

Maryland Health Benefit Exchange

Request for Proposals

Study on Public Relations and Advertising

Issue Date: August 5, 2011

NOTICE

Prospective Offerors who have received this document from the Maryland Health Benefit Exchange's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that addenda to the RFP or other communications can be sent to them.

Minority Business Enterprises are Encouraged to Respond to this Solicitation

MARYLAND HEALTH BENEFIT EXCHANGE

KEY INFORMATION SUMMARY SHEET

Request For Proposals

Study on Public Relations and Advertising

Request For Proposals: Study on Public Relations and Advertising

Issue Date: August 5, 2011

Procurement Officer: Wendy Kronmiller
Chief of Staff/Assistant Secretary for Regulatory Affairs
Department of Health & Mental Hygiene
Office of the Secretary
201 West Preston Street
5th Floor
Baltimore, MD 21201-2301
Phone Number: 410-767-0938
Email: wkronmiller@dnhm.state.md.us

Contract Monitor: Carolyn Quattrochi
Executive Director
Governor's Office of Health Care Reform
100 State Circle
Annapolis, MD 21401
(410) 974-3336
cquattrochi@gov.state.md.us

Procurement Method: Competitive Proposals for a Fixed Price with Adjustments

Proposals are to be sent to: Maryland Health Benefit Exchange
c/o Maryland Department of Health and Mental Hygiene
201 West Preston Street, 5th Floor
Baltimore, MD 21201
Attention: Jill Spector

Closing Date and Time: 4:00 PM Local Time on August 26, 2011

MBE Subcontracting Goal: 0%

SECTION 1 – BACKGROUND

A. Introduction.

On April 12, 2011, Governor O'Malley signed into law the Maryland Health Benefit Exchange Act (Act) that established the Exchange as a public corporation and an independent unit of State government. The Act requires the Maryland Health Benefit Exchange (Exchange) to study and make recommendations on several issues, including how the Exchange should conduct its public relations and advertising campaign. The Exchange created an advisory committee on Navigator and Enrollment Assistance that is charged with considering options for the Exchange's outreach efforts as well as its Navigator Program and enrollment efforts. The Exchange is seeking assistance from a Contractor to provide support to a study on the Exchange's public relations and advertising efforts.

B. Background.

State implementation of health care reform is a complex task and the Maryland Health Benefit Exchange will create a new avenue for individuals and small businesses to get health care coverage. It is essential that the public understands the new options available to them through the Exchange and how to access them. The federal government recognizes the importance of outreach efforts and has identified Outreach as a core business function of the Exchange with milestones requiring states to conduct market analyses and develop outreach plans for consumers, small employers, as well as other key stakeholders (such as providers and insurance carriers).

In establishing the Maryland Health Benefit Exchange, the Maryland General Assembly requires the Exchange to provide a report by December 23, 2011 that studies and makes recommendations on how the Exchange should conduct its public relations and advertising campaign, including what type of solicitation, if any, of individual consumers or employers, would be desirable and appropriate. The subject of this RFP is to assist the Exchange in developing recommendations on its public relations and advertising campaign. The specific question related to what type of solicitation, if any, of individual consumers or employers, would be desirable and appropriate will be addressed by a separate vendor considering options for the Navigator Program.

Maryland has made progress in planning for the education and outreach needed to inform health care consumers about the Exchange and new coverage options available. The HCRCC recognized that engaging stakeholders and consumers in health reform implementation and educating the public about its impact are essential. One of the HCRCC's public workgroups was devoted to gaining input on education and outreach related to health reform.¹ More recently, through private foundation support, Maryland refined messaging around ACA implementation based on findings from professionally-conducted focus groups.

¹ HCRCC Education and Outreach Workgroup White Paper. October 31, 2010. Available at <http://dhmh.maryland.gov/healthreform/pdf/Education/FinalReportEducationWorkgroup.pdf>

