



4050 Esplanade Way
Tallahassee, FL 32399-0950
850-488-2786

Ron DeSantis, Governor
Jonathan R. Satter, Secretary

**ATTACHMENT A
DRAFT CONTRACT
FOR
PHARMACY BENEFIT MANAGEMENT SERVICES
ITN NO.: DMS-19/20-030
BETWEEN
STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
AND
[INSERT CONTRACTOR NAME]**

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ATTACHMENTS:

ATTACHMENT 1: AFFIDAVITS

ATTACHMENT 2: ADMINISTRATIVE REQUIREMENTS

ATTACHMENT 3: PERFORMANCE GUARANTEES

ATTACHMENT 4: PPO PLAN BOOKLET WITH SUMMARY OF MATERIAL MODIFICATIONS

ATTACHMENT 5: APPROVED SUBCONTRACTORS

ATTACHMENT 6: FEES, CLAIMS, CLINICAL PROGRAMS, AND DRUG LISTS

ATTACHMENT 7: PRIVACY, SECURITY, AND CONFIDENTIALITY BUSINESS ASSOCIATE AGREEMENT

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DRAFT

CONTRACT

This Contract is between the STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES (“Department”), an agency of the State of Florida, with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and {Insert Contractor Name} (“Contractor” or “Service Provider”), with offices at {Insert Contractor Address}, each a “Party” and collectively referred to herein as the “Parties”.

WHEREAS, the Contractor responded to the Department’s Invitation to Negotiate (ITN) No.: DMS-19/20-030 for Pharmacy Benefit Management services (Services); and

WHEREAS, the Parties wish to enter into this Contract in accordance with the terms and conditions of the ITN.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, the Parties agree as follows:

Section 1 DEFINITIONS

1.1 Definitions

The following capitalized terms used in this Contract (including the Attachments thereto) have the meanings ascribed below:

“30-Day Retail Pharmacy” or “Retail-30” means a network retail pharmacy that dispenses up to a thirty (30) day supply of covered prescription drugs and supplies for an agreed upon reimbursement.

“90-Day Retail Pharmacy” or “Retail-90” means a network retail pharmacy that dispenses up to a ninety (90) day supply of covered prescription drugs and supplies for an agreed upon reimbursement.

“Account Management Team” means the individuals required by Attachment 2: Administrative Requirements, II. Account Management, 3.:

- Executive Sponsor
- Account Director/Executive
- Account Manager
- Customer Service Manager
- Data/Fiscal Analyst
- Register Pharmacist or PharmD

“Average Wholesale Price” or “AWP” means the average wholesale price for the actual package size of the eleven (11) digit National Drug Code (NDC) of the dispensed prescription drug product on the date dispensed, from the most current pricing information provided to Service Provider by Medi-Span’s Prescription Pricing Guide (with supplements), if available, or other nationally recognized reporting service of pharmaceutical prices as selected by Service Provider and disclosed to the Department. Service Provider shall use a single data reporting source for determining the Department’s AWP Pricing.

“Benefits Document” means the document approved by the Florida Legislature in accordance with section 110.123(5), Florida Statutes, describing the scope of coverage, benefits available, limitations, restrictions and exclusions of the Plan, and the conditions under which Service Provider will pay claims. The Benefits Document is subject to modification by the Florida Legislature and the Department at any time. The covered and excluded services in the Benefits Document will be equivalent to those set forth in the Benefits Document, together with any additional services expressly approved by the Department. The Benefits Document in effect as of the date of the ITN resulting in this Contract is included in Attachment 4. The Department shall provide revisions, updates, and summaries of material modifications to the Benefits Document to the Service Provider as soon as

administratively possible following adoption.

"Brand Drug" means all covered drugs that do not meet the Generic Drug definitions. For pricing guarantee purposes Brand Drugs will include all claims with Medi-Span Brand Name Code = "T" with Medi-Span Multi-Source Code = "M", "N" or "O" on the date dispensed. Contractor's proprietary brand / generic drug algorithm(s) must not be used to classify drugs as Brand or Generic when reconciling Contractor's aggregate Semi-annual Brand AWP Discount Guarantees or Contractor's Per Brand Prescription Rebate Guarantees.

"Business Day" means any day of the week excluding weekends and holidays observed by State agencies pursuant to section 110.117(1), Florida Statutes.

"Calendar Day" means any day in a month, including weekends and holidays.

"Claim(s)" means an application for payment of, or reimbursement for, health care expenses, including prescription drugs, incurred by Participants, which is filed in accordance with the Benefits Document and the Service Provider's and/or Department's requirements.

"CMS" means Centers for Medicare and Medicaid Services.

"Confidential Information" means information that is confidential, proprietary, trade secret, or otherwise not subject to public disclosure pursuant to section 24, Article I of the Florida Constitution (such exemptions may be found in chapter 119, Florida Statutes, or any other Florida law, federal law, or regulation that serves to exempt information from public disclosure).

"Contract" means this agreement between the Department and Service Provider consisting of, in order of precedence, the following documents:

1. This agreement, in the following order of precedence:
 - a. Attachment 1: Affidavits;
 - b. Attachment 2: Administrative Requirements;
 - c. Attachment 3: Performance Guarantees;
 - d. Attachment 4: PPO Plan Booklet and Summary of Material Modifications;
 - e. Attachment 5: Approved Subcontractors;
 - f. Attachment 7: Privacy, Security, and Confidentiality Business Associate Agreement; and
 - g. Attachment 6: Fees, Claims, Clinical Programs, and Drug Lists.

In the event of conflict between this Contract document and the Attachments, the Attachments will control.

2. The General Contract Conditions - PUR 1000 form, which is incorporated by reference, and available at the weblink listed below. The Parties agree that the following provisions of the PUR 1000 are not applicable to this Contract: 2-13, 17, 20-23, 26-29, 31, 34-35).

https://www.dms.myflorida.com/content/download/2933/11777/PUR_1000_General_Contract_Conditions.pdf

If the Contract terms are inconsistent with the benefit and coverage provisions of the Benefits Document or any applicable federal or state statute, administrative rule or regulation; then the provisions of the Benefits Document or statute, rule, or regulation will control.

"Contract Administrator" means the person designated pursuant to section 12.5 of this Contract.

"Contract Manager" means those persons designated pursuant to section 12.6 of this Contract.

"Covered Services" mean the services that are required to be provided as defined in the Benefits Document.

“Data” or “State of Florida Data” means a representation of information, knowledge, facts, concepts, computer software, or computer programs or instructions (including any that it is exempt; confidential; or Protected Health Information protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. §§ 160 and 164, the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), and the regulations promulgated thereunder, or section 110.123(9), Florida Statutes), that is received by the Contractor, or created by the Contractor, in the performance of the Services under the Contract. State of Florida Data may be in any form, including but not limited to, storage media, computer memory, in transit, presented on a display device, or in physical media such as paper, film, microfilm, or microfiche. State of Florida Data includes the original form of the State of Florida Data and all metadata associated with the State of Florida Data.

“Deliverables” mean those services, items and/or materials provided, prepared, or delivered to the Department in the course of performance under this Contract by the Service Provider.

“Department” means the Florida Department of Management Services or its designee. The Department reserves the right to contract with a third-party contractor to assume responsibility for the Department’s administration of the Contract.

“Division” means the Department’s Division of State Group Insurance (DSGI).

“Drug Classification” means the process whereby Service Provider uses the indicators of Medi-Span Master Drug Database (“Medi-Span”), and their associated files, as updated regularly by Medi-Span (or other disclosed nationally available recognized reporting service of pharmaceutical drug information) to determine the classification of drugs (i.e., legend vs. over the counter, Brand vs. Generic, single-source vs. multi-source) for purposes of this Contract. Brand and Generic drugs must be classified as such using the standard manufacturer designations. Reclassification of any drug using any proprietary methodology or algorithms is not permitted. Neither the availability nor supply of a drug will be used as criteria to classify the drug as a Brand Drug or Generic Drug under this Contract. Service Provider shall classify drugs consistently at retail, mail, and specialty pharmacies, based on data provided by sources such as Medi-Span or First DataBank, pharmaceutical manufacturers, and the Food and Drug Administration, or other sources disclosed to the Department. Service Provider will notify the Department if/when it has classified a drug(s) differently than classified by the selected single pricing source noted above.

“Effective Date” means the date the Contract is fully executed by all Parties and therefore signals the start of implementation and transition activities.

“Eligible Dependent” means a Dependent of an enrolled Subscriber, as defined by the Florida Administrative Code and statutes.

“Estimating Conference Report” means the State Employees’ Group Health Insurance Trust Fund Report on the Financial Outlook, typically published twice a year and developed pursuant to section 216.134, Florida Statutes.

