHBE shall notify the Carrier as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.
- C. Upon Termination of This Agreement.** In the event of non-renewal or other termination of this Agreement, Carrier agrees to comply with State and federal laws and regulations, Carrier Reference Manual and MHBE Interim Procedures addressing transition of Covered Persons and small groups.
- D. Not a Novation.** For the avoidance of doubt, nothing in this Carrier Business Agreement 2019 shall be construed to effect a novation of the Agreement, pursuant to which the Parties rights and obligations remain in full force and effect, as the same may be amended herein.

VI. ADDITIONAL TERMS AND CONDITIONS

A. Amendments.

1. The Parties agree to negotiate in good faith to cure any omissions, ambiguities, or manifest errors herein.

2. The Parties agree and acknowledge that this Agreement shall be interpreted in a way that allows MHBE to ensure its compliance with any existing or newly enacted laws and/or regulations, or with any applicable order of any State or federal agency or court. Any such law, regulation or applicable order shall be effective for the purposes of this Agreement as of the date the law, regulation or order becomes or became effective. All references in this Agreement to State and federal law or regulation shall mean the State or federal law or regulation as the same may be amended from time to time.
 3. Any other amendment to this Agreement requires mutual consent of both Parties, in the form of a written amendment, signed by both Parties, and attached hereto.
 4. Notwithstanding anything to the contrary herein, the Parties acknowledge and agree that the MHBE may revise its policies and procedures as set forth COMAR regulation, the Carrier Reference Manual, and the Annual Letter to Issuers, and Carrier agrees to comply with any such revisions. Such revisions shall include notice and comment periods.
 5. The carrier contracting strategy described in the Maryland Health Benefit Exchange Act will be reassessed and may be modified to address evolving market conditions consistent with State and federal laws and regulations.
- B. Adequate Assurances.** If the MHBE is aware of facts or circumstances that it reasonably believes would cause Carrier not to be willing or able to perform its obligations under this Agreement, the MHBE may request, and Carrier shall provide within a reasonably prompt period of time, in light of the circumstances, after receipt of a request, adequate assurances, acceptable to the MHBE in its reasonable discretion, of Carrier's continuing ability and willingness to perform its obligations, or such portion thereof, as required by this Agreement.
- C. Material Subcontractors.** Carrier's Material Subcontractors providing services associated with this Agreement shall be subject to the same terms and conditions as the Carrier, as applicable. Carrier shall remain fully responsible for meeting all the terms and conditions of this Agreement regardless of whether Carrier subcontracts for performance of any responsibilities under this Agreement.
1. For purposes of this Agreement, "Material Subcontractor" means a third party with which Carrier contracts to perform a function required by the Agreement to be performed by the Carrier.
 2. Carrier shall provide prior written notice to the MHBE of any Material Subcontracting arrangement.
- D. Independent Contractors.** The Parties intend to create an independent contractor relationship and nothing contained in this Agreement shall be construed to make either the MHBE or Carrier partners, joint ventures, principals, agents or employees of the other. No officer, director, employee, agent, affiliate or contractor retained by Carrier to perform work related to this Agreement will be deemed to be an employee, agent or contractor of the MHBE. Neither Party will have any right, power or authority, express or implied, to bind the other.
- E. Limitation on Liability.** The MHBE shall have no liability or responsibility for Carrier's provision or arrangement of, or failure to provide or arrange for, any health care services, supplies, medications, or facilities to Covered Persons under this Agreement.
- F. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