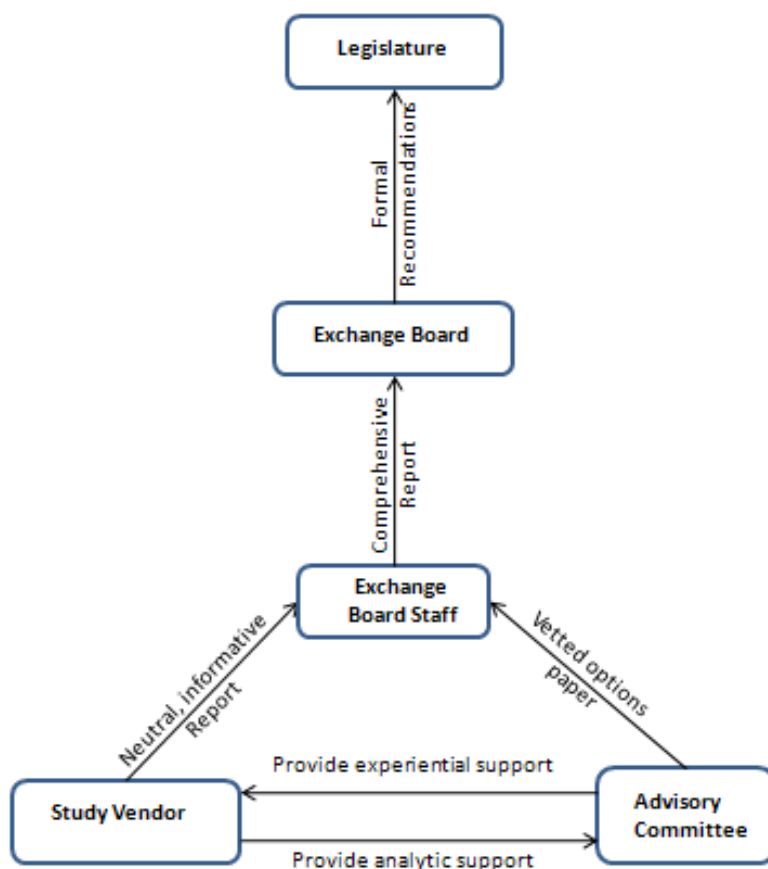
Looking ahead, the Governor's Office of Health Care Reform will manage Maryland's centralized strategy for communications, and will bring together a public/private coalition to help shape and support those efforts. The Executive Director of the Governor's Office of Health Care Reform will serve as the Contract Monitor to coordinate outreach planning activities between the Exchange and the Office of Health Reform.

C. Contractor Responsibilities.

The Exchange Board of Directors is seeking a Contractor to provide analytic support as the Exchange moves forward. The Contractor selected through this RFP process, in partnership with the Navigator and Enrollment Committee, will build upon the progress that has already been made to help the Exchange Board make recommendations regarding public relations and advertising (See Figure 1).

The Contractor will provide the Exchange Board and advisory committee with analytic support to foster informed discussions. By November 15, 2011, the Contractor will publish neutral, informative final report of the options, and objective strengths and weaknesses of each. This report, along with deliverables produced by the advisory committee, will be incorporated into the Exchange's December 23, 2011 report making recommendations to the Maryland General Assembly.

Figure 1: Legislative Study Entities



The Exchange intends to make a single award to the Offeror whose proposal is deemed to be the most advantageous to the State. Offerors, either directly or through their sub-contractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation.

Note. This RFP is contingent upon Maryland's award of the Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges Grant on or about August 14, 2011.

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SECTION 2 – SCOPE OF WORK

- A. The Exchange seeks assistance for analytic support for the Exchange to study and make recommendations regarding how the Exchange should conduct its public relations and advertising campaign. All analyses shall include consideration of the population and environment of Maryland and not just national information, and should use existing data sources, if available.
- B. Deliverables.
1. Final Approved Work Plan: The Offeror selected shall propose a work plan that sets forth a timeline for completing the deliverables, including appropriate input from the related advisory committee. The work plan will be finalized with the input of the Contract Monitor. The work plan should propose how to organize the issues to be addressed in the deliverables to efficiently and effectively address all of the study questions identified in Section 2(A), as well as any other study questions the Offeror determines, in its professional judgment, are necessary for consideration. Unless otherwise specified, the work plan should identify whether each deliverable will be produced as a comprehensive report, issue brief, power point or some other method. The work plan should consider the likely release of federal guidance that may affect the public relations and advertising options. The work plan must identify opportunities for gaining feedback on analysis and options from Maryland stakeholders, the Exchange Board, and Advisory Committees.
 2. Environmental Scan: Environmental Scan: The contractor will conduct a market analysis and environmental scan to assess communications needs, compile existing Exchange communications materials from federal and other sources.
 3. Options Development: The Offeror selected will develop options for the Exchange Board and/or Advisory Committees to consider. The presentation of the options should be sufficiently developed to foster a transparent dialogue about Maryland policy decisions. The options should be consistent with the work plan.
 4. Maryland Specific Analysis of Options: The Offeror selected will provide neutral analysis and Maryland specific analysis of options to support the Exchange Board and/or advisory committees in the development and consideration of options. The Maryland specific analysis of options should be consistent with the work plan described in Section 2(B)(1) and must minimally address all of the study questions identified in Section 2(A) and any other study questions and considerations the successful contractor determines, in its professional judgment, are necessary for the Exchange to consider.
 5. Final Report: Prepare a final report to the Contract Monitor and the Navigator and Enrollment Advisory Committee. The final report should synthesize the environmental scan, options and Maryland specific analysis of options.
 6. Communications Materials: The contractor will develop materials to support the Exchange's outreach efforts during the grant period.

