



REQUEST FOR PROPOSALS (RFP)

MHBE FULFILLMENT SERVICES

SOLICITATION NO. MDM0031032279

Issue Date: May 26, 2017

NOTICE

A Prospective Offeror that has received this document from the Maryland Health Benefit Exchange website <http://www.marylandhbe.com/about-us/procurement/> or <https://emaryland.buyspeed.com/bsol/>, 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: MHBE Fulfillment Services

Solicitation No: MDM0031032279

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: _____

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: **MHBE FULFILLMENT SERVICES**

Solicitation Number: **MDM0031032279**

RFP Issue Date: **May 26, 2017**

Procurement Officer: **Michelle Compton**
Maryland Health Benefit Exchange
750 East Pratt Street, 16th floor
Baltimore, MD, 21202
Phone: 410-547-8152
e-mail: hix.procurement@maryland.gov

Contract Monitor: **LeeAnn Sapp, Manager, Consolidated Service Center**
Maryland Health Benefit Exchange
750 East Pratt Street, 16th floor
Baltimore, MD, 21202

Proposals are to be sent to: **Michelle Compton, Procurement Officer**
Maryland Health Benefit Exchange
e-mail: hix.procurement@maryland.gov

Note: Proposals are to be emailed to the Procurement Officer at the e-mail address above

Pre-Proposal Conference: **June 2, 2017 1:00 PM Local Time**
901 Elkridge Landing Road, 2nd Floor
Linthicum Heights, MD 21090

Closing Date and Time: **June 20, 2017, 2:00 PM, Local Time**

MBE Subcontracting Goal: **0%**

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Maryland Health Benefit Exchange (MHBE) is issuing this Request for Proposals (RFP) to procure the services of a qualified Offeror to perform fulfillment services.
- 1.1.2 It is MHBE's intention to obtain services, as specified in this RFP, through a Contract between the selected Offeror and the MHBE. The anticipated duration of services to be provided under this Contract is two (2) years with three (3), one-year renewal options. See Section 1.4 for more information.
- 1.1.3 The MHBE intends to make a single award as a result of this RFP. See RFP Section 1.15 for more information.
- 1.1.4 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. 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
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.
Agency	The Maryland Health Benefit Exchange (MHBE).
Annual Right to Change (ARC)	Recipient who has been continuously enrolled in the same MCO during the preceding twelve (12) months may change to a different MCO during this period.
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).
COBRA	Consolidated Omnibus Budget Reconciliation Act.
COMAR	Code of Maryland Regulations (available on-line at www.dsd.state.md.us).

Consolidated Service Center (CSC)	Formal and contractual name for the call center.
Consumer	Individual seeking assistance in determining eligibility for health care coverage and/or enrollment assistance for themselves and/or their household.
Contract	The Contract awarded to the successful Offeror(s) pursuant to this RFP, the form of which is attached to this RFP as Attachment A.
Consumer Portal (CP)	Consumer Portal is the public facing website component of the HBX System that offers users the ability to apply for health insurance coverage online.
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(s)	The successful Offeror(s) awarded the Contract as a result of this RFP.
Coverage Month	A month in which qualified plan coverage is effective.
CRM Incident	Term used to refer to a record of a consumer request in the CRM. The Incident is assigned a reference number.
Customer Service Representatives (CSRs)	Official name of fulfillment service center staff managing data entry and processing of inbound and outbound mail.
Customer Relationship Management (CRM)	Database utilized by all Exchange workers to record and work on customer-related transactions.
Disenrollment/Transfer	The process of disenrolling a member from one MCO and enrolling that same member into another MCO with one system transaction.

eMaryland Marketplace (eMM)	Maryland’s online procurement system.
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.
Enrollment Broker	Current entity that performs managed care enrollment functions. These functions will be incorporated into roles and functions within the MHBE call center.
Go-Live Date	The date on which the Contractor(s) must begin providing all services required by this solicitation.
HBX	Synonymous with “System”. See definition of “System”.
Head of Household (HOH)	The head of a household consisting of one or more HealthChoice recipients. The HOH is the only consumer in the household who can choose a Managed Care Organization and Primary Care Provider for all household members.
HealthChoice	The Medical Assistance statewide mandatory Managed Care program administered by the Department pursuant to COMAR 10.09.62 - 10.09.73 and Title XIX of the Social Security Act and other applicable laws and waivers to furnish and to pay for medical services for eligible individuals.
Health Service Needs Information Form (HSNI)	Instrument designed to establish the eligible Medicaid consumer’s basic health status and identify consumers in need of expedited contact or services from their selected MCO.
Inbound File Processing	Generation of files by the interfacing systems which are processed by the HBX.
Incident	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 the processing or storage of data; and changes to system hardware, firmware, or software characteristics 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, 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 or personal health information, whether physical or electronic.
Incumbent Contractor	The Contractor currently performing the Fulfillment operations services to be assumed by Contractor as a result of this RFP.
IRS Form 1095-A	IRS tax form that serves as proof that Quality Health Plan consumers and members of household met the Affordable Care Act requirement to have health coverage. The form is also used to file a federal income tax return and report any received tax credits.
IRS Form 1095-B	IRS tax form that serves as proof that Medicaid consumers and members of household met the Affordable Care Act requirement to have health coverage.
Key Personnel	All personnel identified in the solicitation as such, or personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract. See RFP Section 1.23 and 4.4.2.7. Key Personnel shall include, Operations Manager or Director and Fulfillment Supervisor.
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.
Managed Care	A system of primary care and other medical services that are provided and coordinated by HealthChoice providers in accordance with the provisions of COMAR 10.09.62 -10.09.73 Maryland Medicaid Managed Care Program.
Managed Care Organization (MCO)	An entity which DHMH contracts to provide primary care and certain other medical services to HealthChoice recipients on a capitated (per member per month) basis.
MCO Enrollment Packet	Packet of MCO selection materials mailed to consumers who are eligible for the HealthChoice Program.

MCO Enrollment Form	Paper application used by consumers to select their MCO. This form may be mailed out to consumers upon request and/or received via mail for data entry into HBX.
Maryland Health Benefit Exchange (MHBE or Exchange or Agency)	The unit of Maryland State government issuing this RFP.
Maryland Health Connection (MHC)	The MHBE web-based eligibility and enrollment application.
Material Disruptions	Contractor facility or system-related problems that prevent Contractor from meeting fulfillment production obligations for a time period greater than 8 business hours.
Medicaid	The program administered by the State under Title XIX, which provides comprehensive medical and other health related care for categorically eligible and medically needy consumers. This program is also referred to as “Medical Assistance”.
Maryland Children’s Health Program (MCHP)	This program gives full Medicaid benefits to eligible children up to age 19.
Modified Adjusted Gross Income (MAGI) Eligibility	Under the Affordable Care Act, the figure used to determine eligibility for premium tax credits and other savings for Marketplace health insurance plans and for Medicaid and the Children's Health Insurance Program (CHIP).
Non-MAGI Eligibility	Under the Affordable Care Act, Medicaid categories exempt from applying the MAGI methodology to establish eligibility.
Normal State Business Hours	Normal State Business Hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
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.
Notice to Proceed Date	The date specified in an NTP for work on the Contract to begin
Offeror	An entity that submits a proposal in response to this RFP

Open Enrollment Period	Period of time for consumers to renew and sign up for quality health plan coverage for the new year. Typically a 3-month period during November- January. Consumers can sign up for coverage to begin effective January, February and March.
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.
Primary Care Provider (PCP)	A practitioner (listed in COMAR 10.09.66.05) who is the primary coordinator of care for the HealthChoice consumer and whose responsibility is to provide accessible, continuous, comprehensive, and coordinated health care services covering the full range of benefits required by the Maryland Medicaid Managed Care Program.
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.
Quality Health Plan (QHP)	Under the Affordable Care Act (ACA) is a Qualified Health Plan (QHP) is an insurance plan that is certified by the Health Insurance

	Marketplace, and meets ACA requirements such as coverage of essential health benefits.
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.
Service Level Agreement Activation Date(s)	The date(s) on which the SLA requirements shall commence under the Contract; see RFP § 3.4.2
Service Level	Service Level measures the percentage of calls answered within a certain number of seconds from calls offered.
State	The State of Maryland, including the MHBE and the Department of Health and Mental Hygiene (DHMH).
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 or HBX	The MHBE's underlying mission critical IT systems and applications are collectively referred to as the HBX System ("HBX") or the "System". The System has two major web application components, namely, the Consumer Portal (CP) that the Maryland residents access to seek health insurance coverage, and the Worker Portal (WP) that supports approximately 1,800 social and health exchange workers, producers and navigators to provide various services for the consumers.
System Availability	The period of time the System is operational and accessible.
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 for services 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).

Working Day(s)	Same as “Business Day(s)”.
Worker Portal or WP	Worker Portal is the non-public facing website component of the HBX system that provides the capabilities for the MHBE authorized workers to facilitate the health insurance enrollment process.

1.3 Contract Type

The Contract resulting from this solicitation shall be an Indefinite Quantity Contract with fixed price in compliance with COMAR 21.06.03.06. Operational costs shall be a fixed monthly cost and the per item rate shall be a fixed unit cost as described in the Financial Proposal (ATTACHMENT E).