“Generic Drug” means off-patent single-source generic, multi-source generics, trademarked generics, at risk generics, and any generic products involved in patent litigation, determined in accordance with the Drug Classification requirement of this Contract. As clarification, not limitation, Generic Drugs will include all MAC’d generics and non-MAC’d generics; all multi-source generics and single-source generics (i.e., generics during their exclusivity period) regardless of availability or supply. If a covered drug has been classified as a Generic Drug by Service Provider, it shall remain classified as a Generic Drug unless the initial classification was in error. For pricing guarantee purposes Generic Drugs will be (a) all claims with Medi-Span Brand Name Code = “T” with a Medi-Span Multi-Source Code = “Y” on the date dispensed; and (b) all claims with Medi-Span Brand Name Code = “B” or “G” on the date dispensed. Service Provider’s proprietary brand / generic drug algorithm(s) must not be used to

classify drugs as Brand or Generic when reconciling Service Provider's aggregate Semi-annual Generic AWP Discount Guarantees.

"Generic Product Identifier (GPI)/Generic Code Number (GCN)" means the drug categorization identifier as reported by the source entity (First Databank for GCN and Medi-Span for GPI).

"House Generic" means those drugs which are issued as an originator Brand Drug dispensed and adjudicated as an equivalent Generic Drug.

"Implementation Date" means January 1, 2021, at 12:00 A.M., Eastern Time (EST), the anticipated first date Covered Services are provided to Participants.

"Implementation Period" means the period between the Effective Date and the Implementation Date.

"ITN" means Invitation to Negotiate No. DMS-19/20-030 Pharmacy Benefits Management Services, including all attachments and addenda to the Invitation to Negotiate.

"Limited Distribution Drugs" or "LDDs" means drugs for which Service Provider's specialty pharmacy does not have a direct purchase agreement with the manufacturer or wholesaler distributor of that product. If the manufacturer has designated a specialty product as "limited distribution" or "exclusive distribution", but Service Provider is able to maintain access and distribution rights to the product, the product will not be considered Limited Distribution Drug for the purposes of this Contract. Limited Distribution Drugs will be billed as specified in Specialty Drug Price List.

"MAC" or "Maximum Allowable Cost" means the unit price that has been established by the Service Provider as maximum allowable cost payment, consistent with the terms of Attachment 2: Administrative Requirements, X. Clinical Services, 114., for an off-patent drug. The payment schedules specify the maximum unit ingredient cost payable by the Department for drugs on the MAC List, which unit price may be amended as frequently as weekly by the Service Provider in maintaining its generic pricing program. Provider will not set MAC rates (on a Generic Product Identifier (GPI) or Generic Code Number (GCN) level) higher than the discounted brand AWP in the same GPI/GCN.

"MAC List" means the list of drugs priced on a MAC basis. The MAC List applicable to the Department is not the same as the MAC List published by CMS (formerly known as the Health Care Financing Administration, or "HCFA MAC"). The list and associated unit prices may be amended as frequently as weekly by the Service Provider in maintaining its generic pricing program. The same MAC product shall be used for retail and mail such that the MAC unit cost of every individual product on the MAC product list at Mail Order shall always be equal to or lower than under the Retail Pharmacy Program.

"Maintenance Drugs" means medications prescribed for chronic, long-term conditions and are taken on a regular, recurring basis.

"Manufacturer Payments" means, but is not limited to, revenue received by the Service Provider from pharmaceutical manufacturers (branded and generic), attributable to the purchase or utilization of covered drugs (including Specialty Drugs) by an eligible Participant. Compensation includes, but is not limited to: discounts; credits; payments received in accordance with agreements with pharmaceutical manufacturers for formulary placement and, if applicable, drug utilization; rebates, regardless of how categorized; market share incentives; commissions; any fees received for the sale of utilization data to a pharmaceutical manufacturer; educational grants received from manufacturers in relation to the provision of utilization data to manufacturers for rebating, marketing and related purposes; manufacturer administrative fees; and all compensation from manufacturers including rebates paid by a manufacturer as a result of product inflation caps and/or guarantees negotiated by the Service Provider. Manufacturer Payments do not include purchase discounts based on invoiced purchase terms when the Service Provider is operating in the capacity of a pharmacy that is purchasing stock; and fees under products and services agreements; and patient assistance or copay or coinsurance dollars provided by manufacturers to Participants in order to offset drug costs.

“Mathematically Accurate” means that the instruments, methods, data, numbers, assumptions, and calculations are a correct representation of the outcomes.

“MMA” means the Medicare Modernization Act of 2003, and as may be amended.

“Participants” means all Subscribers and their enrolled Eligible Dependents.

“Pass-Through Pricing” means Service Provider shall provide pricing to the Department whereby all claims adjudicated and dispensed by retail pharmacies will be the same as the actual discounted ingredient costs and dispensing fees billed by the retail pharmacy, which in turn, shall be passed through and billed by Service Provider in the same amount to the Department. Spread pricing will not be used at retail.

“People First” means the enterprise-wide suite of services used by the State to manage human capital including the administration of human resources, benefits, payroll, and staffing. People First is the State’s system of record for Plan eligibility.

“PEPM” means per Subscriber per month.

“PEPY” means per Subscriber per year.

“Performance Guarantees” means specific measurement indicators assigned to Contract tasks representing timeliness and quality of task output.

“Plan” means the prescription drug program established under section 110.12315, Florida Statutes.

“Plan Year” means the calendar year (January 1st to December 31st).

“PMPM” means per Participant per month.

“PMPY” means per Participant per year.

“Program” means the State Group Insurance Program defined in sections 110.123(3) and 110.12315, Florida Statutes.

“Rural Area” means approximately less than 1,000 persons per square mile.

“Run-Out Claims” means Claims for pharmacy expenses incurred by a Plan Participant during the term of the Contract which are received by the Service Provider within one hundred eighty (180) days after termination of the Contract and within sixteen (16) months from the date that the pharmacy services relating to such Claims were rendered.

“ROI” means “Return on Investment,” which is the guarantee of the annual gross savings realized from a program relative to the cost of the program.

“Secretary” means the Secretary of the Department or his/her designee.

“Semi-annual” means twice annually, as defined by the Department.

“Semi-monthly” means twice monthly, as defined by the Department.

“Services” means Pharmacy Benefits Management services to be performed by the Service Provider as specified in this Contract, including the requirements of the Attachments and Appendices to this Contract. The term “Services” includes, but is not limited to, all Deliverables and any unspecified service that is inherent in proper delivery of a specified service or Deliverable.

“Service Provider” or “Contractor” means {Insert Contractor name}, the Pharmacy Benefits Manager.

“Specialty Drugs” means drugs that require a customized medication management program that includes medication use review, patient training, coordination of care, and adherence management

for successful use such that more frequent monitoring and training may be required; and must meet a minimum of two (2) or more of the following characteristics:

- Produced through DNA technology or biological processes
- Target chronic or complex disease
- Route of administration could be oral, inhaled, infused, or injected
- Unique handling, distribution and/or administration requirements

In addition, a follow-on-biologic (i.e. biosimilars) or generic product will be considered a Specialty Drug if the innovator drug is a Specialty Drug and meets the criteria above. Medications that do not meet the above criteria will be dispensed via mail at the standard Mail Order pricing rates (and included in the Semi-annual and/or annual, as appropriate, Mail Order pricing guarantees) or via Retail at the standard retail rates (and included in the Semi-annual and/or annual, as appropriate, Retail pricing guarantees).

“Specialty Drug Price List” means the list of covered prescription drug products which identifies the reimbursement rates applicable under this Contract, and included in Attachment 6: Fees, Claims, Clinical Programs, and Drug Lists, which is maintained and updated by Service Provider from time to time as new prescription drug products come to market. Such Specialty Drug Price List shall be subject to the provisions of Attachment 2: Administrative Requirements.

“State” means the State of Florida.

“Subcontractor” means the Contractor’s Department-approved subcontractors and agents that deliver the Services required by this Contract. The term “Subcontractor” does not include pharmacy personnel who provide services to a Participant.

“Subscriber”, “Enrollee”, or “Member” means the enrolled employee, retiree, surviving spouse, or Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) participant that is the primary insured, as defined in Rule 60P-1.003, Florida Administrative Code, and Florida law.

“Suburban Area” means approximately between 1,000 to 3,000 persons per square mile.

“Urban Area” means approximately greater than 3,000 persons per square mile.