7. **Advisory Committees:** At the request of the Contract Monitor, the Offeror selected will make presentations and engage with the relevant advisory committee and Board meetings, and participate in any necessary conference calls and meetings. The contractor's engagement with the Exchange Advisory Committee on Navigator and Enrollment is expected to be frequent during October and November of 2011.
8. **Availability:** During the term of the contract, travel to Annapolis, Maryland and provide testimony to the General Assembly, its legislative committees, or other entities during the regular 2012 session and any applicable special session(s), as requested by the Contract Monitor.
9. **Future Support:** Provide support to the Exchange for future analytic work that may be needed in response to potential legislative proposals during the 2012 session of the Maryland General Assembly and/or forthcoming federal guidance.

The items required to be provided shall be delivered in accordance with the following schedule:

<u>Action Item</u>	<u>Due Date</u>
Project Start Date	Immediately after the Notice to Proceed is issued
Final Approved Work Plan	7 calendar days from the date that the Notice to Proceed is issued
Environmental Scan	In accordance with approved work plan, but no later than October 17, 2011
Options Development	In accordance with approved work plan
Maryland Specific Analysis of Options	In accordance with approved work plan
Final Report	In accordance with approved work plan, but no later than November 7, 2011
Communications Materials	In accordance with approved work plan
Future Analytic Work	As needed until April 30, 2012

In addition to these deliverables, the successful Contractor will update the Contract Monitor weekly on the progress and status of the work being performed under the Contract, and any findings, issues, and conclusions. These updates shall be provided through written status reports and/or discussions. Discussions may be held either in person or by telephone, at the mutual convenience of both parties.

- C. **Optional Task Orders.** In addition to the scope of services specified in Section 2(A)-(B), which are included in the fixed-price contract, the Contractor shall provide additional related out-of-scope services that arise during the term of this contract, as requested by the Contract Monitor, at the wage and hour rates set forth in the Attachment A.
 - a. Task Orders will govern services required by the Exchange apart from those identified in Section 2(A) above. The Task Order process shall apply only to these activities and not for the requirements of Section 2(A) – (B) of this RFP.

- b. The Contract Monitor will initiate a Task Order Request for Proposals (TORFP). A TORFP will define the scope and requirements of the specific task to be performed and identify the time for the Contractor to submit a proposed response to the TORFP.
 - c. Upon receiving the TORFP, the Contractor shall provide a proposal in response to the TORFP's requirements. At a minimum, the proposal shall include a proposed approach to satisfying the TORFP's requirements, proposed schedule for completion or implementation, proposed total price, and individual personnel prices based on Attachment A.
 - d. Based on the Contractor's proposal, the Contract Monitor will prepare a Task Order Agreement. The Contractor shall begin work on a Task Order Agreement only upon receipt of a notice to proceed.
 - e. Task Order work and invoicing shall be performed by the Contractor in accordance with the terms of the Task Order Agreement.
- D. Contract Personnel Expertise. The Offeror shall describe staff including the organization structure with staffing levels and responsibilities. The Contractor shall identify the single point of contact for the Exchange who will serve as the Contractor's project manager or liaison for managing contractual issues. The Offeror shall demonstrate by resumes provided that the proposed personnel are qualified to perform in the job specified. Key personnel should be qualified to give testimony. Proposed personnel may not be substituted without the prior agreement of the Contract Monitor.
- E. Invoicing and Payment Type
- a. The contract resulting from this RFP shall be a firm fixed price with respect to the services identified in Section 2(A)-(B), and a time and materials contract with respect to Task Order services identified in Section 2(C).
 - b. For services rendered pursuant to the fixed price portion of the contract and unless otherwise directed by the Contract Monitor, all invoices shall be submitted on a monthly basis and shall specify the work performed that month.
 - a. The Exchange reserves the right to reduce or withhold contract payment in the event the Contractor does not provide the Exchange 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. Any action on the part of the Exchange, or dispute of action by the contractor, shall be in accordance with Exchange's Interim Procurement Policy.

SECTION 3 – PROPOSAL FORMAT

- A. Format. Offers shall submit two distinct proposals: a technical proposal and a financial proposal. These should be separate documents, though they should be submitted together. The final submission of these two documents should be in the following format:
- a. 12 point Times New Roman font
 - b. 1 inch margins
 - c. Up to 20 pages in length (not including Appendices)
 - d. Consecutively numbered
- B. Submission.
1. Hard Copies. The technical and financial proposals should be sealed separately from one another, but should be submitted together indicating the RFP title, the Offeror's name and address, and distinguishing the technical proposal and the financial proposal. The Offeror must submit 1 unbound original and 5 copies of each of the technical and fiscal proposals.
 2. Electronic Copy. The Offeror must submit an electronic version (CD) of each of the technical proposal and financial proposal labeled in the same manner as the hard copy submission.
 3. PIA Electronic Copy. The Offeror must also submit a second electronic version (CD) of each of the technical and financial proposals redacting all confidential and/or proprietary information for Public Information Act (PIA) requests.
 4. Offerors may either mail or hand-deliver proposals.
- C. Technical Proposal (**No pricing information is to be included in the Technical Proposal (Volume 1)**). The Technical Proposal shall not exceed twenty pages and include the following in order:
1. Proposed Work Plan. The Offeror selected shall propose a work plan that sets forth a timeline for completing the deliverables. The work plan will be finalized with the input of the Contract Monitor as the first deliverable of the contract. This section of the technical proposal must contain sufficient details to convey to members of the evaluation team the Offeror's knowledge of the subject and skills necessary to successfully complete the project and all requirements of Section 2 of the RFP. The Work Plan should include any required involvement of Exchange staff. The description shall include a project management plan, overall timelines, and key personnel to be assigned at each phase of the project. Offeror must provide an estimate of the total number of hours for key personnel by deliverable, excluding hours for testimony.