1.4 Contract Duration

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is fully executed by both Parties (the “Commencement Date”), following any required approvals of the Contract, including approval by the MHBE Board of Trustees.
- 1.4.2 The duration of the Contract will be for a base term of two years from the Commencement Date for the provision of all services required by the Contract and the requirements of this solicitation. The Contract may be extended for three periods of one year each at the sole discretion of the MHBE and at the prices quoted in the Financial Proposal for Option Years.
- 1.4.3 During the Transition-In Period (refer to RFP Section 3.3), the Contractor shall perform Transition-In activities such as are necessary to enable the Contractor to begin the successful performance of all Contract activities as of the end of the Transition-In period. The Transition-In period shall be no longer than 90 calendar days. Contractor shall perform all activities required by the Contract, including the requirements of this solicitation, the offerings in its Technical Proposal, and any activities it performs during the Transition-In Period, for the compensation described in its Financial Proposal.
- 1.4.4 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 MHBE for purposes of this solicitation prior to the award of any Contract is the Procurement Officer at the address listed below:

Ms. Michelle Compton
 Procurement Officer
 Maryland Health Benefit Exchange
 750 East Pratt Street, 16th Floor
 Baltimore, MD 21202

Phone Number: 410-547-8152
E-mail: 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:

Ms. LeeAnn Sapp
Manager, Consolidated Service Center,
Maryland Health Benefit Exchange
750 East Pratt Street, 16th Floor
Baltimore, MD 21202
Phone Number: 410-547-8150
Email: leeann.sapp@maryland.gov

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

1.7 Pre-Proposal Conference

A Pre-Proposal Conference (the Conference) will be held on **June 2, 2017 beginning at 1:00 PM** Local Time, at 901 Elkridge Landing Road, Linthicum Heights, MD 21090, Second Floor, Training Room. All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

The Conference will be summarized. As promptly as is feasible subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace and the MHBE website. See RFP Section 1.8.

In order to assure adequate seating and other accommodations at the Conference, please e-mail the Pre-Proposal Conference Response Form to the attention of the Procurement Officer no later than **4:00 PM Local Time on May 31, 2017** (final date for submission of Attachment D). The Pre-Proposal Conference Response Form is included as **Attachment D** to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer no later than (final date for request for special accommodations). The MHBE will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

Each Offeror is required 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 Department 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 prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address: hix.procurement@maryland.com. Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer (**see above email address**) in a timely manner. Questions are requested to be submitted by **2:00 PM, June 14, 2017**. 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 Sealed Proposals method under Section II.B of MHBE’s Procurement Policies and Procedures.

1.11 Proposals Due (Closing) Date and Time

Proposals, in the form set forth in Section 4.2 “Proposals” must be received by the Procurement Officer at the e-mail address listed on the Key Information Summary Sheet, no later than **June 20, 2017, 2:00 PM** Local Time on 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.

Proposals must be submitted by e-mail. Proposals will not be opened publicly.

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 4.4.2.2 "Claim of Confidentiality"). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

The Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP for providing the services as specified in this RFP. In order for MHBE to achieve its overall minority participation goal, MHBE may recommend and award a contract to a certified minority business enterprise or to a person whose offer otherwise reflects the greatest amount of certified MBE or minority participation in the event of two or more offers in which the Offerors' Technical and Price proposals are determined by the Procurement Officer to be equally most advantageous to the State. The MBE documentation required by COMAR 21.11.03.10B(2)-(6) shall be used in making this determination. 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 related, to this solicitation shall be subject to the provisions of Section VII of the MHBE Procurement Policies & Procedures. Any dispute related to the Contract shall be subject to the Disputes 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 ("Role") must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see Section 1.33 "Minority Business Enterprise Goals").

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 Contractor shall 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 Substitution of Personnel

This section is not applicable for this RFP.

1.24 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 RFP **Attachment A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal may be rejected if it takes exception to these terms or fails to state that it has taken no exceptions (reference RFP Section 4.4.2.4).**

1.25 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.

1.26 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor shall 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. This Contract Affidavit is also required to be submitted by the Contractor with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), note that a business entity that is organized outside of the State of Maryland is considered to be a "foreign" business.

1.27 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.

1.28 Verification of Registration and Tax Payment

Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. 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.

1.29 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.

1.30 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

1.31 Prompt Payment Policy

This procurement and the Contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor must comply with the prompt payment requirements outlined in the Contract, Section 29.3 "Prompt Payment" (see **Attachment A**). Additional information is available on GOMA's website at:

<http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf>

1.32 Electronic Procurements Authorized

- A. Unless otherwise prohibited by law, MHBE may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the

Maryland Uniform Electronic Transactions Act, Md. Code Ann., 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 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/bsol/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 “Payments by Electronic Funds Transfer”), 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 or e-mail to issue:
 - (a) the solicitation (RFP);
 - (b) any amendments;
 - (c) pre-Proposal conference documents;
 - (d) questions and responses;
 - (e) communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
 - (f) notices of award selection or non-selection; and
 - (g) the Procurement Officer’s decision on any Bid protest or Contract claim.
 2. An Offeror or potential Offeror may use e-mail to:
 - (a) ask questions regarding the solicitation;
 - (b) submit the Proposal (including technical and financial);
 - (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, but only on the terms specifically approved and directed by the Procurement Officer;
 - (d) submit a "No Bid/Proposal Response" to the solicitation; and
 - (e) submit documents determined by the MHBE to require original signatures (contract execution or modifications).
 3. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
 4. Notwithstanding the foregoing provisions of this Section 1.32, MHBE requires all Transmittal Letters, Proposals and any Contract resulting from this RFP to contain original signatures executed in ink by a person authorized to bind the Contractor. However, the Contractor may scan and submit electronically any document containing such original signature(s). The Contract 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.

1.33 Federal Funding Acknowledgement

- 1.33.1 There are programmatic conditions that apply to this Contract due to Federal funding (refer to RFP **Attachment F**).
- 1.33.2 The total amount of Federal funds allocated for the MHBE is \$47.3 million in Maryland State fiscal year 2017. This represents 57.5% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 1.33.3 This Contract contains federal funds. The source of these federal funds is Medicaid. The CFDA number is 93.778. Execution of a Contract awarded as a result of this RFP indicates the Contractor's agreement with all federal funding terms and conditions that apply to contractors receiving federal funds from Medicaid, including the provisions described in RFP **Attachment F**.

1.34 Conflict of Interest Affidavit and Disclosure

Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (RFP **Attachment G**) 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 G** 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.

1.35 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 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.

1.36 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 I**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Proposal. 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 and make the award to the responsible Bidder/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

1.37 HIPAA — Business Associate Agreement

Based on the determination by MHBE that certain functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the recommended awardee shall

execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and in substantially similar form to that set forth in **Attachment K**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. Should the Business Associate 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 MHBE Board of Trustees, may withdraw the recommendation for award and make the award to the responsible Bidder/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

1.38 Nonvisual Access

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

1.39 Mercury and Products That Contain Mercury

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

1.40 Performance Bond

- 1.40.1 The successful Offeror shall deliver a performance bond or other security acceptable to MHBE to the MHBE within five (5) working days after notification of recommended award (the "Performance Bond").
- 1.40.2 The successful Offeror must submit a Performance Bond in the amount of \$500,000, guaranteeing that the Contractor shall well and truly perform the Contract.
- 1.40.3 The Performance Bond shall be in the form provided in RFP **Attachment J** and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the State, or shall be in the form of another security acceptable to MHBE. Acceptable security for the Performance Bond is limited to a bond in a form satisfactory to the MHBE underwritten by a surety company authorized to do business in this State.
- 1.40.4 The Performance Bond shall be maintained throughout the term of this Contract, and renewal option periods, if exercised. Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the MHBE. This Performance Bond shall also secure liquidated damages.
- 1.40.5 The Performance Bond may be renewable annually. The Contractor shall provide to the MHBE, 30 days before the annual expiration of the Performance Bond, confirmation from the surety that the Performance Bond will be renewed for the following year. Failure to timely provide this notice shall constitute an event of default under the Contract. Such a default may be remedied if the Contractor obtains a replacement bond that conforms to the requirements of the Contract and provides that replacement bond to the MHBE prior to the expiration of the existing Performance Bond.
- 1.40.6 The cost of this Performance Bond is to be included in the total price proposed and is not to be proposed and will not be recoverable as a separate cost item.
- 1.40.7 After the first year of the Contract, the Contractor may request a reduction in the amount of the Performance Bond. The amount and the duration of the reduction, if any, will be in the MHBE's sole discretion. If any reduction is granted, the MHBE shall have the right to increase the amount of the Performance Bond to any amount, up to the original amount, at any time and at the MHBE's sole discretion.

1.40.8 The Performance Bond shall include terms that guarantee substitute performance under the Contract in the event of default. Specifically, whenever the Contractor shall be declared by the MHBE to be in default under the Contract, the Surety may, within 15 days after notice of default from the MHBE, notify the MHBE of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the MHBE thereupon shall have the remaining contract work completed, Surety to remain liable thereunder for all expenses of completion up to but not exceeding the sum of \$1,500,000.00.

1.41 Surety Bond Assistance Program

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

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

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SECTION 2 – MINIMUM QUALIFICATIONS

2.1 Offeror Minimum Qualifications

The Offeror shall have at least three (3) years of experience within the past five (5) years with: (1) reading barcodes, scanning and indexing high volumes of inbound documents, (2) receiving electronic data files to generate high volumes of notices for printing and mailing, (3) working knowledge of ACA eligibility applications processing and income and citizenship verifications document processing, and (4) experience utilizing a third party customer relationship manager (CRM) solution such as Oracle RightNow or Salesforce. As proof of meeting this requirement, the Offeror shall submit a reference or combination of references who can attest to the Offeror's above experience with the information required in Section 4.4.2.10 for each reference.

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SECTION 3 – SCOPE OF WORK

3.1 Background and Purpose

The mission of the Maryland Health Benefit Exchange (“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 MHBE is issuing this solicitation to procure fulfillment operations support to ensure the successful enrollment into a qualified health plan, standalone dental plan or managed care organization (MCO). Fulfillment services include the electronic upload of all inbound documents to the MHC application, printing and mailing outbound consumer notices, processing mailed paper Medicaid Managed Care Organization (MCO) enrollment forms and returned mail, and all outbound document mailing. The Contractor shall be fully responsible for the graphic design, printing, forms fulfillment, mailing and postage and all costs associated with all MCO enrollment materials and outbound correspondence specified in the RFP.