Section 2 CONTRACT DOCUMENTS

2.1 Rules of Interpretation

The following rules of interpretation apply, unless otherwise indicated:

- (a) Reference to, and the definition of, any document (including any attachments) shall be deemed a reference to such document as it may be amended, supplemented, revised or modified;
- (b) The table of contents and section headings and other captions are for the purpose of reference only and do not limit or affect the content, meaning or interpretation of the text;
- (c) Defined terms in the singular shall include the plural and vice versa and the masculine, feminine, or neuter-genders shall include all genders;
- (d) The words “hereof,” “herein,” “hereunder,” and words of similar import, shall refer to this Contract as a whole and not to any particular provision of this Contract;
- (e) The words “include,” “includes,” and “including” are deemed to be inclusive and followed by the phrase “without limitation”;
- (f) Any reference to a governmental entity or person shall include the governmental entity’s or person’s authorized successors and assigns; and
- (g) The words “quarterly,” “on a quarterly basis,” “quarterly meeting” or other similar terms mean, unless otherwise stated herein, once every three (3) months, beginning January 1, 2021.

2.2 Hierarchy of Documents

The Contract sets forth the entire understanding between the Parties. In the event that any of the Contract documents conflict, the conflict will be resolved in the order of precedence as listed in the definition of the term "Contract" in section 1.1. However, if the Contract terms are inconsistent with the benefit and coverage provisions of the Benefits Document or any applicable federal or state statute, administrative rule, or regulation; then the provisions of the Benefits Document or statute, rule, or regulation will control.

Section 3 TERM, SCOPE, AND PAYMENTS

3.1 Term

3.1.1 Initial Term

The Initial Term of the Contract will commence on the Effective Date and end after 11:59:59 P.M., Eastern Time (EST), on December 31, 2022, unless extended, terminated, or renewed as provided herein. The Parties acknowledge that the Plan will not be implemented and administered under this Contract until January 1, 2021. While pre-implementation services will be required, payment will be made only in accordance with the fees listed in the Financial Terms section of this Contract (Attachment 6: Fees, Claims, Clinical Programs, and Drug Lists) as due.

3.1.2 Renewals

The Department, at its sole option and discretion, may renew the Contract for up to three (3) additional years at the same prices as those specified in this Contract or lower negotiated prices. Such renewal will be binding on the Contractor and may be in one (1) year or multiple year increments at the Department's sole option. Renewal in whole or in part shall be at the sole discretion of the Department and shall be contingent upon the Department's determination that Contractor has satisfactorily performed its obligations under the Contract. The Department shall also consider whether Contractor has been subject to any performance violations and/or liquidated damages in complying with any of the Contract requirements. Any renewal shall be in writing and signed by both Parties.

The Contractor shall not charge any costs for renewing the Contract. The renewal is subject to appropriations by the legislature and is contingent upon the availability of funds.

Pursuant to Chapter 287.057(12) Florida Statutes, as modified by section 110.123, Florida Statutes, this Contract may be extended if the completion of the Contract is beyond the control of the Contractor, as determined by the Department.

3.2 Department's Right to Terminate for Convenience

The Department, by sixty (60) Calendar Days advance written notice to Contractor, may terminate the Contract for any reason or no reason at all when the Department determines in its sole discretion that it is in the Department's best interest to do so. The Contractor shall not perform any Services after the effective date of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor will not be entitled to recover any lost profits, special, consequential, or indirect damages, or any other damages other than the payment of amounts due for performance until the effective date of termination. If this Contract is terminated for convenience prior to January 1, 2021, the Department shall reimburse Contractor for direct costs actually incurred for Services authorized by the Department and satisfactorily performed prior to receipt of the notice of termination.

3.3 Scope of Work

The Contractor will provide all labor, materials, and supplies necessary to provide the Services as described in this Contract and the Attachments. The Contractor agrees to periodic reviews by the Department on the Contractor's performance to improve delivery of the scope of work. Corrective work to comply with the requirements of this Contract will be performed by the Contractor at its expense, and the Contractor will not be entitled to any compensation for such corrective work.

3.4 Modifications and Changes

The Department, by written change order, may unilaterally require changes altering, adding to, or deducting from the Services, products, or Contract specifications, provided that such changes are within the general scope of the Contract. If Services or products are added, the Service Provider and the Department will negotiate a mutually agreed amendment to the Contract. The Department may make an equitable adjustment in the Contract price or delivery date if changes to Contract specifications affect the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If the Parties fail to agree to an equitable adjustment, such dispute must be resolved pursuant to the Dispute Resolution procedures identified in section 11.7.

The Contract contains all the terms and conditions agreed upon by the Parties, which shall govern all transactions under the Contract. Other than as specified above, the Contract may only be modified or amended upon mutual written agreement of the Department and Contractor. No oral agreements or representations shall be valid or binding upon the Department or Service Provider. Contractor may not unilaterally modify the terms of the Contract by incorporating terms onto Contractor's order or fiscal forms or other documents forwarded by Contractor for payment. The Department's acceptance of Service or processing of documentation on forms furnished by Contractor for approval or payment will not constitute amendment to this Contract or waiver of a default.

3.5 Department's Right to Suspend Work

The Department may in its sole discretion suspend any or all Services under the Contract, at any time, when in the best interests of the Department to do so. The Department will provide Contractor written Notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other like circumstances. After receiving a suspension Notice, the Contractor will comply with the Notice.

3.6 Department's Obligation to Supply Data to Contractor

The Department shall supply all eligibility and personnel data and information necessary for Contractor to provide the Services.

3.7 Bills for Travel

Bills for travel expenses are not permitted under this Contract.

3.8 Payments

The Contractor agrees to perform all the Services for compensation and financial arrangements set forth in Attachment 6: Fees, Claims, Clinical Programs, and Drug Lists. No additional compensation will be allowed unless specifically set forth in the Attachments. The Contractor shall invoice the Department on the schedule set forth in Attachment 2: Administrative Requirements. Payment timeframes are set forth in Section 15 of the PUR 1000. Invoices must be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

The Contractor is subject to the transaction fee specified in Section 14 of the PUR 1000. The Contractor should note that changes to the percentage of that fee may be specified in the State's

General Appropriations Act. For the avoidance of doubt, the transaction fee does not apply to Participant-covered prescription drug claims amounts invoiced pursuant to this Contract.

3.9 Specific Appropriation

The funds from which the state will make payment for Services under the Contract are identified from line number 2878 of the Fiscal Year 2019-2020 General Appropriations Act [note: this section will be updated if the 2020-2021 General Appropriations Act is in effect at the time of Contract execution], paid from the State Employees Group Health Insurance Trust Fund. The Department of Management Services is authorized to submit budget amendments in accordance with chapter 216, Florida Statutes, to increase Specific Appropriation 2878 in the event administrative service payments exceed the amount of budget authority appropriated.

The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

3.10 Non-Exclusive Contract

Nothing herein is intended to assure the Contractor that it is the only vendor providing these Services to the State, nor does it prohibit the State from procuring these services from additional vendors during the term of the Contract.

Section 4 CONTRACT ADMINISTRATION

4.1 Ownership of Deliverables and Retention of Records

All Deliverables, papers, documents, materials, work, and other items prepared by the Contractor and provided to the State for purposes of the Contract are the property of the Department and shall be available to the Department at any time. The Department has the right to use the same without restriction and without any additional payments to Contractor other than that specifically provided by the Contract. The Contractor does not waive its rights in any Deliverables not prepared specifically for the Department that are also provided to other clients of Contractor for substantially the same purpose as they are provided to the Department, however, Contractor hereby grants a license to the Department to use such documents. Data deemed proprietary, trade secret, or otherwise confidential may be subject to further restrictions in compliance with Florida Statutes and federal laws and regulations.

Contractor shall retain sufficient documentation to substantiate claims for payment under the Contract, and all other records (including electronic files), papers, and documents, which were made for purposes of the Contract. Such records shall include all records in all types of media and all formats maintained by the Contractor directly relating to the Services. Contractor shall retain all such records, papers, and documentation in compliance with record retention schedules published by the State of Florida Department of State. Prior to the destruction of any such records, papers, or documentation, Service Provider will consult with and obtain the prior written approval of the Department.

4.2 Contractor Obligations

4.2.1 General

Contractor will provide any and all labor, materials, and supplies necessary to perform the Services in the manner prescribed by this Contract. Contractor will meet or exceed the Administrative Requirements set forth in Attachment 3: Performance Guarantees.

4.2.2 Major Organizational Changes

The Contractor recognizes and agrees that award of the Contract was predicated upon features of Contractor's business organization as represented by the Contractor during

negotiations. If the Contractor transfers or sells forty-nine and nine tenths percent (49.9%) or more of its equity shareholder interests or allows a sale of substantially all of its assets as determined by the Department, the Department may terminate, at its sole discretion, this Contract, which will be deemed a termination for convenience as provide in section 3.2 of this Contract and subject to that provision.