2. Corporate Qualifications. Offerors shall describe how their organization can meet the requirements of this RFP and shall include the following:
 - a. An overview of the Offeror's experience and capabilities providing similar services.
 - b. The names and titles of key management personnel directly involved with supervising the services rendered under this Contract.
 - c. At least three references 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 provided service within the past five years and shall include (1) the name of client organization, (2) the name, title, telephone number and e-mail address, if available, of point of contact for client organization, and (3) the value, type, duration, and services provided. **The Exchange reserves the right to request additional references or use references not provided by an Offeror.**
 - d. A complete list of any subcontractors other than those used to meet a Minority Business Enterprise subcontracting goal. This list shall include a full description of the duties each subcontractor will perform and why/how they were deemed the most qualified for this project.
3. Experience and Qualifications of Proposed Staff.
 - a. Offerors shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities as detailed in the Work Plan.
 - b. Include individual resumes for the key personnel who are to be assigned to the project if the Offeror is awarded the contract. The key personnel will be considered material to the contract, and may not be changed without prior approval of the Contract Monitor. Letters of intended commitment to work on the project, including non-Minority Business Enterprise subcontractors should be included in this section. (Resumes and letters of commitment may be provided as appendices and will not count towards the page limits on the technical proposal.) Key personnel should be qualified to give testimony.
 - c. Offerors are required to provide an organizational chart outlining personnel and their related duties. Include job titles and the percentage of time each individual will spend on their assigned tasks.
4. Signed copies of each attachment identified in Section 6 to this RFP. (These attachments may be provided as appendices and will not count towards the page limits on the technical proposal).

D. Financial Proposal.

The Financial Proposal should detail the total price proposed by the Offeror for all tasks to be completed under Sections 2(A) and (B) of the RFP. The Financial Proposal shall detail the project costs by task to be completed, by person performing the tasks, and the expected hours for each task to be completed. The Financial Proposal shall also include Attachment A for purposes of task orders under Section 2(C) of the RFP.

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SECTION 4 – EVALUATION CRITERIA

- A. Evaluation of proposals will be based on the criteria set forth below. The Contract(s) resulting from this RFP will be awarded to the Offeror(s) that is most advantageous to the Exchange considering price and the technical factors. In making this determination, technical factors will receive greater weight than price factors. The evaluation team will determine which proposals satisfy the requirements of this RFP by considering the following criteria on a “points earned” basis, as follows:
- a. Reasonableness and likely success of Proposed Work Plan - 30 points
 - b. Qualifications and experience of proposed staff with similar projects and their public relations experience and knowledge and familiarity with populations most likely to be served by the Exchange – 30 points
 - c. Corporate qualifications – 20 points
 - d. Cost proposal – 20 points

SECTION 5 - GENERAL INFORMATION

- A. The Contract that results from this RFP shall be a firm fixed price contract.
- B. The Contract resulting from this RFP shall be for a period of approximately 7 months beginning on or about September 20, 2011 and ending on April 30, 2012. The Contractor shall provide services upon receipt of a Notice to Proceed from the Contract Monitor.
- C. The sole point of contact in the Exchange for purposes of this RFP prior to the award of any Contract is the Procurement Officer at the address listed below:

Wendy Kronmiller
Chief of Staff/Assistant Secretary for Regulatory Affairs
Department of Health & Mental Hygiene
Office of the Secretary
201 West Preston Street
5th Floor
Baltimore, MD 21201-2301
Phone Number: 410-767-0938
Email: wkronmiller@dnhm.state.md.us

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

- D. The Contract Monitor is:

Carolyn Quattrochi
Executive Director
Governor's Office of Health Care Reform
100 State Circle
Annapolis, MD 21041
cquattrochi@gov.state.md.us

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

- E. If it becomes necessary to revise this RFP before the due date for proposals, addenda will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the Exchange web page and through eMarylandMarketplace. Addenda made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.
- F. The Exchange 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 cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the Exchange's best interests. The Exchange

also reserves the right, in its sole discretion, to award a Contract based upon the written proposals received without prior discussions or negotiations.