3.2 Scope of Work

The following Scope of Work outlines the Exchange’s overall expectations. Potential Bidders will be asked to develop their own, more detailed approach in response to this RFP.

The Scope of Work of this RFP is for Fulfillment Services for the successful operations of the Maryland Health Connection, the Exchange’s individual health insurance marketplace. The successful Offeror shall provide Fulfillment Services from the Go-Live Date through the Contract end date, including any option years, in compliance with all applicable State and federal laws in effect at the time the services are offered, including (a) the ACA and its regulations together with any regulations promulgated thereunder.

The following chart depicts monthly fulfillment volumes offered during FY16 and FY17 to date:

Month	Outbound Notice Volume	Inbound Documents Processed	1095-A Forms	1095-B Forms	Correction Forms 2016	Outbound MCO Packets	Paper MCO Enrollment Forms Processed	Outbound MCO Selection Reminder Notices
Jan-16	117,541	8,098	121,688	928,771		15,198	731	13,222
Feb-16	100,888	11,806				27,990	602	24,631

Mar-16	37,480	6,203				25,555	1,367	22,232
Apr-16	82,157	3,129				16,703	1,165	14,531
May-16	88,973	3,368				20,803	963	18,098
Jun-16	100,007	2,960				15,452	758	13,443
Jul-16	104,679	2,763				13,177	651	11,463
Aug-16	98,052	2,795				12,005	783	10,444
Sep-16	88,973	2,981				18,429	522	16,033
Oct-16	181,779	1,925				17,626	696	15,334
Nov-16	115,472	1,870				14,584	555	12,688
Dec-16	141,466	1,470				17,980	439	15,642
Jan-17	109,418	2,138	140,284	1,434,371		17,580	651	15,232
Feb-17	92,971	1,525				15,859	769	13,125
March-17	99,701	7,384	1895	25,254		18,740	775	14,900
TOTAL	1,459,856	53,031	261,972	2,363,142	103,947	248,941	10,652	216,118

Basic Assumptions for MCO Enrollments and Materials:

- Real time MCO plan shopping upon MAGI Medicaid eligibility determination is anticipated to reduce the volume of MCO enrollment packets that are mailed to MAGI consumers. However, non-MAGI consumers will be required to receive the MCO enrollment packets via the mail. The MHBE and DHMH anticipate a need to fulfill approximately 10,000 MCO enrollment packets per month. Enrollment packets are printed,

assembled and ready for mailing requests. There are currently 9 unique pieces and 2 envelopes to be printed in black and white and color format. MCO-provided brochures are also included as assembly items. We do not anticipate changes to current artwork and layout formats.

- The MHBE and DHMH anticipate less than 500 paper enrollments to be processed per month.
- The MHBE and DHMH anticipate the printing, fulfillment and mailing of less than 100 Provider Network Directories per month. The Provider Network Directory is not required to be included in the MCO Enrollment packets but a printed copy must be made available to a recipient upon receipt. There are seven regional Provider Network Directories that include approximately 114 pages. Page numbers range from 25 pages to 200 pages, depending on the region.

3.2.1 Contractor Requirements

For certain deliverables related to the following requirements, see Section 3.2.2.2.

ID #	Task	Requirement
3.2.1.1	System Generated Outbound Notice Production	The Contractor shall print and mail notices from nightly HBX-generated PDF files. The notices are relative to enrollment, disenrollment, and action reminder eligibility.
3.2.1.2	Manual Notice Production	The Contractor shall prepare mail merge letter with address data points, print and mail on an as requested basis by the MHBE. The volume can range from several hundred to several thousand. The files are typically encrypted and emailed to Contractor point of contact.
3.2.1.3	Voter's Registration Forms Fulfillment	The Contractor shall mail voter registration forms, provided by the MHBE, to recipients on the weekly address file generated from HBX.
3.2.1.4	Paper Application Fulfillment	The Contractor shall mail printed paper MHC application forms, as requested by consumers, to recipients in the provided address file generated from HBX and/or CRM.
3.2.1.5	IRS Forms 1095-A and 1095-B Production	The Contractor shall print and mail HBX-generated IRS Forms 1095-A and 1095-A forms not later than January 31st of each year.
3.2.1.6	Medicaid Managed Care Organization (MCO) Enrollment Packet Production and Mailing	<p>The Contractor shall design, print and mail Medicaid MCO enrollment packets to recipients in address file generated from the HBX on a daily basis. .</p> <p>The MHBE and DHMH are responsible for providing the content, draft layouts and final approval of all enrollment materials. The Contractor shall be responsible for providing, at a minimum, the enrollment materials printed in both English and Spanish. The</p>

		<p>Contractor shall design the enrollment materials and submit to the DHMH for review 60 days before the Go-Live date. Once approved, the Contractor must print and mail all enrollment materials as required.</p> <p>Enrollment materials included in the MCO Enrollment packet should be printed, revised and/or ordered as needed to ensure adequate real-time inventory.</p> <p>The Contractor will be responsible for formatting and adding inserts which are approved by DHMH into the MCO enrollment packet if a change is necessary to the enrollment materials between print cycles.</p> <p>The Enrollment Packet shall contain the following (See Appendices):</p> <ul style="list-style-type: none"> A. Cover Letter B. Notice - MCO Change Policies C. HealthChoice Program Information Booklet D. An MCO Performance Card E. A Doctor/Clinic Listing Request Card F. An MCO Enrollment Form G. A Health Service Needs Information (HSNI) Form G. Envelope that is postage-paid and self-addressed to the vendor's mailing address for processing of mailed in enrollment forms; H. Reminder Notices; and I. Non-Discrimination Statement and Accessibility Requirements Brochure; and J. MCO-provided Brochures. <p>The Contractor shall print and mail enrollment packets to designated HOH recipients within five (5) Business Days upon receipt of new HealthChoice enrollment transactions from the Maryland Health Benefit Exchange;</p> <p>The Contractor shall print and mail a reminder notice (See Appendix B) within seven (7) days of sending the enrollment packet if no response has been received from the recipient explaining that the recipient must choose an MCO within a specified time or be auto-assigned by the Department.</p> <p>The Contractor shall generate graphics from DHMH-provided artwork; along with pre-printed window envelopes.</p>
3.2.1.7	Inbound Document Processing Services	<p>The Contractor shall provide the following inbound document processing services:</p> <ul style="list-style-type: none"> ● Provide P.O. Box/Collect Mail Daily ● Document receipt

		<ul style="list-style-type: none"> ● Form Identification/Coding ● Barcode reading ● Scan into PDF format and upload to HBX ● Data enter and process received paper applications to eligibility determination in HBX worker portal ● Data enter and process received cancellation forms in HBX worker portal ● Data enter and process Medicaid MCO enrollment request forms within 48 hours of receipt date. ● Document receipt of Fair Hearing Requests in CRM and attach to CRM for routing to Appeals Team ● Shredding received documents after scanning ● Return to sender wrongly mailed checks and important originals
3.2.1.8	Returned Mail Management	<p>The Contractor shall document all returned mail in the CRM.</p> <p>The Contractor shall determine if there is a correct address and resend.</p>
3.2.1.9	Facility	<p>The Contractor is responsible for providing a facility that meets, but is not limited to, the following requirements:</p> <ul style="list-style-type: none"> ● The Contractor shall provide turn-key facilities located in the State of Maryland within 100 miles of zip code 21202 (Baltimore, MD). ● The Contractor shall provide adequate workspace with equipment and furniture to support mailroom, document preparation, data entry operations and secure document storage facilities. This includes mail opening equipment, and document scanning hardware and software to capture 200 dpi bi-tonal (black and white) images of paper documents. ● The Contractor shall provide PC workstations for indexing operations and processing of data. ● The Contractor's physical and environmental security controls shall meet MARS-E and HIPAA compliance standards.
3.2.1.10	Network Infrastructure	<p>The Contractor shall maintain at least two environments Integrated Test Environment (ITE) and production environment. Integration test environment to be used for end to end testing with HBX.</p> <p>The Contractor must provide appropriate network infrastructure and expert support services to acquire and complete circuit connectivity within the Fulfillment Center facility;</p> <p>The Contractor must provide fiber connectivity within the Fulfillment Center facility.</p>