Notwithstanding anything to the contrary in section 3.2 of this Contract, the Service Provider will reimburse the Department for all costs of the Department in procuring a new service provider (e.g., any consultant fees, posting fees, outside counsel fees, etc.) within thirty (30) Calendar Days of notice of the Department's payment of such cost.

4.2.3 Subcontractors

Contractor is responsible for the acts or omissions of all Subcontractors, if any, it uses in the provision of the Services during the term of the Contract. The Department will have no liability of any kind for Subcontractor demands, loss, damage, negligence, or any expense relating, directly or indirectly, to Subcontractors.

Contractor will not subcontract any of the Services or enter into any subcontracts or change approved Subcontractors set forth in Attachment 5: Approved Subcontractors (including their key personnel and/or location of processes for the Services) without the express written consent of the Department. In seeking such consent, the Contractor will provide the Department prior notice of at least sixty (60) Calendar Days or, in case of an emergency, as soon as practical. Each approved Subcontractor will be subject to the same terms and conditions as outlined in this Contract. For purposes of this section, pharmacy providers are not considered to be Subcontractors. The Contractor shall not utilize any volunteers in the performance of Services.

4.2.4 Background Screening, Record Retention, and Warranty of Security

All of Contractor's employees, Subcontractors, and agents performing work under the Contract must comply with all security and administrative requirements of the Department.

4.2.4.1 Background Screening

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for each of its employees, Subcontractor personnel, independent contractors, leased employees, volunteers, licensees, or other person, hereinafter referred to as "Person" or "Persons," operating under their direction who directly perform services under the Contract, whether or not the Person has access to State of Florida Data, as well as those who have access, including indirect access, to State of Florida Data, whether or not they perform services under the Contract. The Contractor warrants that all Persons will have passed the Background Screening described herein prior to, but no longer than five (5) year's before, they gain access to State of Florida Data or begin performing services under the Contract. The look-back period for such background screenings shall be for a minimum of six (6) years where six (6) years of historical information is available.

"Access" means to review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage or the ability to review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.

"Data" or "State of Florida Data" is as defined in section 1.1.

The minimum background check process must include a check of the following databases through a law enforcement agency or a Professional Background Screener accredited by the National Association of Professional Background Screeners, the National Committee for Quality Assurance, or a comparable standard:

- Social Security Number Trace; and
- Criminal Records (Federal, State and County criminal felony and misdemeanor, national criminal database for all states which make such data available);

The Contractor agrees that each Person has been screened as a prior condition for performing services or having access to State of Florida Data. The Contractor is responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Contractor will maintain, or cause to be maintained, documentation of the screening in the Person's employment file. The Contractor will abide by all applicable laws, rules, and regulations including, but not limited to, the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations, or ordinances. The Department may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results.

4.2.4.2 Disqualifying Offenses

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with Access to State of Florida Data or directly performing services under the Contract. The disqualifying offenses are:

- (a) Computer-related crimes;
- (b) Information technology crimes;
- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records;
- (k) Felony theft; and
- (l) Identity Theft.

If the Contractor finds a Disqualifying Offense for a Person within the last six (6) years from the date of the court's disposition, it may obtain information regarding the incident and determine whether that Person should continue providing Services under the Contract or have Access to State of Florida Data. The Contractor will consider the following factors only in making the determination: i.) nature and gravity of the offense, ii.) the amount of time that lapsed since the offense, iii.) the rehabilitation efforts of the person and iv.) relevancy of the offense to the job duties of the Person. If the Contractor determines that the Person should be allowed Access to State of Florida Data, then Contractor shall maintain all criminal background screening information and the rationale for such Access in the Person's employment file.

The Contractor shall require all Persons to self-report within three (3) Business Days of adjudication to the Contractor any adjudication of guilt as described above for the Disqualifying Offenses. The Contractor shall immediately disallow that Person Access to any State of Florida Data or Services under the Contract. Additionally, the Contractor shall require that the Person complete an annual certification that he or she has not received an adjudication of guilt as described above for the Disqualifying Offenses and shall maintain that certification in the employment file.

4.2.4.3 Refresh Screening

The Contractor will ensure that all background screening will be refreshed every five (5) years from the time initially performed for each Person during the term of the Contract.

4.2.4.4 Annual Certification

The Contractor is required to submit the attached Affidavit of Warranty of Security to the Department by December 31st of each Contract year.

4.2.4.5 Duty to Secure Data

The Contractor will maintain the security of State of Florida Data including, but not limited to, a secure area around any display of such State of Florida Data or State of Florida Data that is otherwise visible. The Contractor will also comply with all HIPAA and Rule Title 60GG-2, Florida Administrative Code, requirements and any other state and federal rules and regulations regarding security of information. State of Florida Data cannot be disclosed to any person or entity that is not directly approved to participate in the services provided under Contract.

4.2.4.6 Department's Ability to Audit Screening Compliance and Inspect Locations

The Department reserves the right to audit the Contractor's background screening process upon two (2) Business Days' prior written notice to the Contractor during the term of the Contract. The Department will have the right to inspect the Contractor's working area, computer systems, and/or location upon two (2) Business Days' prior written notice to the Contractor to ensure that Access to the State of Florida Data is secure and in compliance with the Contract and all applicable state and federal rules and regulations.

4.2.4.7 Record Retention

The Contractor shall retain a list of all Persons with Access to State of Florida Data, including a statement confirming that each Person has passed the Background Screening required herein. Such a statement shall not include the substance of the screening results, only that the Person has passed the screening.

The Contractor shall create a written policy for the protection of State of Florida Data, including a policy and procedure for Access to State of Florida Data.

The Contractor shall document and record, with respect to each instance of Access to State of Florida Data:

- 1) The identity of all individual(s) who Accessed State of Florida Data in any way, whether those individuals are authorized Persons or not;
- 2) The duration of the individual(s)' Access to State of Florida Data, including the time and date at which the Access began and ended;

- 3) The identity, form, and extent of State of Florida Data accessed, including, but not limited to, whether the individual Accessed partial or redacted versions of State of Florida Data, read-only versions of State of Florida Data, or editable versions of State of Florida Data; and
- 4) The nature of the Access to State of Florida Data, including whether State of Florida Data was edited or shared with any other individual or entity during the duration of the Access, and, if so, the identity of the individual or entity.

The Contractor shall retain the written policy and information required in this section for the duration of this Contract and a period of no less than five (5) years from the date of termination of this Contract and any Contract extensions. The written policy and information required in this section shall be included in the Department's audit and screening abilities as defined in section 4.2.4.6. The written policy and information required in this section shall also be subject to immediate disclosure upon written or oral demand at any time by the Department or its designated agents or auditors.

Failure to compile, retain, and disclose the written policy and information as required in this section shall be considered a breach of the Contract. The resulting damages to the Department from a breach of this section are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The Parties acknowledge that these financial consequences are liquidated damages, exclusive of any other right to damages, not intended to be a penalty, and solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department the sum of \$10,000 per event, for each breach of this section.

4.2.4.8 Indemnification

The Contractor agrees to defend, indemnify, and hold harmless the Department, the State of Florida, its officers, directors, and employees for any claims, suits, or proceedings relating to a breach of this section. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this section for a period of one (1) year following the breach.

4.2.5 Work Locations, No Offshoring of Data

Service Provider, including its employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees, or other persons operating under their direction, are prohibited from (i) performing any of the Services under the Contract outside of the U.S., or (ii) sending, transmitting, or accessing any State of Florida Data, outside of the U.S. The Parties agree that a violation of this provision will:

- (a) result in immediate and irreparable harm to the Department, entitling the Department to immediate injunctive relief, provided, however, this shall not constitute an admission by the Service Provider to any liability for damages under subsection (c) below or any claims, liability, or damages to a third party, and is without prejudice to the Service Provider in defending such claims.
- (b) entitle the Department to a credit of \$50,000 per violation, with a cumulative total cap of \$500,000 per event. This credit is intended only to cover the Department's internal staffing and administrative costs of investigations and audits of the transmittal of State of Florida Data outside the U.S.

- (c) entitle the Department to recover damages, if any, arising from a breach of this section and beyond those covered under subsection (b).
- (d) constitute an Event of Default not subject to the dispute resolution provisions in section 11.7 ("Dispute Resolution") of this Contract.

The credits in subsection (b) are a reasonable approximation of the internal costs for investigations and audits from a violation. The credits are in the nature of liquidated damages and not intended to be a penalty on the Service Provider. By executing this Contract, Service Provider acknowledges and agrees the costs intended to be covered by subsection (b) are not readily ascertainable and will be difficult to prove. Service Provider agrees that it will not argue, and is estopped from arguing, that such costs are a penalty or otherwise unenforceable. For purposes of determining the amount of credits due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same offshore entity) shall be treated as a single violation. The credits will be paid to the Department as prescribed by the Department, and are exclusive of any other right to damages.