- G. The Exchange is not responsible an Offeror's costs incurred in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities relative to this solicitation.
- H. By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. Payment by electronic funds transfer is mandatory for contracts exceeding \$100,000. The selected 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 and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form can be downloaded at: <http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>.
- I. By submitting an offer in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment B**. Any exceptions to this RFP or the contract must be raised prior to August 12, 2011. The Exchange shall evaluate all exceptions noted by all potential Offerors and respond to all such exceptions and questions by August 19, 2011. Changes to the solicitation or contract made by the Offeror after August 19, 2011, or after proposals are due on August 26, 2011, shall result in rejection of the Offeror's proposals.

SECTION 6 – ADDITIONAL MATERIALS TO SUBMIT

- A. This solicitation contains federal funds through an Establishment Grant under a Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges (CFDA number 93.525). Accordingly, there are programmatic conditions that apply to this contract, which are contained in **Attachment C**. Acceptance of this Contract indicates your intent to comply with all conditions, which are part of this Contract.
- B. All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel and each of the participating subcontractor personnel shall be required to complete agreements such as **Attachment D** 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.
- C. A proposal submitted by an Offeror must be accompanied by a completed Affidavit. A copy of this Affidavit is included as **Attachment E** of this RFP.

SECTION 7 - ATTACHMENTS

- A. Hourly Labor Rate for TORFPs
- B. State Contract
- C. Federal Funding Programmatic Conditions
- D. Conflict of Interest Affidavit
- E. Affidavit

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ATTACHMENT A – TORFP RATES

Contractor Key Personnel	Hourly Labor Rate
A.	\$
B.	\$
C.	\$
D.	\$
E.	\$
F.	\$
G.	\$
H.	\$

Authorized Individual Name

Company Name

Title

Company Tax ID #

The Hourly Labor Rate is the actual rate the Exchange will pay for services and must be recorded in dollars and cents.

SUBMIT AS A .PDF FILE WITH THE FINANCIAL RESPONSE

ATTACHMENT B – STANDARD CONTRACT

Maryland Health Benefit Exchange Legislative Study Contract

THIS LEGISLATIVE STUDY CONTRACT (the “Contract”) is made this ____ day of _____, 2011 by and between _____ (the “Contractor”) and the Maryland Health Benefit Exchange (the “Exchange”).

In consideration of the promises and the covenants herein contained, the parties agree as follows:

1. Scope of Work.

- A. The Contractor shall provide all deliverables as defined in Section 2 of the RFP attached hereto as an Exhibit. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. 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 – The Technical Proposal

Exhibit C – The Financial Proposal

- B. 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. Unless agreed to in writing by the Contractor, 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 agreed to by Contractor 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.
- C. Modifications to this Contract may be made provided (a) the modifications are made in writing and (b) all parties sign the modifications.
- D. The Exchange will provide all necessary and reasonably requested information, direction and cooperation to enable Contractor to provide the services provided hereunder, and any direction (whether verbal or written) shall be effective if received (whether verbally or in

writing) from a person known to Contractor or reasonably believed by Contractor to be authorized to act on the Exchange's behalf. Contractor shall be permitted to use all information and data supplied by or on behalf of the Exchange without having independently verified the accuracy or completeness of it except to the extent required by generally accepted professional standards and practices..

- E. Neither the Contract nor the provision of the services is intended to confer any right or benefit on any third party. The provision of services under this Contract cannot reasonably be relied upon by any third party.

2. Period of Performance. This Contract shall be for a period of approximately 7 months beginning on or about September 20, 2011 and ending on April 30, 2012. The Contractor shall provide services upon receipt of a Notice to Proceed from the Contract Monitor.

3. Consideration and Payment

- A. In consideration of the satisfactory performance of the work set forth in this Contract, the Exchange shall pay the Contractor in accordance with the terms of this Contract and at the rates specified in the Contractor's Financial Proposal. Except with the express written consent of the Procurement Officer, payment to the Contractor, pursuant to this Contract, shall not exceed \$_____ with respect to the fixed price portion of the Contract. Payment for services provided under Section 2(C) of the RFP shall be made in accordance with such Section.
- B. Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Exchange of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is _____. Charges for late payment of invoices other than as prescribed by Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 1, are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the Exchange to pay Contractor pursuant to this Contract and any other Exchange payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- C. 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. Rights to Records

- A. The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the

Contractor, for purposes of this Contract shall be the sole property of the Exchange and shall be available to the Exchange at any time. The Exchange shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