		<p>The Contractor will work with state technology division to arrange for connectivity to the Worker Portal via means of direct connection from the state to a contractor premise and/or site to site VPN tunnel;</p> <p>The Contractor must provide local internet services capable of supporting a 150M MPLS connection;</p> <p>The Contractor must supply all PCs, monitors, printers, network routers, network switches, data center racks, and wiring sufficient to meet network and operational needs;</p> <p>Contractor will assume billing and cost management responsibilities for establishing and maintaining connectivity (MPLS and Internet)</p> <p>The Contractor shall provide resource(s) to:</p> <ul style="list-style-type: none"> • Configure production environment and ITE servers • Test the production environment and ITE servers • Configure production environment workstations • Configure production environment networking equipment • Test production environment workstations and networking equipment • Support system integration testing and troubleshooting • Participate in system User Acceptance Testing (UAT) in conjunction with the MHBE. <p>The Contractor will provide redundant DHCP and DNS network services;</p> <p>The Exchange will provide CRM Users License sufficient for the number of required staff and Maryland.gov email addresses for specific staff;</p> <p>The contractor must provide internet connectivity to the following applications:</p> <ul style="list-style-type: none"> • The Exchange’s Web Application • The Exchange’s Learning Management System (LMS) • The Exchange’s Customer Relationship Management System (CRM) <p>The Contractor will ensure desktop upgrades to support Service Center tools to Service Center Representatives desktops. Contractor will either use Chrome, Firefox or Internet Explorer web browsers, or such other upgraded versions as required, to connect to the hosted Exchange applications;</p> <p>The Contractor shall provide computing systems workstations with the following minimum specifications:</p> <ul style="list-style-type: none"> • Processor - 7th Generation - i7 Processor • Memory - 8 Gig minimum
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		<ul style="list-style-type: none"> • Disk Space - Minimum 256 SSD or Regular Hard Drive (500Gig) • Full disk encryption • Monitors (2) - 24 inch monitors <p>The Contractor shall have technical support for all provided systems, desktops and network connectivity.</p>
3.2.1.11	Development, Testing, Network Connectivity Services	MHBE will pay for Contractor labor to execute activities described in tasks 3.2.1.10 (Network Infrastructure) and 3.2.1.12 (Specific Development and Testing)
3.2.1.12	Specific Development and Testing	<p>The Contractor shall provide resource(s) to:</p> <ul style="list-style-type: none"> • Develop and test scanner applications for the MHBE documents. • Validate the capability to process all the existing forms and verification documents with no additional impact to HBX system • If HBX replace current document repository, then make necessary system changes required for that transition • Support enhanced forms design by working with the MHBE and to validate that all the MHBE application forms and notices will be suitable for efficient scanning and processing. • Develop, implement and test the MHBE specific requirements such as unique form types. • Establish and test SFTP connections PGP encryption and transmission. • Develop User Acceptance Test scripts and test batches in conjunction with the MHBE. • Unit testing and complete solution testing. • Professional Services resources to test the scanning, form identification and indexing processes and associated workflows in the ITE. • Upload test export batches to the MHBE test folder for validation by the MHBE.
3.2.1.13	Ongoing Support/Account Management	<p>The Contractor shall provide resources to process and resolve the MHBE support requests (emails/phone calls) regarding system issues such as: unreadable images; images not received; incomplete batch of documents; etc.</p> <ul style="list-style-type: none"> • Provide a single vendor point of contact. • Coordinate all activities with the MHBE contract monitor. • Implement methods, procedures, documentation, standards and controls for the Scanning and Indexing Operations. • Upon request, provide the MHBE, with status information/reports on work plans, schedules, deliverables, acceptance criteria and other work products related to the Scanning and Indexing Operations.

		<ul style="list-style-type: none"> • Provide operational reports that detail the volume of documents scanned and processed by date and source. • Notify the MHBE contract monitor on a timely basis of any and all issues and concerns of which the Contractor becomes aware relating to the conduct of the project. • The Contractor and the MHBE will review this SOW on a quarterly basis to ensure that all of the activities and processes associated with the project at that time are fully captured by this SOW. New services that are determined to be out of scope will result in amendments to the SOW.
3.2.1.14	Operations	<p>The Contractor shall:</p> <ul style="list-style-type: none"> • Assist the MHBE to establish and fund a USPS Post Office Box dedicated to the MHBE. • Provide appropriate staffing to handle the daily mail pickup at the USPS Post Office. • Conduct all required training of personnel. • Create operational procedures documentation. • Read barcodes on the MHBE documents that contain 1D or 2D barcodes and automatically populate document metadata. • Perform manual identification of semi-structured and unstructured client documents (e.g., identifying a client’s U.S. passport as document type “AHU-1”). • Perform automatic or manual separation as required of merged client documents to allow each document to be indexed separately. • Export images and data in PGP encrypted zip file format to the MHBE SFTP site at least once every business day. If the daily volume increases significantly, increase the upload frequency to ensure the constant flow of images and data to the MHBE. • Provide chain of custody mailroom controls and mailroom processing, pre-scan document preparation, document scanning, indexing, quality assurance and reconciliation. • Return certain critical documents (such as original passports, original driver’s licenses, checks, money orders, voter registration documents) to senders within 1 business day. • Implement pre- and post-scanning Quality Assurance processes. Provide description and example of Quality Assurance and Control program. • Research cases using the MHBE worker portal in order to print barcoded cover sheets for envelopes that are received from clients without a barcoded cover sheet (also known as ‘Unknown Documents’).

		<ul style="list-style-type: none"> Perform other the MHBE worker portal activities as requested by the MHBE.
3.2.1.15	Ownership of Hardware and Software Resources	All computer hardware, computer software and facilities resources required to implement and operate the MHBE processing operation will be the sole property of the Contractor. The scanned paper documents, and the data and images created from the scanned documents will be the sole property of the MHBE.
3.2.1.16	Data and Images Retention	The Contractor shall retain electronic data and images the MHBE production database environment for 90 days after scanning. After 90 days the MHBE data and images will be purged from the production database.
3.2.1.17	Adding or Changing Document Types	The production and test environments for the MHBE will be configured to process the Document types provided by the MHBE. Document types can be added or changed and business rules can be added or changed via a project change request.
3.2.1.18	Barcode Scan	Contractor shall have capability to scan barcoded documents as generated by the HBX. .
3.2.1.19	Reports Design	Contractor shall provide daily and monthly production reporting.
3.2.1.20	Compliance	<p>The Contractor shall store post-scan MHBE paper documents in a secure storage facility accessible only to resources assigned to the MHBE project for 60-days.</p> <p>The Contractor shall provide secure destruction of the MHBE paper documents.</p> <p>The Contractor shall prepare for and participate in facility and operational audits conducted by the MHBE and OIG.</p> <p>Security standards shall be in accordance with State and federal security and privacy requirements regarding collection, maintenance, and use of the Protected Information, including the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996, and implementing regulations of 45 C.F.R. Parts 160 and 164; and the Affordable Care Act, and 45 C.F.R. § 155.260 and the Maryland Confidentiality of Medical Records Act (“MCMRA”). Md. Code Ann. Health-Gen §§ 4-310 et seq.</p>

3.2.2 Deliverables

3.2.2.1 Deliverables Submission Process

For each deliverable, the Contractor shall submit the deliverable to the Contract Monitor in the format, content, and due date/timeframe as specified in RFP Section 3.2.2.2. 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. Unless otherwise stated in Table 3.2.2.2 below, deliverables are due by 10 AM on the date the deliverable is due. A deliverable shall be considered received upon written notification of receipt of the deliverable from the Contract Monitor to the Contractor. For each written deliverable, draft and final, the Contractor shall submit electronically to the Contract Monitor in compliance with the Acceptance Criteria in 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. 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 defined as a final document shall satisfy the scope, requirements, and acceptance criteria for that deliverable. Final written deliverables shall be complete and shall not contain structural errors such as poor grammar, misspellings or incorrect punctuation.

- Be presented in a format appropriate for the subject matter and depth of discussion.
- Be organized in a manner that presents a logical flow of the deliverable's content.
- Represent factual information reasonably expected to have been known at the time of submittal.
- Present information that is relevant to the Section of the deliverable being discussed.
- Be complete and address all State comments provided on the final draft deliverable.

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.

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3.2.2.2 Deliverables

Task	Deliverable	Description	Frequency/ Due Date
3.2.1.13 Ongoing Support/Account Management	Weekly/Monthly To-Date Operations Report	A combination report providing daily, weekly and month-end production counts on inbound/outbound mail processing, Voter Registration mailings, applications and enrollment forms entry, packet mailings.	Weekly by 10:00AM Mondays unless otherwise approved by MHBE.
3.2.1.14 Operations	Quality Assurance (QA) Report	Quality Assurance report will contain: <ol style="list-style-type: none"> 1. Number of sampled indexed documents and/or number of data-entered applications and enrollment form per fulfillment rep per month 2. Average overall score for sum of evaluations 3. Average score for key components of QA checklist/scorecard 	Weekly by noon on Monday for the previous week
3.2.1.14 Operations	Training Work plan and training materials	Detailed training work plan and all training materials	Annually by August 1st or within 5 business days of material modification to the work plan or training materials
3.2.1.1 System Generated Outbound Notices	Electronic confirmations	Daily electronic confirmation (email) of processed system generated notices files.	Daily
3.3 Transition Plan	Transition In Plan	Refer to RFP Section 3.3.1 for details	NTP + 10 calendar days
3.3 Transition Plan	Transition Out Plan	Refer to RFP Section 3.3.2 for details	90 days prior to contract expiration

3.3 Transition Plan

3.3.1 Transition-In Planning and Execution

3.3.1.1 Kick-off Meeting:

A kickoff meeting will be held within 5 calendar days after the issuance of the NTP to the Contractor. MHBE

will provide a copy of the Incumbent Contractor's draft Transition-Out Plan to the Contractor on or before this meeting.

3.3.1.2 Establish a Transition-In Plan:

The Contractor will have up to 75 calendar days for complete verification and transfer of all operations, control, processes and data from the Incumbent Contractor. The plan shall describe transitioning of all operations, and activities specified in RFP Section 3.2, from the Incumbent Contractor to the Contractor in accordance with the time periods outlined in the RFP Section 3.2.2.2 - Deliverables. The Contractor shall work with MHBE and the Incumbent Contractor to identify and plan for the continuation and completion of all outstanding tasks. The plan shall include identification of all tasks, assumptions, clear delineation of responsibilities, level of effort to complete each task, timelines for task completion, and the labor categories required to perform the work.

3.3.1.3 Transition-In Execution:

At the kickoff meeting, the Contractor shall be provided with the Incumbent Contractor's final transition plan, if not previously provided. The Contractor shall use this as the basis for development of the final Transition-In plan. The Contractor shall submit the final Transition-In plan within 10 calendar days following the issuance of the NTP. The plan can be submitted in a progressive elaboration fashion, with the upcoming 3 weeks of activities elaborated in detail.