4.2.5.1 Contractor's Responsibility to Notify Department

For purposes of sections 4.2.5.1 through 4.2.5.3, the following definitions apply:

"Breach" means a confirmed event that compromises the confidentiality, integrity, or availability of information or State of Florida Data, or unauthorized access of State of Florida Data in electronic form containing personal information. Additional requirements related to breaches of HIPPA information are covered in Attachment 7: Privacy, Security, and Confidentiality Business Associate Agreement.

"Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology security policies, acceptable use policies, or standard security practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur.

Notwithstanding any provision of this Contract to the contrary, the Contractor shall notify the Department as soon as possible and in all events immediately upon discovering any Breach or Incident regarding State of Florida Data; any unauthorized access of State of Florida Data (even by persons or companies with authorized access for other purposes); any unauthorized transmission of State of Florida Data; or any credible allegation or suspicion of a material violation of the above. This notification is required whether the event affects one Participant or the entire population. The notification shall be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of personal information that was subject to the unauthorized Access and acquisition.
- (c) The number of individuals who were, or potentially have been, affected by the Breach or Incident.
- (d) The actions taken by the Contractor to protect the State of Florida Data information from further unauthorized Access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the Breach.

Upon becoming aware of an alleged Breach or Incident, the Contractor shall set up a conference call (via a telephone call and email) with the Department's Contract

Manager and any necessary parties. The conference call invitation shall contain a brief description of the nature of the event. When possible, a thirty (30) minute notice shall be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call shall be scheduled. All available information shall be shared on the call. The Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Contractor shall provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a Breach or Incident outside of normal business hours, the Contractor shall notify the Department's Contract Manager as soon as possible, and in all events, within twenty-four (24) hours.

The Contractor's failure to perform the obligations in this section shall also be an Event of Default, and will entitle the Department to recover any other damages it incurs arising from a failure to perform the obligations in this section (including any actual out-of-pocket expenses incurred by the Department to investigate and remediate the violation) and/or to pursue injunctive relief.

4.2.5.2 Contractor's Responsibility to Notify Participants

The Contractor shall pay all costs to notify all Participants whose information was contained in the State of Florida Data that was accessed in the Breach, unauthorized access or transmission caused by the Contractor its Subcontractors no later than thirty (30) Calendar Days after the determination of a Breach or reason to believe a Breach occurred. If the Contractor cannot identify the specific persons whose data may have been accessed, such notice shall be provided to all persons whose data reasonably may have been accessed. Nothing in this section will alter or replace the application of section 501.171, Florida Statutes, as to the Contractor's obligations and liability for Breaches concerning personal information.

4.2.5.3 Credit Monitoring and Notification

The Service Provider shall include credit monitoring services at its own cost for those Participants affected or potentially affected by an alleged Breach for no less than a period of one (1) year following the Breach.

The Service Provider shall provide the Department of Legal Affairs written notice of a Breach that affects 500 or more Participants as soon as practicable, or within thirty (30) Calendar Days of the Breach. The Contractor shall provide the Department a copy of the written notice to the Department of Legal Affairs. If a Breach impacts more than 1,000 Participants at a single time, the Service Provider shall notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in the Fair Credit Reporting Act, 15 U.S. Code Section 1681a (p), of the timing, distribution, and content of the notices required pursuant to sections 4.2.5.1 ("Contractor's Responsibility to Notify Department") and 4.2.5.2 ("Contractor's Responsibility to Notify Participants") of this Contract.

4.2.6 E-Verify

Pursuant to Florida Executive Order No.: 11-116, Contractor is required to utilize the Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor to work on this Contract during the Contract term. Also, Contractor will include in related subcontracts a requirement that Subcontractors performing work or providing Services pursuant to the Contract utilize the E-Verify system to verify

employment of all new employees hired by the Subcontractor during the Contract term.

4.2.7 Scrutinized Companies – Termination by the Department

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes; been placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List; been engaged in business operations in Cuba or Syria; or been engaged in a boycott of Israel.

4.2.8 Removal or Replacement of Employees and Subcontractors for Cause

The Department may refuse access to or require replacement of any Contractor, employee, Subcontractor or Subcontractor employee, or agent for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Department's security or other requirements. Such action shall not relieve Contractor of its obligation to perform all work in compliance with the Contract. The Department may reject and bar from any facility for cause any of Contractor's employees, Subcontractors or Subcontractor employees, or agents.

4.2.9 Employment of State Workers

During the term of the Contract, Contractor shall not knowingly employ, subcontract with, or sub-grant to any person (including any non-governmental entity in which such person has any employment or other material interest as defined by section 112.312(15), Florida Statutes) who is employed by the State or who has participated in the management or procurement of this Contract, except as provided in section 112.3185, Florida Statutes.

4.3 Acceptance of Deliverables

The Department will conduct its acceptance review in a manner so as to identify whether the Deliverables fail to conform to the Contract. The Department shall notify the Contractor in writing of failures of a Deliverable to conform to the Contract and specify how the Deliverable failed to meet the requirements of the Contract. Within five (5) Business Days of such notice, Contractor will give written notice of one of the following:

- The correction of the nonconformity and the details of the correction;
- A written corrective action plan for correcting the nonconformity; or
- Its disagreement as to the nature or scope of the nonconformity and the reasons therefore.

The Department will either accept or reject the Contractor's reply (with or without modifications from the Department) and provide notice of the Department's decision and proposed remedy, if any.

4.4 Warranty

Generally: Contractor warrants that the Services shall be delivered in a professional workman-like manner in accordance with the standards and quality prevailing among first-rate nationally recognized firms in the industry and in accordance with this Contract and this warranty will remain in effect for a period of three hundred, sixty-five (365) Calendar Days following delivery of the Services ("Warranty Period").

Remedies: In the event that the Department discovers that the Services are not delivered in accordance with the foregoing warranties during the Warranty Period, the Department will provide notice to the Contractor, and the Contractor will promptly correct, cure, replace, or otherwise remedy such performance at no cost to the Department.

This section shall survive termination of this Contract.

Section 5 AUDIT RIGHTS

The Department has the right to conduct performance and/or compliance audits of any and all areas of the Service Provider and/or Subcontractors activities related to this Contract. The Department may at any time enter and inspect the Contractor's physical facilities where operations required under this Contract are performed, within reasonable notice. Except in emergency situations, reasonable notice will be provided for audits conducted at Contractor's premises, which notice will not be less than 10 Business Days. Audits may include, but not be limited to, audits of procedures, computer systems, claims files, provider contracts, service records, accounting records, internal audits, quality control assessments, and any and all applicable provider contracts, including contracts with pharmaceutical manufacturers, and service programs related to this Contract. Contractor will cooperate and work with any representatives selected by the Department to conduct said audits and inspections, including but not limited to, other state agencies. The Contractor will make available all data and information requested by the Department in furtherance of any audit. Prior to the commencement of this audit, the Contractor may request to enter into a mutually agreeable confidentiality agreement with any third-party auditor. However, no such agreement shall limit the Department's access to this audit report or any other document, and must be consistent with section 11.4 of this Contract, Article 1, section 24 of the Florida Constitution, and Chapter 119, Florida Statutes.

The Contractor recognizes and acknowledges that release statements from its providers are not required for the Department or its' designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract.

The right of the Department to perform audits and inspections will survive the expiration or termination of this Contract. The Department will use reasonable efforts to minimize the number and duration of such audits or inspections conducted and to conduct such audits and inspections in a manner that minimizes disruption to Contractor's business operations.

This provision does not operate to limit the rights of the Inspector General (as required by section 20.055, Florida Statutes) or other state agencies or officers, such as the state's Chief Financial Officer and the Office of the Auditor General, to perform audits and inspections.

Except for the annual SSAE 18 audit, the Department will be responsible for the independent third-party auditor costs associated with any audit performed.

Any disputes regarding the audit findings of the Department or its designated auditor shall be resolved in accordance with section 11.7 (Dispute Resolution) of this Contract.

Section 6 DIVERSITY

It is the policy of the State that Minority Business Enterprises, Woman-Owned Business Enterprises, and Service-Disabled Veteran Business Enterprises (as those terms are defined by Florida Statutes), have the maximum practicable opportunity to participate in performing contracts let by any State agency. Contractor will carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient Contract performance by reasonably considering such business enterprises as Subcontractors for the Services. Contractor further agrees to comply with all controlling laws and regulations respecting the participation of such business enterprises in the provision of the Services and to reasonably cooperate in any studies or surveys as may be conducted by the State to determine the extent of Contractor's compliance with this section.