- B. The Contractor agrees that at all times during the term of this Contract and thereafter, only those documents, materials and other deliverables created or developed by Contractor specifically and exclusively for the Exchange pursuant to the Contract will be considered the sole property of the Exchange or “work made for hire” as that term is interpreted under U.S. copyright law and exclusively owned by the Exchange (collectively, “Work”).
 - C. To the extent that any products created as a deliverable under this Contract are not Work, the Contractor hereby relinquishes, transfers, and assigns to the Exchange all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the Exchange in effectuating and registering any necessary assignments.
 - D. The Contractor shall report to the Exchange, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
 - E. The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the Exchange hereunder and if such markings are affixed, the Exchange shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
 - F. Notwithstanding anything to the contrary in the Contract, Contractor will retain all patent, copyright and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience (collectively, “Intellectual Property”) owned or possessed by Contractor before the commencement of, or acquired by Contractor during or after, the performance of the Services. To the extent that any of Intellectual Property is embodied in any of the Work, Contractor will grant to the Exchange a nonexclusive, non-transferable, royalty-free license to use the Intellectual Property for its internal use, but solely in connection with and to the extent necessary for use of the Work as contemplated by the Contract. Unless Contractor provides its prior written consent, the Exchange will not use, or disclose to any third party, Contractor's advice or Work other than as mutually contemplated by the parties when Contractor first was retained to provide such advice or Work or as required by law.
5. **Exclusive Use.** The Exchange shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the Exchange shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the Exchange.

6. Patents, Copyrights, Intellectual Property

- A. 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 Exchange to use such item or items.
- B. The Contractor will defend or settle, at its own expense, any claim or suit against the Exchange alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret; provided, however, that Contractor's indemnity obligations under this Section should not apply to any claim for infringement or misappropriation of intellectual property rights to the extent any such infringement or misappropriation is caused by: (i) information or materials provided by the Exchange or a third party other than Contractor's subcontractors, if any, (ii) modifications made by the Exchange or a third party other than Contractor's subcontractors to Services, Work or Contractor's other materials provided to the Exchange in connection with the Services, or any parts, thereof, or (iii) the Exchange's use of Services, Work or such other materials or any parts thereof, in a manner inconsistent with the terms of the Contract. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the Exchange against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the Exchange (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 6(C) below.
- C. If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the Exchange the right to continue using the applicable item, (b) replace the product with a non-infringing product substantially complying with the item's specifications, or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

- 7. Confidentiality.** 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 that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. 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.

8. Indemnification

- A. The Contractor shall hold harmless and indemnify the Exchange from and against any and all losses, damages, claims, suits, actions, liabilities and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
 - B. The Exchange 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.
 - C. The Exchange 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. The Exchange shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance or operation of this Contract.
 - D. 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 Agreement, and will cooperate, assist and consult with the Exchange in the defense or investigation of any claim, suit, or action made or filed against the Exchange as a result of, or relating to, the Contractor's performance under this Contract.
9. **Non-Hiring of Employees.** No employee of the Exchange or of the State of Maryland, or any department, commission, agency, branch or unit thereof, whose employee duties include matters relating to or affecting the subject matter of this Contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the Exchange.
10. **Disputes.** Disputes arising under this Contract which cannot be resolved between the Contractor and the Contract Monitor for the Exchange shall be forwarded to the Exchange's Executive Director. For disputes associated with contracts valued at less than \$75,000, the decision of the Executive Director or designated procurement officer is final. For disputes associated with contracts valued at \$75,000 or more, the Contractor may appeal the Executive Director's decision to the Exchange's Board of Directors. The decision of the Exchange's Board of Directors is final. Pending resolution of any such dispute, the Contractor shall proceed with the performance of this Contract.
11. **Maryland Law.** This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
12. **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, 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.

13. **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 or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on the making of this Contract. For breach or violation of this warranty, the Exchange may terminate this Contract without liability, or deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

14. **Termination for Cause.**

- A. If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Agreement, the Exchange shall notify the Contractor in writing of such failure and the Contractor shall have the right to cure any alleged breach of its obligations under the Contract within the time specified in the notice from the Exchange. If the Contractor is unable to cure such breach during the specified time, the Exchange may terminate the Agreement by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination.
- B. The Contractor should also have the right to terminate the Contract for an uncured breach of the Exchange's obligations under the Contract.
- C. If this Contract is terminated under Section 14(A) or (B), all finished or unfinished work provided by the Contractor shall, at the Exchange's option, become the Exchange's property but shall be provided on an "AS IS" basis the Contractor should have no liability from the use of any such unfinished Work. The Exchange 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 Exchange can affirmatively collect damages.