The Transition-In Plan shall address the following:

- a) Contractor transition team staff (must include the leadership staff that will support the contract beyond transition).
- b) Communication between the Contractor, Incumbent Contractor and MHBE.
- c) Transfer of knowledge, including practices and processes from the Incumbent Contractor to the Contractor staff regarding CSR work instructions and CRM utilization.
- d) Establishment of connectivity with MHBE networks.
- e) Establishment of operational readiness across the service center.
- f) Demonstrating operational readiness and support of all operational requirements under scope.
- g) Transferring MHBE assets from Incumbent Contractor's location to the Contractor, if applicable.
- h) Establishment of all telephony, ACD and IVR connectivity and operational readiness.
- i) Hiring, training and readiness of all staff by go live date.
- j) Status reports and meetings.
- k) Other matters deemed important for the Transition-In process that may be identified during the kick-off meeting.

The Contractor, during the course of the Transition-In period shall:

- a) Demonstrate an understanding of the operational activities necessary to stand up the Consolidated Services Center.
- b) Have the ability to independently provide operational support with minimal external assistance.
- c) Demonstrate technical skills to identify issues and provide root cause analysis for day-to-day operational issues resolution.

3.3.2 Transition-Out Planning and Execution

The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this solicitation to any subsequent contract for similar services. The transition period shall begin 75 calendar days before the Contract end date, or the end date of any final exercised option or Contract extension. The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of Contract.

The Contractor shall provide a Transition-Out Plan at least 75 calendar days prior to termination of its Contract outlining the steps necessary to transition out activities to the successor MHBE Contractor. The Contractor shall work in full cooperation with the MHBE and the Successor Contractor to ensure that each status report for Transition-Out activities are accurate.

The Contractor shall work during the Transition-Out period as if time is of the essence. This period of time provides an opportunity for the Successor Contractor staff to gain a full understanding of the operational environment in order to provide all the services required by the Successor Contractor.

The Contractor's Transition-Out Plan shall address the following:

- a) A preliminary Transition-Out Project Work Plan (PWP), with placeholders for milestones, key delivery dates, and resource assignments. The PWP shall contain fields to capture successor and predecessor tasks to identify and track dependencies, and where applicable, it shall link related tasks.
- b) The key transition personnel and their respective Roles.
- c) The reporting mechanism for providing, at a minimum, twice-weekly reports during the transition.
- d) The final Transition-Out methodology, accounting for MHBE's project work, consumer call volumes, and other considerations.
- e) The mechanism by which the Contractor will identify, capture, and transition to the Successor Contractor any outstanding deliverables and/or tasks and time frames for completion.
- f) The plan for ensuring that all Contract documentation has been updated to reflect all changes, such as enhancements and modifications.
- g) The plan for ensuring that all required support training materials, and transition information has been delivered to the MHBE.
- h) The required involvement of the Successor Contractor team, MHBE resources, and any third-party.
- i) A description of the resources that the Contractor will commit and the functions that the Contractor will perform, along with time frames, in transferring the operation to the Successor Contractor.
- j) Risk assessment and mitigation recommendations/solutions and the plan for monitoring and managing risk during the Transition-Out period.
- k) A clear set of tasks, objectives, outcomes, and timeframes to transition on-going activities, processes, people, services, knowledge and documentation associated with the exit of the Contractor.

The Contractor shall provide a final PWP to address these tasks at a granular level, and shall successfully complete the tasks as part of the Transition-Out effort. Transition-Out tasks include all aspects of the Contractor's Transition-Out Plan, including but not limited to the following:

- a) Provide timely access to necessary call data
- b) Provide operational work instruction knowledge transfer
- c) Participate and contribute in transition-in activities for the Successor Contractor
- d) Ensure seamless telephony shut-down and start-up transition with Successor Contractor to minimize downtime.
- e) Provide all call recording data in encrypted and searchable format.

- f) Provide weekly/monthly status for the previous period
- g) Participate actively in all transition meetings.
- h) Provide requested information within five (5) calendar days.
- i) Meet all defined due dates as determined and approved by MHBE.
- j) Make recommendations throughout the Transition-Out effort to mitigate risk.
- k) Participate in all activities required by MHBE to assess the incoming Contractor’s readiness and capabilities to assume complete control and management of application maintenance and enhancement services.

The Contractor shall provide a Systems Documentation Report no less than 20 calendar days before the end of the Contract during the Transition-Out containing the following:

- a) Contractor’s record of its deliverable submissions and approvals, of work products approved and completed, and project documentation throughout the duration of its Contract.
- b) All applicable access to tools and repositories as needed to complete turnover to MHBE and references to the locations of all work products and technical artifacts.
- c) The final System Documentation Report is due no less than 20 calendar days before the end of the Contract during the Transition Out phase.

Transition Requirements Summary Table

RFP Section #	Activity	Completion Date
3.3.1.1	Kick –off Meeting	NTP + 5 calendar days
3.3.1.2 & 3.3.1.3	Contractor submits Transition Plan	NTP + 10 calendar days
3.3.1.3	Transition-In of contractual activities with day-to-day support from the Incumbent Contractor	NTP + 45 calendar days
3.3.1.3	Full transition by Contractor to successfully and completely take over all contractual activities with support from the Incumbent Contractor	NTP + up to 75 calendar days
3.3.2	Contractor Transition-Out Plan outlining the steps necessary to transition out activities to the successor MHBE Contractor.	Contractor shall provide Transition-Out Plan at least 90 calendar days prior to termination of its Contract

3.4 Service Level Agreements (SLA)

During the course of the contract, the MHBE will measure and review Contractor performance. The Contractor must have in place processes to monitor performance and must report its performance in accordance with the Service Level metrics provided herein. The Contract Manager and other state personnel designated by the MHBE shall actively participate with the Contractor to approve the results, request corrective actions, and assess liquidated damages if necessary. Invoicing and payments shall be administered in accordance with the process outline in Section 1.41. The MHBE reserves the right to introduce additional Service Level metrics following an initial baseline period after reasonable notice to the contractor.

MHBE agrees that Contractor will not be assessed liquidated damages for failure to meet a milestone or metric if the failure results from the unavailability of tools, or technologies to be provided by others but not available for use by Offeror. MHBE also agrees that Contractor will not be considered in breach and will not be assessed liquidated damages for failure to meet a SLA if the failure results from the staffing levels imposed on Contractor by the RFP.

3.4.1 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 3.4.6 Service Level Measurements below, the Contractor shall be liable for liquidated damages in the amount provided for in this RFP, specifically RFP Section 3.5.

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,.

3.4.2 SLA Effective Date

Although the SLAs set forth herein shall be in effect beginning with the commencement of services as of the NTP date, liquidated damages shall not be assessed for the first 120 days of the Contract. The Contractor shall be responsible for complying with all performance measurements, and shall also ensure compliance by all subcontractors.

3.4.3 SLA Reporting

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

3.4.4 Credit for failure to meet SLA

Contractor's failure to meet an SLA will result in assessment of liquidated damages (refer to RFP Section 3.5 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, may deduct an amount due as liquidated damage from any money payable to the Contractor or may bill the Contractor as a separate item.

3.4.5 Root Cause Analysis

If the same SLA is not met more than once during one month, the Contractor shall conduct a root cause analysis. Such root cause analysis shall be provided upon request of the Contract Monitor.

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3.4.6 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
3.4.6.1	3.2.1.1	Outbound Notice Mailing	# of notices received/number of notices mailed	<u>100% of notices mailed within 2 business days upon receipt of file</u>
3.4.6.2	3.2.1.6	Medicaid Managed Care Organization (MCO) Enrollment Packet Production and Mailing	# of packet fulfillment requests received/number of packets mailed	<u>100% of packets mailed within 5 business days upon receipt</u>
3.4.6.3	3.2.1.7	Inbound Document Processing Services	# of documents received and imaged	<u>100% of received documents to be imaged and indexed within 1 business day</u>

3.5 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 3.4.6, 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 3.5.4 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.

3.5.1 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.

3.5.2 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.

3.5.3 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.

3.5.4 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 3.4.6. 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

SLA ID#	Requirement	SLA Measurement	SLA Measurement Achieved	Liquidated Damages Deduction
3.4.6.1	Outbound Notice Mailing	100% of notices mailed within 2 business days upon receipt of file	<100%	.5% of total monthly unit costs
3.4.6.2	Medicaid Managed Care Organization (MCO) Enrollment Packet Production and Mailing	100% of packets mailed within 5 business days upon receipt	<100%	.5% of total monthly unit costs
3.4.6.3	Inbound Document Processing Services	100% of received documents to be imaged and indexed within 1 business day	<100%	.5% of total monthly unit costs

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 MHBE within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor, as well as to other MHBE 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 NTP. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- a) The process for establishing the existence of a problem.
- b) Names, titles, and contact information for progressively higher levels of personnel in the Contractor’s organization who would become involved in resolving a problem.
- c) For each individual listed in the Contractor’s PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor’s PEP.
- d) Expedited escalation procedures and any circumstances that would trigger expedited escalation procedures.
- e) The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the MHBE.
- f) Contact information for persons responsible for resolving issues after Normal State Business Hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis.
- g) A process for updating and notifying the Contract Monitor of any changes to the PEP.

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

3.7 Staffing Requirements/Plan

Effective resource planning, assignment, right skill sets, and personnel management are critical components of successful delivery of requirements defined in this RFP.

3.8 Security Requirements

3.8.1 Employee Identification

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

3.8.2 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.

3.8.3 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 – 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 J 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.
- 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>), including specific requirements for password length, complexity, history, and account lockout.

- 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 commingled 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.

3.8.4 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 J. 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. See Section 1.37 for further information regarding this requirement.
- 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.