Section 7 LIQUIDATED DAMAGES

7.1 Generally

Time is of the essence in performing the Contract; this is true generally and particularly with respect to achieving an Implementation Date of January 1, 2021, and meeting the Performance Guarantees set forth in Attachment 3. Contractor acknowledges that untimely performance or other material noncompliance will damage the Department, but by their nature such damages are impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining the amount of damages will be multiple and complex, and will be dependent on many and variant factors, proof of which would be burdensome and require lengthy and expensive litigation, which the Parties desire to avoid. Accordingly, the Parties agree that it is in the Parties' best interests to agree upon a reasonable amount of liquidated damages, which are not intended to be a penalty and are solely intended to compensate for unknown and unascertainable damages. The Parties acknowledge that liquidated damages are contemplated by section 110.123(3)(d)3, Florida Statutes.

7.2 Implementation Delays

- (a) Untimely Plan Implementation: If Service Provider fails to achieve Plan implementation by January 1, 2021, it will pay liquidated damages of **\$3,000,000** per month, unless any such delay is solely due to the Department's failure to comply with the defined timeline. Service Provider will pay this amount of liquidated damages for every calendar month thereafter until the Plan is fully implemented as determined by the Department. A partial month delay will be treated as a full month and will not be pro-rated.

In addition to the above, Service Provider will pay the indicated amount of liquidated damages for each Calendar Day beyond the date indicated in the Service Providers' Implementation Plan, for any Implementation Plan milestone that is not timely implemented, including but not limited to the following:

<u>Milestone</u>	<u>Completion Date</u>	<u>Liquidated Damages</u>
<u>Benefits</u>		
Plan design coding document approved	10/01/2020	\$10,000/day
<u>Eligibility</u>		
Automation finalized	11/28/2020	\$10,000/day
Load production eligibility file	PG-19(a)	\$100,000/day
Mail identification cards	12/20/2020	\$100,000/day
<u>Finance</u>		
Finalize billing arrangements	10/01/2020	\$10,000/day

- (b) Failure to Achieve Progress Towards Other Implementation Milestones: If Service Provider fails to achieve the scheduled progress toward any other Implementation Plan milestone, the Department at its sole discretion may assess an underperformance fee of \$10,000 per Calendar Day until the day Service Provider achieves the milestone.

7.3 Failure to Meet Performance Guarantees

- (a) Contractor agrees to payment of additional liquidated damages in the form of Performance Guarantees if it fails to meet the performance standards set forth within Attachment 3: Performance Guarantees.
- (b) Performance Guarantees are intended only to cover the Department's internal staffing and administrative costs and the diminished value of the Services provided under the Contract. In accepting any form of liquidated damages, the Department does not waive its right to pursue other remedies provided for under this Contract for other breaches.

- (c) Notwithstanding anything in the Contract to the contrary, the total of any and all Performance Guarantees paid or to be paid by Contractor pursuant to this Contract for any calendar quarter will not exceed one hundred percent (100%) of the payments due under section 3.8 above.
- (d) Upon mutual agreement of the Parties, Performance Guarantees may be suspended from time to time for special circumstances. Suspension of a Performance Guarantee will not excuse Contractor from accumulating data relevant to that Performance Guarantee and reporting such data to the Department as part of the management reports delivered pursuant to this Contract.
- (e) Contractor will provide the Department with a Performance Standards Guarantee Report for all Performance Guarantees prescribed by Attachment 3: Performance Guarantees, on a quarterly basis. For each Performance Guarantee that the Contractor fails to meet, based on the Performance Standards Guarantee Report, the Contractor will provide appropriate payment to the Department within fifteen (15) Calendar Days from date of invoice.
- (f) The Department may require the Contractor to propose and implement a reasonable Corrective Action Plan to address and correct the root causes of any missed Performance Guarantee.
- (g) The inclusion of Performance Guarantees in this Agreement is intended to address unsatisfactory performance in the context of ongoing operations without resorting to the default provisions set forth in Section 9 of the Contract. However, if Contractor's performance falls below the minimum level of performance (as contained in Attachment 3: Performance Guarantees) for the same Performance Guarantee for three (3) measurement periods and such failure is not otherwise excused, then the Department may declare an Event of Default and pursue alternative remedies in lieu of accepting Performance Guarantees.
- (h) Contractor will be excused for failing to meet any Performance Guarantee to the extent such failure is caused by the Department not performing any of its obligations under the Contract.
- (i) Contractor will advise the Department in writing as soon as possible of any circumstance or occurrence which would excuse or affect Contractor's ability to achieve any of the Performance Guarantees. In all such cases, Contractor will continue to make all reasonable efforts to achieve the Performance Guarantees.

Section 8 INSURANCE

8.1 Insurance Coverage

During the Contract term, Contractor and each Subcontractor will, at their sole expense, continuously maintain commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract and as required by law. Providing and maintaining adequate insurance coverage is a material obligation of Contractor and Subcontractors, and performance may not commence on this Contract until such time as insurance is secured by the Contractor and is approved by the Department. The Department will not unreasonably withhold or delay such approval. The limits of coverage under each policy do not limit Contractor's or Subcontractor's liability and obligations under the Contract. Unless otherwise agreed in writing by the Department, all insurance policies must be through insurers authorized or eligible to write policies in Florida. The Contractor shall notify the Department immediately if the Contractor loses any liability insurance coverage.

- (a) Commercial General Liability. The Contractor must continuously maintain commercial general liability insurance (inclusive of any amounts provided by an umbrella or excess policy) in the face amount of **\$5,000,000**.
- (b) Business Interruption Insurance. Contractor must continuously maintain business interruption insurance coverage in the face amount of **\$25,000,000**.

- (c) Workers' Compensation Insurance. The Contractor shall continuously maintain workers' compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all Subcontractors to similarly provide workers' compensation insurance for all of the latter's employees. In the event work is being performed by the Contractor under the Contract and any class of employees performing the work is not protected under Workers' Compensation statutes, the Contractor must provide, and cause each Subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of employees not otherwise protected.
- (d) Professional Indemnity Insurance. The Contractor must secure and continuously maintain professional indemnity insurance that must cover professional liability and error and omissions in the face amount of **\$25,000,000**. Contractor will indemnify, defend, and hold harmless the Department and its employees and agents, from and against any third-party claims, demands, loss, damage, or expense caused by Contractor in connection with the performance of the Services related to professional liability and error and omissions. Each insurance certificate for such policy must include an agreement that the insurer provide thirty (30) Calendar Days prior written notice to the Department of cancellation for any coverage.

The Contractor will provide all certifications of insurance as proof of insurance, including evidence of renewed or replaced coverage, at least thirty (30) Calendar Days prior to the expiration or termination of any insurance policy.

8.2 Payment and Performance Bond

In accordance with section 110.123(3)(d)2, Florida Statutes, within thirty (30) days of executing the Contract, Contractor shall deliver to the Department's Contract Manager, without additional cost to the Department, a payment and performance bond or, if approved by the Department, a negotiable irrevocable letter of credit or other form of security (collectively the bond) for the payment and performance of work under the Contract in an amount equal to or greater than the lesser of 1) Contractor's share of the estimated annual total pharmacy costs, or 2) five percent (5%) of the estimated annual total pharmacy cost. However, at no time will the penal sum of the bond be less than \$20,000,000. The annual pharmacy cost estimate will be as established by the most current Estimating Conference Report projections available at the time the bond is established. The bond or letter of credit shall be used to guarantee at least satisfactory performance by Contractor throughout the term of the Contract (including renewal years). The bond shall be maintained throughout the term of the Contract, issued by a reliable surety company which is licensed to do business in the State of Florida, and otherwise approved by the Department, and must include the following conditions:

- 1) Obligee: The Department shall be named as the obligee/beneficiary of the bond. Contractor's bond will provide that the insurer or bonding company shall be obliged to provide performance or payment remuneration directly to the Department.
- 2) Notice of Attempted Change: The Contractor shall, or shall cause the surety company to, provide the Department with thirty (30) Calendar Days prior written notice of any attempt to cancel or to make any other material change in the status, coverage, or scope of the required bond or of Contractor's failure to pay bond premiums.
- 3) Premiums: The Department shall not be responsible for any premiums or assessments on the bond.
- 4) Purpose of Bond: The bond is to protect the Department and the State against any loss sustained through failure of the Contractor or any of its employees, officers, directors, agents and representatives to accurately perform the Services required by the Contract for the entire term of the Contract.

No compensation shall be due to the Contractor until the performance bond is in place and approved by the Department in writing.