15. **Termination for Convenience.** The performance of work under this Contract may be terminated by the Exchange upon 30 days written notice to the Contractor by certified mail to the Contractor's principal office, or from time to time in part, whenever the Exchange shall determine that such termination is in the Exchange's best interest. The Exchange 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 Agreement; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

16. **Suspension of Work.** The Exchange 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 Exchange may determine to be appropriate for the Exchange's convenience.
17. **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 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.
18. **Documents Retention and Inspection Clause.** The Contractor and sub-contractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the Exchange hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Exchange, including the procurement officer or designee, at all reasonable times.
19. **Compliance with Laws.** The Contractor hereby represents and warrants that:
- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
 - B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, 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;
 - C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
 - D. 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.
20. **Assignment.** This Contract shall not be assigned by either contracting party without the prior written consent of the other party.
21. **Liability.** For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:
- A. For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 6 of this Contract;
 - B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

- C. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount of the Agreement value up to the date of settlement or final award of any such claim. Third party claims, arising under Section 8, "Indemnification", of this Contract, are included in this limitation of liability only if the Exchange is immune from liability. Contractor's liability for third party claims arising under Section 6 of this Contract shall be unlimited if the Exchange is not immune from liability for claims arising under Section 6.

22. Prompt Pay Requirements

- A. If the Contractor withholds payment of an undisputed amount to its subcontractor, the Exchange, at its option and in its sole discretion, may take one or more of the following actions:
- i. Not process further payments to the contractor until payment to the subcontractor is verified;
 - ii. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - iii. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - iv. Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - v. Take other or further actions as appropriate to resolve the withheld payment.
- B. An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation: (i) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (ii) in amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- C. An act, failure to act, or decision of a Procurement Officer or a representative of the Exchange, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not (i) affect the rights of the contracting parties under any other provision of law; (ii) be used as evidence on the merits of a dispute between the Exchange and the contractor in any other proceeding; or (iii) result in liability against or prejudice the rights of the Exchange.
- D. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise ("MBE") program.

E. To ensure compliance with certified MBE subcontract participation goals, the Exchange may, consistent with COMAR 21.11.03.13, take the following measures:

- i. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate: (a) Inspecting any relevant records of the Contractor; (b) Inspecting the jobsite; and (c) interviewing subcontractors and workers. Verification shall include a review of: (x) the Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and (y) the monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- ii. If the Exchange determines that the Contractor is in noncompliance with certified MBE participation goals, then the Exchange will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- iii. If the Exchange determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Exchange requires, the Exchange may then: (a) terminate the contract; (b) refer the matter to the Office of the Attorney General for appropriate action; or (c) initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
- iv. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

23. Federal Department of Health and Human Services (DHHS) Exclusion Requirements.

The Contractor agrees that it will comply with federal provisions (pursuant to §§1128 and 1156 of the Social Security Act and 42 CFR § 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities (LEIE) maintained by DHHS. By executing this Contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The 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 the Exchange immediately of any identification of the contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the contractor or any contractor employee.

24. Legality; Severability. In the event that any part or portion of these Mandatory Contract Provisions shall be deemed by appropriate judicial or regulatory authority to be void, to be voidable, unenforceable, or contrary to applicable statutory or regulatory authority, or if any provision shall have been omitted contrary to the requirements of such law, then all other provisions hereof shall be unaffected thereby and shall remain in full force and effect. In such an event, if one party requests the other party, both parties shall endeavor to agree to such substitute language to the Mandatory Contract Provisions as shall best evidence their original intent hereunder, if there is no material harm thereby caused to the other party, and as shall best comply with all applicable requirements of law.

25. Maryland's Public Information Act. The Agreement is subject to Maryland's Public Information Act. Md. Ann. Code § 10-611 et seq.

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

CONTRACTOR

MARYLAND HEALTH BENEFIT
EXCHANGE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT C – FEDERAL FUNDS REQUIREMENTS AND CERTIFICATIONS

A Summary of Certain Federal Fund Requirements and Restrictions

1. Form and rule enclosed: 18 U.S.C. 1913 and section 1352 of P.L. 101-121 require that all *prospective* and present subgrantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form “Certification Against Lobbying”. It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF- LLL.
2. Form and instructions enclosed: “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.
3. Form and summary of Act enclosed: Subrecipients of federal funds on any level must complete a “Certification Regarding Environmental Tobacco Smoke, required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, education or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.
4. In addition, federal law requires that:
 - A) OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations requires that grantees (both recipients and subrecipients) which expend a total of \$500,000 or more in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act of 1996, P.L. 104-156, and the Office of Management and Budget (OMB) Circular A-133. All subgrantee audit reports, performed in compliance with the aforementioned Circular shall be forwarded within 30 days of report issuance to the DHMH, Audit Division, 605 S. Chapel Gate Lane, Old School Building, Baltimore, MD 21229.
 - B) All subrecipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
 - C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for

which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- b) The contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor issued pursuant to the act.
- c) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the secretary of labor issued pursuant to the act.
- d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor vendor. The contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 791 et seq.) 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.