3.9 Insurance Requirements

- 3.9.1 Any insurance furnished as a condition of this Contract shall be issued by a company authorized to business in this State.
- 3.9.2 Insurance shall be provided as specified in the Contract (Attachment A).
- 3.9.3 The recommended awardee must provide a certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this Section 3.9 "Insurance Requirements," within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts the Contractor shall update certificates of insurance annually, or as otherwise directed by the Contract Manager.
- 3.9.4 The following type(s) of insurance and minimum amount(s) of coverage are required:
 - 3.9.4.1 General Liability - 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, servants, 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 \$3,000,000 aggregate.
 - 3.9.4.2 Errors and Omissions/Professional Liability - The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
 - 3.9.4.3 Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.

3.9.5 State Inclusion on Insurance

The State shall be listed as an additional insured on all policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Manager, by certified mail, not less than 45 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Manager receives a notice of non-renewal, the Contractor shall provide the Contract Manager with an insurance policy from another carrier at least 30 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.

3.9.6 Subcontractor Insurance

The Contractor shall require that any subcontractors providing products/services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Manager with the same documentation as is required of the Contractor.

3.9.7 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 and \$30,000,000 aggregate. 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.

3.10 Invoicing

3.10.1 General

a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor within 30 days of delivery of services and 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.

3.11 Work Hours

The Contractor's core personnel will work an eight-hour day, Monday through Friday except for contractor recognized holidays. Contractor shall provide appropriate management oversight during all open business hours.

3.12 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:

- 3.12.1 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.
- 3.12.2 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 3.8, relevant to the following trust principles: Security, Confidentiality, and Privacy as defined in the aforementioned Guidance.
- 3.12.3 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.
- 3.12.4 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.
- 3.12.5 All SOC 2 Audits, including those of the Contractor and any relevant subcontractor, shall be performed at no

additional expense to the MHBE.

- 3.12.6 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.
- 3.12.7 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.
- 3.12.8 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).
- 3.12.9 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 3.12.1, 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.

SECTION 4 – PROPOSAL FORMAT

4.1 Proposal Submission

- A. The Proposal shall be submitted to the Procurement Officer electronically via one unencrypted e-mail at hix.procurement@Maryland.gov. The subject line in the e-mail shall state "MHBE Fulfillment Services System RFP #MDM0031032279 Proposal" including the Offeror's name.
- B. The e-mail shall provide the following attachments:
 1. One attachment labeled "MHBE Fulfillment Services System RFP #MDM0031032279 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 "MHBE Fulfillment Services System RFP #MDM0031032279 Financial" containing the Financial Proposal contents, signed and in Excel and PDF format.
 3. A third attachment labeled "MHBE Fulfillment Services System RFP #MDM0031032279", 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 Subject to the Maryland Public Information Act and any other applicable law or regulation, Proposals and any modifications to Proposals will be shown only to MHBE employees, members of the Evaluation Committee, or other persons deemed by the MHBE to have a legitimate interest in them.

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, page 3.

4.4 Volume I – Technical Proposal

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

4.4.1 Format of Technical Proposal

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. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 3.2.1 Response . . . ; “Section 3.2.2 Response . . .,” etc.). This Proposal organization will allow MHBE 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 MHBE 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.” 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 Minimum Qualifications Documentation (Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 2 “Offeror Minimum Qualifications.”

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

- a. The Offeror shall address each Scope of Work requirement (Section 3) 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 MHBE 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) 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.
- a. 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. Final procedures shall be submitted as indicated in RFP Section 3.6.

4.4.2.7 Experience and Qualifications of Proposed Staff (Submit under TAB F)

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

4.4.2.8 Staffing Plan

The Offeror shall provide a draft Staffing Plan with the Technical Proposal. The Staffing Plan shall describe the Offeror's staffing approach and team organizational structure for the Offeror and any proposed Subcontractors, to complete all phases of work, functions, requirements, roles, and duties associated with this RFP.

The Staffing Plan deliverable will be updated and submitted as Final to the MHBE Contract Monitor within 30 calendar days of NTP.

4.4.2.9 Offeror Qualifications and Capabilities (Submit under TAB G)

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.

4.4.2.10 References (Submit under TAB H)

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. 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 POC 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.

4.4.2.11 List of Current or Prior State Contracts (Submit under TAB I)

Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

- 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.

4.4.2.12 Financial Capability (Submit under TAB J)

An Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L)

statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

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

- 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.

4.4.2.13 Certificate of Insurance (Submit under TAB K)

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.9. See Section 5.5 for the required insurance certificate submission for the recommended Offeror.

4.4.2.14 Subcontractors (Submit under TAB L)

The Offeror shall provide a complete list of all Subcontractors that will work on the Contract if the Offeror receives an award. This list shall include a full description of the duties each Subcontractor will perform and why/how each Subcontractor was deemed the most qualified for this project. See Sections 4.4.2.7 and 4.4.2.8 for additional Offeror requirements related to Subcontractors.

4.4.2.15 Legal Action Summary (Submit under TAB M)

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 N)

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

- a. Completed Bid/Proposal Affidavit (RFP **Attachment B**).
- b. If applicable, a signed statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. ***refer to RFP Section 1.22.**
- c. Federal Funding Acknowledgement (**Attachment F**); **refer to RFP Section 1.33.**

- d. Completed Conflict of Interest Affidavit and Disclosure (**Attachment G**) *refer to RFP Section 1.34.

4.5 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in **RFP Attachment E**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

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

5.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with Section II.B 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.

5.2.1 Offeror’s Technical Response to RFP Requirements and Work Plan (See RFP § 4.4.2.6)

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, including proposed Subcontractors (See RFP § 4.4.2.9 – 4.4.2.15)

5.2.3 Experience and Qualifications of Proposed Staff (See RFP § 4.4.2.7 - 4.4.2.8)

5.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see Section 5.4.2.4) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment E - Financial Proposal Form**.

5.4 Selection Procedures

5.4.1 General

The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at Section II.B of MHBE's Procurement Policies and Procedures. The Competitive Sealed Proposals 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 Contractor shall receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the 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:

- a. Contract (**Attachment A**), see **RFP Section 1.24**
- b. Contract Affidavit (**Attachment C**), see **RFP Section 1.26**
- c. Non-Disclosure Agreement (**Attachment H**); see **RFP Section 1.35**
- d. Non-Exchange Entity Agreement (**Attachment I**), if applicable; see **RFP Section 1.36**
- e. Copy of a current Certificate of Insurance with the prescribed limits set forth in RFP Section 3.9 “Insurance Requirements,” listing the State as an additional insured, if applicable, see **RFP Section 3.9**
- f. Performance Bond (**Attachment J**); see **RFP Section 1.40**
- g. Business Associates Agreement (**Attachment K**), if applicable, see **Section 1.37**

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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 – 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 E – 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 F – Federal Funds Attachment

If required, the Federal Funds Attachment must be completed and submitted with the Technical Proposal (refer to RFP Section 1.33). The terms and conditions in this attachment are incorporated into any resulting Contract with the Offeror.

ATTACHMENT G – Conflict of Interest Affidavit and Disclosure

If required (refer to RFP Section 1.34), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT H – Non-Disclosure Agreement

If required (refer to RFP Section 1.35), 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 I – Non-Exchange Entity Agreement

If required (refer to RFP Section 1.36), 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 J – Performance Bond

If required, submitted within five (5) Business Days of receiving notification of recommendation for award (refer to RFP Section 1.40).

ATTACHMENT K – Business Associate Agreement

If required (see Section 1.37) 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.

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ATTACHMENT A – CONTRACT
MHBE FULFILLMENT 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 “Minority Business Enterprise” (MBE) means an entity meeting the definition at COMAR 21.0 1.02.01B(54), which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.10 “RFP” means the Request for Proposals for MHBE Fulfillment Services, Solicitation # MDM0031032279, and any addenda thereto issued in writing by the MHBE.
- 1.11 “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.
- 1.12 “Proposal(s)” means, as appropriate, either or both of the Contractor’s Technical or Financial Proposal.

- 1.13 “State” means the State of Maryland and includes the MHBE.
- 1.14 “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 MHBE Fulfillment Services and related services awarded in accordance with Exhibits A-G 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 Federal Funds Attachment (Attachment F to the RFP, including F-1 and F-2).

Exhibit F – The Contractor’s Technical Proposal

Exhibit G – 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 shall start as of the date of full execution by the Parties. From this date, the Contract shall be for a period of two years with three, one-year renewal options at the sole discretion of the MHBE.
- 3.2 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the MHBE shall pay the Contractor in accordance with the terms of this Contract and at the prices in RFP Attachment E – Price Proposal, which is incorporated into this Contract as Exhibit G.
- 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-]. 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. Patents, Copyrights, and Intellectual Property

- 5.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 5.2 Except as provided in Section 5.4 of this Contract, the Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, software, graphics, mechanical, artwork, computations and data prepared by or for the Contractor for purposes of this Contract (Work Product) shall become and remain the sole and exclusive property of the State and shall be available to the MHBE at any time. The 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.
- 5.3 Except as provided in Section 5.4 of this Contract, the Contractor agrees that at all times during the term of this Contract and thereafter, the Work Product shall be "works made for hire" as that term is interpreted under U.S. copyright law and shall be owned by the State. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product. In the event any Work Product is or may not be considered a work made for hire under applicable law, Contractor assigns and transfers to the State the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof. Contractor shall execute all documents and perform such other proper acts as the State may deem necessary to secure for

it the rights pursuant to this section.