- G. Entire Contract.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof including all Schedules, Appendices, Exhibits, Attachments, the Carrier Reference Manual, MHBE Interim Procedures, the Annual Letter to Issuers, and amendments hereto, and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein. The terms of this Agreement shall prevail notwithstanding any variances with the terms and conditions of any written or verbal communication subsequently occurring, except as otherwise provided herein.
- H. No Third Party Enforcement.** No person not executing this Agreement shall be entitled to enforce this Agreement against a Party hereto regarding such Party's obligations under this Agreement. Notwithstanding the foregoing, nothing herein is intended to affect enforcement rights existing under State and/or federal law, including but not limited to regulatory enforcement and/or private rights of action.
- I. Existing Rights and Authority.** No provision of this Agreement shall affect existing authority of other State agencies, nor any individual rights related to a cause of action against a State agency.
- J. Effect of Invalidity of Clauses.** If any clause or provision of this Agreement is in conflict with any State or federal law or regulation, that clause or provision shall be null and void and any such invalidity shall not affect the validity of the remainder of this Agreement.
- K. Waiver.** The waiver by either Party of any part of this Agreement or of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver in any other respect, to any other extent, or at any other time.
- L. Corrective Action Plan.** At any point during this Agreement, if the MHBE identifies, in its sole judgment, any deficiency related to plan certification requirements, the MHBE will engage with Carrier to develop a commercially feasible corrective action plan to correct such deficiency. Carrier shall submit any such corrective action plan to the MHBE and shall within three days of any written request, commence to implement such corrective action plan only as approved or modified by the MHBE.
- M. Contract Officers.**
1. The MHBE designates the Executive Director of the MHBE as its Contract Officer, who may appoint a designee. She or her designee shall be authorized and empowered to represent the MHBE with respect to all matters relating to the Agreement. Such designation may be changed during the period of this Agreement only by written notice.
 2. Carrier designates [individual authorized to enter into binding agreement on behalf of Carrier] as its Contract Officer. S/he or his/her designee shall be authorized and empowered to represent Carrier with respect to all matters relating to the Agreement. Such designation may be changed during the period of this Agreement only by written notice to the MHBE.
- N. Venue.** Suits or proceedings under this Agreement must be initiated in the State of Maryland Circuit Court for Baltimore City. Service will be in accordance with State or federal law as applicable.
- O. Maryland Law.** Except as otherwise noted, this Agreement shall be construed, interpreted and enforced according to the laws of the State of Maryland.
- P. Notice.** Notices to the Parties as to any matter under this Agreement will be sufficient if given in writing and sent by certified mail (return receipt **requested**), postage prepaid, or delivered in hand or by an overnight delivery service with acknowledgment of receipt:

To the MHBE: Michele Eberle, Executive Director, Maryland Health Benefit Exchange, 750 E. Pratt St., 6th Floor, Baltimore, 21202.

To the Carrier: [Carrier to write in notice party name and address here]

Q. Severability. In the event that any provision of this Agreement or the applicability thereof to any person or circumstance is held invalid by competent judiciary or regulatory authority, it shall not affect the validity or enforceability of any other provision of this Agreement. In the event a provision of this Agreement is severed by a judiciary or regulatory authority, the Parties will negotiate in good faith an amendment to this Agreement that addresses the consequences of any such severance

R. Confidentiality.

1. Except where superseded by State or federal transparency requirements, the Parties agree (1) to keep all non-public information arising from or related to this Agreement confidential (Confidential Information); (2) to hold all Confidential Information related to this Agreement in confidence to the same extent and with at least the same degree of care as the Party protects its own confidential or proprietary information of like kind and import, but in no event using less than a reasonable degree of care.
2. Notwithstanding the foregoing, (1) Carrier acknowledges and agrees that the MHBE is subject to laws that may compel the MHBE to disclose information, such as the Maryland Public Information Act; and (2) the Parties shall be permitted to disclose relevant aspects of Confidential Information to their officers, agents, and subcontractors only to the extent such disclosure is reasonably necessary for the performance of their duties and obligations under this Agreement and such disclosure is not prohibited by applicable law. For the avoidance of doubt, to the extent this provision conflicts with any provision of the Non-Exchange Entity Agreement between MHBE and the Carrier, the Non-Exchange Entity Agreement shall prevail as to the Carrier obligations with respect to confidentiality and privacy.

S. Use of Party Names and Logos. Each Party's use of the other Party's trademarks, brand names, seals, logos and similar instruments, including those marks licensed by the Party, shall be subject to prior review and approval by the other Party, provided, however, that such approval shall not be unreasonable denied. Carrier and the MHBE agree to work cooperatively to develop mutually agreeable guidelines for said review and approval.

[Signatures next page(s)]

SIGNATURE PAGE

This Carrier Business Agreement 2019 is entered into between [CARRIER name here] and the Maryland Health Benefit Exchange and is made effective as of the Effective Date as t forth above.

MARYLAND HEALTH BENEFIT EXCHANGE:

[CARRIER]:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form and legal sufficiency
this ____ day of _____, 2019.

By: _____
Assistant Attorney General
Maryland Health Benefit Exchange