- D) All subrecipients comply with Title VI of the Civil Rights Act of 1964, that they must not discriminate in participation by race, color, or national origin.
- E) All subrecipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from

paying any direct salary at a rate in excess of Executive Level 1 per year. (This includes, but is not limited to, subrecipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)

- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.
- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.
- H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or that (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]
- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

Rev. 3/2008

CERTIFICATION REGARDING ENVIRONMENTAL SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source or applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification, the offeror/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization agrees that it will require that the language of this certification be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

NAME: _____

TITLE: _____

GRANT NO: _____

STATE: _____

U.S. Department of Health and Human Services

Certification Regarding Lobby

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 Lobby," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients 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.	Organization Entity
Name and Title of Official for Organization Entity	Telephone No. of Signing Official
Signature of Above Official	Date Signed

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. Contract <input type="checkbox"/> b. Grant <input type="checkbox"/> c. Cooperative Agreement <input type="checkbox"/> d. Loan <input type="checkbox"/> e. Loan guarantee <input type="checkbox"/> f. Loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. Bid/offer/application <input type="checkbox"/> b. Initial award <input type="checkbox"/> c. Post-award	3. Report Type: <input type="checkbox"/> a. Initial filing <input type="checkbox"/> 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, if known: _____	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____			
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____			
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____			
<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> 10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI): _____ </td> <td style="width: 50%; vertical-align: top;"> b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): _____ </td> </tr> </table>			10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI): _____	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): _____
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI): _____	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): _____			
<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> 11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned </td> <td style="width: 50%; vertical-align: top;"> 13. Type of Payment (check all that apply) <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: _____ </td> </tr> </table>			11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply) <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: _____
11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply) <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 (check all that apply) <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: <div style="text-align: right; font-size: small;">(attach Continuation Sheet(s) SF-LLLA, if necessary)</div>				
15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No				

<p>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.</p>	Signature: _____		
	Print Name: _____		
	Title: _____		
	Telephone No.: _____ Date: _____		
<table border="1"> <tr> <td>Federal Use Only:</td> <td>Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)</td> </tr> </table>		Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)
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 subawardee 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 subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," 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.

A PDF version of this form is available on-line at:
<http://www.whitehouse.gov/sites/default/files/omb/grants/sflll.pdf>

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ATTACHMENT D – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

- 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 Exchange, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage, or a reasonable member of the public might have the perception that the impartiality of the person is compromised. For purposes of identifying when a reasonable member of the public might have the perception of a potential conflict, if a person has engaged in a professional activity in the State of Maryland in the past 24 months in which the person was paid \$5,000 or more where the activity was in or directly related to one of the following areas, this might give rise to that perception and should be disclosed:
1. Health benefit exchanges;
 2. Health insurance;
 3. Health insurance carriers, broker, or dealers;
 4. Goods, equipment, materials, supplies, or information technology or telecommunication products of the type used by or reasonably likely to be used by the Maryland Health Benefit Exchange;
 5. Trade associations of health insurance carriers, health insurance agents or brokers, health care providers, or health care facilities or health clinics; or
 6. Personal services used by or reasonably likely to be used by the Maryland Health Benefit Exchange, including, but not limited to, health care and insurance research consulting firms.
- B. “Person” has the meaning stated in COMAR 21.01.02.01B(64) and includes an 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 or offer is made.
- C. The 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 Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the 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 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 THE TECHNICAL RESPONSE

ATTACHMENT E – AFFIDAVIT

Maryland Health Benefit Exchange Required Affidavits and Affirmations

A. Authorized Representative

I hereby affirm that I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. Affirmation Regarding Bribery Convictions:

I further affirm that neither I, nor to the best of my knowledge, information, and belief, the above business (as 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):

C. 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 or 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 or proposals for a public or private contract; or
 - (8) 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(1)—(7) 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):
-
-

D. 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, except as follows:

- (1) Has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity; and
- (2) Is on the federal Excluded Parties List System (EPLS), which includes information regarding entities debarred, suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits.

(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 his/her/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 debarment or suspension)

E. 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 § 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 qualifications):
-
-

F. Sub-Contract 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.

G. 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 or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or 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 or offer is submitted.

H. Financial Statement Disclosure

I further affirm that I am aware of, and the above business will comply with, the provisions of § 13-221 of the State Finance and Procurement Article of the 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.

I. Political Contribution Disclosure Affirmation

I further affirm that I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

J. Drug and Alcohol Free Workplace

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 or offer, 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 whom 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' 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 §J(2)(b), above;
 - h. Notify its employees in the statement required by §J(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;
 - iii. Notify the Exchange within 10 days after receiving notice under §J(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
 - i. Within 30 days after receiving notice under §J(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
 - j. Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §J(2)(a) – (i), above;
- (3) If the business is an individual, the individual shall certify and agree as set forth in §J(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.

K. Certification of Corporation Registration and Tax payment

I further affirm that

- (1) The business named above is a (domestic)_____ (foreign) _____ corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name:_____

Address:_____

- (2) 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.

L. 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.

M. Acknowledgement

I acknowledge that this Affidavit is to be furnished to the Maryland Health Benefit Exchange. 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 or 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.

By: _____

Name: _____

Title: _____

Date: _____

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