- 5.4 Notwithstanding anything to the contrary in this Contract, to the extent (i) the Work Product incorporates any commercial-off-the shelf software (COTS) and/or any Pre-Existing Intellectual Property or (ii) any COTS and/or Pre-Existing Intellectual Property (other than a computer's operating system, supported internet browser, browser accessibility software or hardware if needed by the user, and software required to access a commonly-available data transmission tool or export format) is required to access, install, build, compile or otherwise use the Work Product (such COTS and Pre-Existing Intellectual Property individually and collectively referred to herein as "Third-party Intellectual Property," which shall be the sole property of Contractor or its third-party licensors, as applicable), Contractor hereby grants, on behalf of itself and any third-party licensors, to the State a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right to use, execute, reproduce, display, perform, distribute copies of internally, modify and prepare derivative works based upon, such Third-party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended. "Pre-Existing Intellectual Property" means any program, utility or tool owned by Contractor or its third-party licensors that was created by Contractor or its third-party licensors independently from its performance of this Contract and not solely using funds from this Contract.
- 5.5 Subject to the terms of Section 6, Contractor shall defend, indemnify, and hold harmless the State, including, but not limited to, the Agency and its agents, officers, and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any claim the Work Product or any Third-party Intellectual Property infringes, misappropriates or otherwise violates any Third-party Intellectual Property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent, which consent may be withheld in the State's sole and absolute discretion. Contractor shall be entitled to control the defense or settlement of such claim (with counsel reasonably satisfactory to the State), provided that the State will, upon requesting indemnification hereunder: (a) provide reasonable cooperation to Contractor in connection with the defense or settlement of any such claim, at Contractor's expense; and (b) be entitled to participate in the defense of any such claim. Contractor's obligations under this section will not apply to the extent any Third-party Intellectual Property infringes, misappropriates or otherwise violates any third party intellectual rights as a result of modifications made by the State in violation of the license granted to the State pursuant to section 5.4; provided that such infringement, misappropriation or violation would not have occurred absent such modification.
- 5.6 Without limiting Contractor's obligations under Section 5.5, if all or any part of the Work Product or any Third Party Intellectual Property is held, or Contractor or the State reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the item in accordance with its rights under this Contract; (b) replace the item with an item that does not infringe, misappropriate or otherwise violate any third party intellectual property rights and, in the State's sole and absolute determination, complies with the item's specifications, and all rights of use and/or ownership set forth in this Contract; or (c) modify the item so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and, in the State's sole and absolute determination, complies with the item's specifications and all rights of use and/or ownership set forth in this Contract.
- 5.7 Except for any Pre-Existing Intellectual Property and Third-Party Intellectual Property, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, software, technical information, specifications, drawings, records, documentation, data or any other

materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State.

- 5.8 Contractor, on behalf of itself and its Subcontractors, hereby agrees not to incorporate, link, distribute or use any Third-party Intellectual Property in such a way that: (a) creates, purports to create or has the potential to create, obligations with respect to any State software (including any deliverable hereunder), including without limitation the distribution or disclosure of any source code; or (b) grants, purports to grant, or has the potential to grant to any third-party any rights to or immunities under any State intellectual property or proprietary rights. Without limiting the generality of the foregoing, neither Contractor nor any of its Subcontractors shall incorporate, link, distribute or use, in conjunction with the Work Product, any code or software licensed under the GNU General Public License (“GPL”), Lesser General Public License (“LGPL”), Affero GPL (“AGPL”), European Community Public License (“ECPL”), Mozilla, or any other open source license, in any manner that could cause or could be interpreted or asserted to cause any State software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or such other open source software.
- 5.9 Without limiting the generality of the foregoing, neither Contractor nor any of its Subcontractors shall use any software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its Subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third-party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an “Open Source License”). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its Subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its Subcontractors that is undertaken under this Contract as to any software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.
- 5.10 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 Work Product delivered under this Contract.

6. Indemnification

- 6.1 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.
- 6.2 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.
- 6.3 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.

6.4 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.

6.5 Section 6 shall survive expiration of this Contract.

7. 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.

8. 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.

9. Confidentiality

9.1 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.

9.2 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.

9.3 Section 9 shall survive expiration or termination of this Contract.

10. 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.

11. Non-Hiring of Employees

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

12. Disputes

12.1 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.

12.2 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.

- 12.3 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.
- 12.4 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.
- 12.5 Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.
- 12.6 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.

13. Maryland Law

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The 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.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Multi-year Contracts Contingent Upon Appropriations

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's 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 of Maryland 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

15. 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.

16. 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.

17. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's 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.

18. 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.

19. 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).

20. 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.

21. Delays and Extensions of Time

21.1 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.

21.2 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.

22. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

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.

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, 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 5 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 for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.

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 Federal Funds Requirements and Restrictions

This Contract contains federal Medicaid Funds (CFDA number 93.778). Execution of this Contract indicates Contractor’s agreement with all federal funding terms and conditions that apply to contractors receiving federal funds from the above referenced source, including but not limited to those required by 45 C.F.R. § 75.335, Appendix II to Part 75 of Title 45 of the Code of Federal Regulations and Attachment G of the RFP (including G-1 and G-2).

Attachment G of the RFP is incorporated into this Contract pursuant to Section 2.1, above. .

35 Federal Funds Exclusion Requirements

Contractor agrees that it will comply with federal laws (including §§ 1128 and 1156 of the Social Security Act and 42 CFR § 1001) that prohibit payments under certain federal healthcare programs to any individual or entity that is on the List of Excluded Individuals/Entities (LEIE) maintained by HHS. By executing this Contract, Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. Contractor agrees, further, during the term of this Contract, to check the LEIE prior to hiring or assigning individuals to work on this Contract, and to notify MHBE immediately of any identification of Contractor or an individual employee as excluded, and of any HHS action or proposed action to exclude Contractor or any of Contractor's employees.

36 Miscellaneous

- 36.1 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.
- 36.2 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.

[Signatures on next page(s)]

[Signature page to MHBE Fulfillment Services RFP]

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

CONTRACTOR

MARYLAND HEALTH BENEFIT
EXCHANGE

By:

By: Acting Executive Director
Or designee:

Date

Date

Approved for form and legal sufficiency
this ____ day of _____, 2017.

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):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting

activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

_____.

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (1) The business was not established and 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 – PRE-PROPOSAL CONFERENCE RESPONSE FORM

Solicitation Number MDM0031032279
MHBE Fulfillment Services

A Pre-Proposal Conference will be held at 1:00 PM, on June 2, 2017, at 901 Elkridge Landing Road, Linthicum Heights, Maryland 21240, Second Floor Training Room. Please return this form by May 31st, 2017, advising whether or not you plan to attend.

Return via e-mail or fax this form to the Procurement Officer:

Michelle Compton
Maryland Health Benefit Exchange
750 East Pratt Street, 16th Floor
Baltimore, MD 21202
Email: hix.procurement@maryland.gov

Please indicate:

Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 1.7 “Pre-Proposal Conference”):

Signature

Title

Name of Firm (please print)

ATTACHMENT E – FINANCIAL PROPOSAL INSTRUCTIONS

Provided as a separate Excel Document

Submit as both an Excel and PDF format

ATTACHMENT E – FINANCIAL PROPOSAL FORM

Provided as a separate Excel Document

Submit in both an Excel and PDF format

ATTACHMENT F - FEDERAL FUNDS ATTACHMENT

[Reference, among other provisions, 45 C.F.R. § 75.335]

In addition to other provisions required by the RFP and Contract related to the federal funds that may be included in any Contract to be awarded as a result of this RFP, the following provisions are applicable:

A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

C. Debarment and Suspension (Executive Orders 12549 and 12689) (see 2 CFR 180.220 and 45 CFR 75.212) A party listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension” is not eligible for award under this RFP. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Any Contractor awarded a Contract as a result of this RFP is responsible for ensuring that any party with which it subcontracts is not debarred or suspended and is in full compliance with the executive orders and federal regulations cited in this paragraph.

D. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required attached certification. Each tier (including the Contractor and any subcontractor(s)) certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal awardee (which, in this case, is the State of Maryland).

1. *Form and rule:* All prospective and present contractors and subcontractors (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the attached form “Certification Against Lobbying.” It assures, generally, that contractors and subcontractors receiving federal funds will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF-111.

2. *Form and instructions:* “Form LLL, Disclosure of Lobbying Activities” must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.

E. Section 504 of the Rehabilitation Act of 1973. Any Contractor awarded a Contract as a result of this RFP certifies that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 791 *et seq.*), and all regulations promulgated thereunder. Section 504 prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation— programs, activities, and facilities and employment. It states, among other things, that: *Grantees that provide health ... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with impaired sensory or speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.*

F. Age Discrimination Act of 1975. Any Contractor awarded a Contract as a result of this RFP certifies that it shall not discriminate on the basis of Age, according to the requirements of the Age Discrimination Act of 1975.

G. Title VI of the Civil Rights Act of 1964. Any Contractor awarded a Contract are a result of this RFP certifies that it shall comply with Title VI of the Civil Rights Act of 1964 and shall not discriminate in participation by race, color, or national origin.

H. Section 1557 of the ACA. 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. Section 1557 further provides that, except as provided in Title I or the Patient Protection and Affordable Care Act (as amended, the 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.

ATTACHMENT F-1 – CERTIFICATION AGAINST LOBBYING

U.S. Department of Health and Human Services
CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Award No.	Organizational Entry
Name and Title of Official Signing for Organizational Entry	Telephone No. Of Signing Official
Signature of Above Official	Date Signed

ATTACHMENT F-2

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: a. Contract b. Grant c. Cooperative Agreement d. Loan e. Loan guarantee f. Loan insurance	2. Status of Federal Action: a. Bid/offer/application b. Initial award c. Post-award	3. Report Type: a. Initial filing b. Material change For Material Change Only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, <i>if known</i> :	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, <i>if known</i> :	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, <i>if applicable</i> : _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a) (last name, first name, MI):</i>	
11. Amount of Payment <i>(check all that apply)</i> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment <i>(check all that apply)</i> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
12. Form of Payment <i>(check all that apply)</i> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind, specify: _____ nature _____ value: _____		

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) SF-LLLA, if necessary)	
15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No	
16. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change

to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

ATTACHMENT G– 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 H – 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 Systems Operations Support for the HBX, Solicitation #MDM0031023850 (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 I-1. Contractor shall update ATTACHMENT I-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or 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’ 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 H-1

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

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

NON-DISCLOSURE AGREEMENT – ATTACHMENT H-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 I – 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: _____ [Name of RFP], Solicitation No. _____ (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 personally identifiable information.