Upon execution of the Contract and by each yearly anniversary of the Effective Date, the Contractor shall provide the Department with a surety bond continuation certificate or other acceptable verification that the bond is valid and has been renewed for an additional year.

As an alternative to the surety bond described in this section, the Contractor may use an irrevocable letter of credit on an annually renewable basis which, in the reasonable judgment of the Department, provides substantially equivalent protection.

Section 9 EVENTS OF DEFAULT AND REMEDIES

9.1 Contractor Events of Default

Any one (1) or more of the following events by Contractor, which is not cured within ten (10) Calendar Days after receipt of notice thereof by the Department, shall constitute an "Event of Default" on the part of Contractor:

- (a) Contractor fails to pay any sum of money due hereunder;
- (b) Contractor fails to provide the Services as required under the Contract;
- (c) Contractor employs an unauthorized alien in the performance of any work required under the Contract;
- (d) Contractor fails to correct work that the Department has rejected as unacceptable or unsuitable;
- (e) Contractor discontinues the performance of the work required under this Contract;
- (f) Contractor fails to resume work that has been discontinued within the time prescribed by the Department in its notice;
- (g) Contractor abandons the project;
- (h) Contractor becomes insolvent or is declared bankrupt;
- (i) Contractor files for reorganization under the bankruptcy code;
- (j) Contractor takes any other action towards the initiation of bankruptcy or insolvency proceedings, either voluntarily or involuntarily;
- (k) Contractor fails to promptly pay any and all taxes or assessments imposed by and legally due the Department, State, or federal government;
- (l) Contractor makes an assignment for the benefit of creditors without the approval of the Department;
- (m) Contractor makes or has made a material misrepresentation or omission in any materials provided to the Department;
- (n) Contractor commits any material breach of this Contract;
- (o) Contractor fails to furnish and maintain the performance bond;
- (p) Contractor fails to procure and maintain the required insurance policies and coverages required by this Contract;
- (q) The Department determines that the surety company issuing a bond securing Contractor's performance of its obligations hereunder becomes insolvent or unsatisfactory;
- (r) Contractor utilizes a Subcontractor in the performance of the work required by this Contract, which has been placed on the State's Convicted Vendor List or Discriminatory Vendor List;
- (s) Contractor is suspended or removed as an authorized Contractor by any State or federal agency; is convicted of a felony; is placed on the State's Convicted Vendor List or Discriminatory Vendor List; or has its license suspended or revoked;
- (t) Contractor refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by Contractor in conjunction with this Contract and not otherwise deemed confidential, proprietary, or trade secret;

- (u) Contractor refuses to allow any access required to comply with the audit provisions of the Contract;
- (v) Contractor's license to provide Services in the State is suspended or revoked;
- (w) Violation of section 4.2.5 (Work Locations, No Offshoring of Data), or Contractor's permitting State of Florida Data to be transmitted, viewed, or accessed outside of the United States;
- (x) Contractor's change of Subcontractors in violation of section 4.2.3, Subcontractors of the Contract;
- (y) The Contractor, upon discovery or notice thereof, fails to notify the Department within seven (7) Calendar Days of problems or issues impacting provision of Services or compliance with the terms of the Contract not already subject to a shorter notification timeframe set forth herein;
- (z) For any other cause whatsoever that Contractor fails to perform in accordance with the Contract, including, but not limited to, failure to meet performance standards and/or pay associated guarantees;
- (aa) Failure to provide complete paid Claims data to the Department's Health Insurance Management Information System Vendor;
- (bb) Failure to timely report and pay the transaction fee contained in section 287.057(22)(c), Florida Statutes, as detailed in section 14 of the PUR 1000; or
- (cc) Failure to meet the same Performance Guarantee for at least three (3) performance periods.

9.2 Department Remedies in the Event of Default

Upon the occurrence of an Event of Default on the part of Contractor, the Department is entitled to one (1) or all of the following remedies:

- (a) To terminate this Contract for cause, in whole or in part if Contractor commits an Event of Default under section 9.1 of this Contract. If the Contract is terminated for cause, the Contractor shall be liable for any re-procurement costs. The Contractor shall continue work on any part not terminated. Except for an Event of Default of Subcontractors, Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of Contractor. If the failure to perform is caused by the Event of Default of a Subcontractor, and if the cause of the Event of Default is completely beyond the control of both the Contractor and the Subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted Services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and convenience of the Parties shall be the same as if the termination had been issued for the convenience of the Department;
- (b) To institute legal proceedings against Contractor to collect payment of any damages or sums owed by Contractor hereunder, including liquidated damages and the costs of re-procurement, and such equitable relief as is appropriate; and
- (c) Upon notice to Contractor, to perform the Services (or cause the Services to be performed) on behalf of, and at the reasonable expense of, Contractor. If, at any time and by reason of such default, the Department is compelled to pay, or elects to pay, any sum of money or do any act, which will require the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights hereunder or otherwise, such sum or sums (with a rate of interest if not established herein then as statutorily set by the State's Chief Financial Officer) will be promptly repaid by the Contractor to the Department upon receipt of a bill from the Department.

In the event of the Contractor's default, all State agencies will be advised not to do business with Contractor without written approval from the Division of State until such time as Contractor reimburses the Department for all re-procurement and transition costs in accordance with

paragraph (3)(c) of Rule 60A-1.006, Florida Administrative Code.

The rights and remedies of the Department in Section 9 are in addition to any other rights and remedies provided by law or under the Contract.

9.3 Department Events of Default

Any one (1) or more of the following events shall, after the required notice(s) and opportunity to cure, except as otherwise provided below, constitute an Event of Default on the part of the Department:

The Department fails to timely pay all non-disputed amounts. The cure period for failure to pay shall be forty-five (45) Calendar Days from receipt of notice of failure to pay, unless State law allows a longer period to pay; or

The Department breaches any other material obligations under this Contract. The cure period for a material breach by the Department shall be forty-five (45) Calendar Days from receipt of notice of material breach.

9.4 Contractor Remedies in the Event of Default

Upon occurrence of an Event of Default on the part of the Department, Contractor is entitled to any one (1) or all of the following remedies.

- (a) Equitable Relief.
- (b) Monetary Damages. Contractor is entitled to recover any payments due under section 3.8, Payments, for Services actually provided in accordance with the Contract but not paid by the Department, subject to the Department's right to back-charge/set off for liquidated or other damages due as determined by the Department in its sole discretion. Contractor is not entitled to, and will not seek, any other reimbursement or payment, or damages, including but not limited to lost profits. Prior to the Department's payment to Contractor as the result of termination, Contractor will have satisfied all undisputed obligations to third parties relating to the Contract.

Contractor agrees that the provisions of sections 9.3 and 9.4 shall be its exclusive remedy for termination and that Contractor is not entitled to, and will not seek, any other reimbursement or payment, claims or damages, including but not limited to lost profits, consequential or indirect damages, home office overhead, or costs for accelerating performance.

9.5 Rights Cumulative, No Waiver

The rights and remedies provided and available to the Department and Contractor in this Contract are distinct, separate, and cumulative remedies, and no one of them, whether or not exercised by a Party, will be deemed to be in exclusion of any other. The election of one (1) remedy shall not be construed as a waiver of any other remedy.

Section 10 TRANSITION SERVICES

At the Department's request, or in the event of termination or expiration of the Contract, Service Provider shall provide transition services to the Department.

Transition services shall be provided during the term of the Contract and for up to twelve (12) months after the termination or expiration, unless otherwise waived by the Department, and such services shall include:

- i. Continued provision of specified, identifiable Services according to the same terms and conditions provided in the Contract;
- ii. Service Provider's cooperation with the Department and/or another vendor(s) designated by

- the Department in connection with the transfer of Services to such other vendor(s);
- iii. Notification of current procedures;
- iv. Listing of equipment and software licenses then used to provide the Services;
- v. Explanations of operations to new Service Provider;
- vi. Submission of a schedule for transition activities; and
- vii. In post-migration status, answering reasonable questions on an as-needed basis.

The transition services rendered during the term of the Contract shall be provided at no additional cost. Transition services rendered after the term of the Contract shall be provided at no cost. The Service Provider acknowledges that additional Services may be required to be performed after the twelve (12) month transition period noted above (e.g., payment of manufacturer rebates and retiree drug subsidy reconciliation) as specified in Attachment 2: Administrative Requirements and that such Services must continue in accordance with the terms and conditions of the Contract and must be provided at no cost.

Service Provider recognizes that the Services under the Contract are vital to the Department and must be continued without interruption and that, upon Contract expiration or termination, a successor may continue them. Service Provider's failure to cooperate with a succeeding vendor in ensuring continuity of Services is default and breach of Contract, which shall entitle the Department to damages. Service Provider shall provide experienced personnel during the transition period to ensure that the Services required by the Contract are maintained at the same required level of proficiency subject to the required Performance Guarantees and to furnish phase-out training to either the Department or another vendor.