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, 16th
Floor Baltimore, MD 21202
Phone: (410) 547-1838
Email: caterina.pangilinan@maryland.gov

With a copy to:

Sharon Stanley Street, Principal Counsel Office of the
Attorney General
Maryland Health Benefit Exchange Division 750 East
Pratt Street, 16th Floor
Baltimore, MD 21201
Phone: (410) 547-7378
Email: sharon.street1@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 _____, 2017.

By: _____

Assistant
Attorney General Maryland Health Benefit
Exchange

EXHIBIT 1 TO 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:

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):

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

Contact information to ask questions or learn additional information: _____

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

ATTACHMENT J – PERFORMANCE BOND

Principal	Business Address of Principal	
Surety A corporation of the State of and authorized to do business in the State of Maryland	Obligee	STATE OF MARYLAND
	By and through the following Administration	
Penal Sum of Bond (express in words and figures)	Date of Contract	, 20__
Description of Contract	Date Bond Executed	, 20__
Contract Number:		

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

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

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

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

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

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may,

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

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

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

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

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

as to

(SEAL)

Attest:

Corporate Principal

(Name of Corporation)

AFFIX
CORPORATE
SEAL

Corporate Secretary

as to

By:
President

Attest:

(SEAL)

Signature

(Individual or Corporate Surety)

Title

SEAL

(Business Address of Surety)

Approved as to legal form and sufficiency this ____ day
of _____ 20__

Asst. Attorney General

ATTACHMENT K – BUSINESS ASSOCIATE AGREEMENT
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is made by and among the Maryland Health Benefit Exchange (“MHBE”), the Maryland Medical Assistance Program (a unit of the Maryland Department of Health and Mental Hygiene, herein referred to as “Covered Entity”) and _____ (hereinafter known as “Business Associate”). MHBE, Covered Entity, and Business Associate shall collectively be known as the “Parties.”

WHEREAS, MHBE has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) which may necessitate Business Associate to be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent regulations (45 CFR Parts 160 and 164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)(collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between MHBE and Business Associate may involve the exchange of Protected Health Information (“PHI,” as that term is defined under HIPAA) between Business Associate and Covered Entity; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, MHBE, Covered Entity and Business Associate enter into this agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 *et seq.*) (“MCMRA”); and

NOW THEREFORE, the premises having been considered and 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:

I. DEFINITIONS

- A. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- B. Breach. “Breach” shall have the same meaning as the term “breach” in 456 CFR§ 164.402.
- C. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.
- D. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- E. Protected Health Information. “Protected Health Information” or “PHI” shall have the same

meaning as the term “protected health information” in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

- F. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.
- G. Secretary. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.
- H. Unsecured Protected Health Information. “Unsecured Protected Health Information” or “Unsecured PHI” shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary or as otherwise defined in § 13402(h) of the HITECH Act.

II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE

- A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of MHBE as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy rule.
- B. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR § 164.504(e).
- C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI

- A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement, the MCMRA, or as Required By Law.
- B. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- C. Business Associate shall immediately notify MHBE and Covered Entity of any use or disclosure of PHI in violation of this Agreement.
- D. In addition to its obligations in Section III.C, Business Associate shall document and notify Covered Entity of a Breach of Unsecured PHI. Business Associate’s notification to MHBE and Covered Entity hereunder shall:
 - 1. Be made to MHBE and Covered Entity without unreasonable delay and in no case later than 45 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 purposes of clarity for this Section

III.D.1, Business Associate must notify MHBE and Covered Entity of an incident involving the acquisition, access, use, or disclosure of PHI in a manner not permitted under 45 CFR Part E within 45 calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA.

2. Include the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
 3. Be in substantially the same form as Exhibit A hereto; and
 4. Include a draft letter for MHBE or the Covered Entity to utilize to notify the Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
 - a) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - b) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
 - c) Any Steps the Individuals should take to protect themselves from potential harm resulting from the Breach;
 - d) A brief description of what MHBE, the Covered Entity, and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
 - e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.
- F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of MHBE or Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- G. To the extent applicable, Business Associate shall provide access to PHI in a Designated Record Set at reasonable times, at the request of MHBE or Covered Entity, or, as directed by MHBE or Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- H. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a

Designated Record Set that MHBE or Covered Entity pursuant to 45 C.F.R. § 164.526 at the request of MHBE, Covered Entity or an Individual.

- I. Business Associate shall, upon request with reasonable notice, provide MHBE or Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI
- J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Should an individual make a request to MHBE or Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 CFR § 164.528, Business Associate agrees to promptly provide MHBE or Covered Entity with information in a format and manner sufficient to respond to the individual's request.
- K. Business Associate shall, upon request with reasonable notice, provide MHBE and Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.
- L. Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to MHBE or Covered Entity that seeks documents or other information held by Business Associate.
- M. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR § 164.502(j)(1).
- N. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of _____, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of MHBE or Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section IV.

- B. Termination for Cause. Upon MHBE or Covered Entity's knowledge of a material breach of this Agreement by Business Associate, MHBE or Covered Entity shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by MHBE or Covered Entity, terminate this Agreement;
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure is feasible, report the violation to the Secretary.
- C. Effect of Termination.
1. Except as provided in paragraph C(2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of MHBE or Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the PHI.
 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to MHBE or Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
 3. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, MHBE shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

V. CONSIDERATION

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to MHBE and Covered Entity, and to the business of MHBE and Covered Entity, in the event of breach by Business Associate 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 II or III above, MHBE and Covered Entity shall be entitled

to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or II by Business Associate, MHBE and Covered Entity is entitled to reimbursement and indemnification from Business Associate for MHBE and/or Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

VII. 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 Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

VIII. 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.

IX. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to MHBE. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Caterina Pañgilinan
Chief Compliance Officer
Maryland Health Benefit Exchange
750 E. Pratt Street, 16th Floor
Baltimore, MD 21202

Phone: (410) 547-1838

- D. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

[Designated DHMH Representative]
Department of Health & Mental Hygiene
201 W. Preston Street
Baltimore, MD 21201-2301
Phone:

- E. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

Attention: _____
Phone: _____

- F. 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.
- G. 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.
- H. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
- I. 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.

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

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

MARYLAND HEALTH BENEFIT EXCHANGE:

By: _____

Name: _____

Title: _____

Date: _____

**ATTACHMENT K-1
BUSINESS ASSOCIATE NOTIFICATION FORM OF ACTUAL OR POTENTIAL
HIPAA PRIVACY – IT SECURITY INCIDENT**

Date Reported to MHBE and Covered Entity: _____

This notification is made pursuant the Business Associate Agreement between the MARYLAND HEALTH BENEFIT EXCHANGE, a public corporation and independent unit of State government (“MHBE”) and reporting _____ (“Insert Business Associate name”).

Business Associate hereby notifies MHBE that there has been an actual or potential breach of unsecured protected health information (“PHI”) that Business Associate has used or has had access to under the terms of the Business Associate Agreement. Please provide as much detail as possible.

1) Description of the breach:

2) Were documents inappropriately loaded into wrong account? Yes No

If “yes,” into wrong account, Full Name of Account Owner Application ID Document ID(s)

(First) (Middle) (Last) _____

3) Was breach identified from work list or in application while assisting a customer? Yes No

4) Date of discovery of the breach: _____ Date of the breach: _____

5) Does the breach involve 500 or more individuals? Yes/No

6) Number of individuals “affected” (read: Number whose PHI was exposed) by the breach: _____

7) Name(s) of individuals “affected” by the breach (read: whose PHI was exposed): (attach list if over 5)

.1 _____ Application ID _____

.2 _____ Application ID _____

.3 _____ Application ID _____

.4 _____ Application ID _____

(Please Complete Next Page)

8) For each “affected” individual, explicitly list the types of unsecured PHI that were involved in the breach (such as “full name”, “Social Security number”, “date of birth”, “Medicaid number”, “home address”, “account number”, “passport number,” or other number. (Please refrain from simply identifying the type of document):

Name(s) of “Affected” Party	Document ID #	Types of PII
.1 _____	_____	_____
.2 _____	_____	_____
.3 _____	_____	_____
.4 _____	_____	_____
.5 _____	_____	_____

9) Was breach caused by reporting entity? Yes No

If “yes,” Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

10) Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

Please securely email completed form to caterina.pangilinan@maryland.gov or call Cat Pañgilinan, MHBE Chief Compliance Officer, at 410-547-1838 if you have any questions. Thank You!

Revised 2-2017

APPENDICES TO THE RFP

Attached as separate documents to the RFP:

Appendix A - Business Reply Envelope for Enrollment

Appendix B - Enrollee Reminder Notice

Appendix C - Enrollment Package Envelope Front and Back

Appendix D - HealthChoice Help Line Brochure (English)

Appendix E - Information Booklet (English)

Appendix F - MCO Comparison Chart (English)

Appendix G - MD Non Discrimination Policy

Appendix H - MD Provider Directory Request Card

Appendix I - Performance Report Card for Consumers (English)

Appendix J - Special Needs Brochure

Appendix K - Welcome Letter and Booklet

Appendix L – Sample Medicaid, MCHIP, or MCHP Renewal Notice