The Service Provider shall provide a transition plan no later than thirty (30) Calendar Days prior to expiration of the Contract, thirty (30) Calendar Days after the Department's request, or thirty (30) Calendar Days after notice of termination of the Contract. The transition plan must include a detailed timeline and training program or process, and will be subject to the Department's approval.

Within thirty (30) Business Days from the Contract's termination or expiration date, the Service Provider shall deliver to the Department all related files, records, or other documentation related to the Services required by this Contract. The Service Provider shall deliver any related files, records, or other documentation for any Services that continue during or past the transition period, (e.g. additional manufacturer payments and claim run-out services), every thirty (30) Calendar Days until all Services cease. Attorney-client and work product privileged information and proprietary and competitively sensitive trade secret information belonging to the Service Provider is not subject to this provision.

This section shall survive termination of this Contract.

Section 11 GENERAL PROVISIONS

11.1 Advertising

- (a) Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department, including, but not limited to, mentioning the Contract in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking Contractor's name and either a description of the Contract or the name of the State or the Department in any material published, either in print or electronically, to anyone except Participants, network providers, or potential or approved Subcontractors. Within a reasonable time after the Effective Date, the Parties may issue a mutually agreeable joint press release regarding the Contract and the Services to be provided hereunder.
- (b) The Contractor may use its logos, symbols, trademarks, trade names, or service marks on Plan identification cards and other Department-approved forms, and to publicize Contractor's relationship with the State to Participants and potential or existing network providers. Contractor will not use the State seal, name, or logo of the Department or State, or Contractor's relationship

to the Plan, for any purpose without the prior written consent of the Department.

- (c) Contractor will not publish or release the results of its engagement without prior written approval from the Department. However, Contractor may refer to the Contract as an experience citation with other customers without prior approval.

11.2 Assignment, Acquisition by Third Party

Contractor shall not sell, assign, or transfer any of its rights, duties, or obligations under the Contract. In the event of any proposed sale, transfer, or assignment, the Department may agree to enter into a novation of the Contract with the proposed purchaser, assignee, or transferee at its sole discretion. No change in Contractor's organization, if any, will operate to release the Contractor from its liability for the prompt and effective performance of its obligations under this Contract.

11.3 Change of Statute or Regulation or Governmental Restrictions

In the event Service Provider knows or should have known that any federal or state policies, operating procedures, laws, rules, or regulations applicable to its performance under the Contract have been or will be changed, created, or otherwise modified so as to materially change or impact, either directly or indirectly, the Services, the medical industry, the managed care industry, the pharmaceutical manufacturing industry, or the responsibilities of the Parties (herein referred to as "Changes"), Service Provider shall immediately notify the Department, indicating the specific law, rule, regulation, draft or pending legislation, and/or policies and procedures.

Service Provider will implement all requirements arising from Changes and the Parties will modify this Contract to the extent reasonably necessary to ensure that the Services will be in full compliance with such Changes. Such compliance will not entitle Service Provider to any extension of time, term, or increase in compensation, except for those Changes that materially cause an increase in the Services or the scope of work. The Department reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Service Provider.

Service Provider will not be entitled to an equitable adjustment or any additional compensation for any changes made to the Benefits Document, the Plan, statutes, or Chapter 60A-1 of the Florida Administrative Code, even if such Changes are attributable directly or indirectly to a state statute, law or other any action by Florida Legislature, which is intended to modify the Plan, the Benefits Document, the State Group Insurance Program or the Prescription Drug Program.

11.4 Compliance with Laws, Including HIPAA

- (a) Generally: Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, sections 110.123 and .12315 of the Florida Statutes and Chapter 60P of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, Contractor shall comply with the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination. The Service Provider shall notify the Department immediately if the Contractor loses any licenses.
- (b) Anti-Kickback Statute: Each party certifies that it will not violate the following laws with respect to the performance of its obligations under this Contract: the federal ant-kickback statute, set forth in 42 U.S.C. 1320a-7b(b); Florida's Anti-Kickback Law, set forth in section 409.920, Florida Statutes; the federal Stark law, set forth in 42 U.S.C. 1395nn; the Patient Self-Referral Act of 1992, set forth in section 456.053, Florida Statutes; the Patient Brokering Act, set forth in section 817.505, Florida Statutes; and the Florida False Claims Act, set forth in sections 68.081 – 68.092, Florida Statutes.

- (c) Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA): Contractor will comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its rules and regulations, including but not limited to the provisions governing the privacy and security of records as well as administrative simplification. Contractor shall commit to implementation and compliance by the statutory deadlines set forth in the statute and associated regulations. Contractor shall assist the State in implementing its compliance with this legislation as it relates to employee health benefits including, but not limited to, executing Attachment 7: Privacy, Security, and Confidentiality Business Associate Agreement.
- (d) Internal Revenue Service Reporting: Service Provider will make all necessary reports to the Internal Revenue Service regarding benefit payments made to health care Service Providers as required by law.
- (e) Equal Employment Opportunity: Service Provider will not discriminate in its employment practices based on race, color, religion, age, sex, marital status, political affiliation, national origin or handicap, except as provided by law.

11.5 Contract Administrator

The Department will name a Contract Administrator during the term of this Contract whose responsibility will be to maintain this Contract. As of the Effective Date, the Contract Administrator is:

Shannon Bagenholm
Departmental Purchasing
Department of Management Services
4050 Esplanade Way, Suite 335
Tallahassee, FL 32399-0950
Telephone: 850-410-2404
Email: DMS.Purchasing@dms.myflorida.com

The Department will provide Notice to Contractor of any changes to the Contract Administrator; provided, such changes will not be deemed Contract amendments.

11.6 Contract Managers

Each Party will designate a Contract Manager during the term of this Contract who will oversee the Party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, the Department's Contract Manager is:

[Insert Name]
[Insert Title]
[Address]
[City and Zip]
Telephone: []
Email: []

Contractor's Account Manager is:

[Insert Name]
[Insert Title]
[Address]
[City and Zip]
Telephone: []
Email: []

Each Party will provide prompt written notice no later than five (5) Business Days to the other Party of any changes to the Party's Contract/Account Manager or his or her contact information. Such changes will not be deemed Contract amendments.

11.7 Dispute Resolution

11.7.1 Overview

Dispute Resolution and Mediation Procedure: Any conflict or dispute between the Department and the Service Provider relating to the Contract will be resolved in accordance with the procedures specified in this Contract, which will be the sole and exclusive procedures for the resolution of any such disputes prior to litigation. Negotiations and Mediation as herein prescribed are conditions precedent to litigation; however, this section 11.7 will not apply in the case of termination for convenience as provided in section 3.2.

11.7.2 Informal Negotiations/Informal Resolution

Whenever the Department and Service Provider have a dispute relative to the Contract, the Contract Managers will immediately attempt to resolve the dispute, subject to the approval of the authorized signatory of the Parties or their designees.

11.7.3 Informal Executive-Level Negotiations

Service Provider and the Department will attempt in good faith to resolve any dispute arising out of or relating to the Contract promptly by negotiation between the Director of the Division and an executive of the Service Provider, or their designees, having authority to settle the controversy, and who are at a higher level of management than persons with direct responsibility for the administration of the services at issue.

11.7.4 Mediation

If the Department and Service Provider are not able to resolve a dispute by negotiation, either Party may initiate a mediation proceeding by a request in writing to the Service Provider within five (5) Business Days after delivery of the notice declaring the negotiation process terminated as required by this Dispute Resolution section. The mediation is a condition precedent to filing any civil action against the other Party.

11.7.4.1 Mediation Procedure

All mediation proceedings will be conducted in accordance with the Contract, Florida Statutes, and the Florida Supreme Court Rules for Certified and Court-Appointed Mediators.

11.7.4.2 Selection of a Neutral Mediator

If the Department and Service Provider do not agree within ten (10) Business Days of the request for mediation on the selection of a neutral mediator willing to serve, then the Department will unilaterally select a certified mediator, who must be an attorney who is a current member of The Florida Bar, and a resident in one of the six counties within the Second Judicial Circuit of Florida. Both Parties will promptly cooperate with the appointed mediator to effectuate mediation.

11.7.4.3 Location of Mediation

Unless otherwise agreed in writing by the Department and Service Provider, mediation sessions will occur in-person in Tallahassee, Florida.

11.7.4.4 Mediation Period

Mediation pursuant to this section will be conducted within a period of forty-five (45) Calendar Days following the appointment of a mediator. If the dispute cannot be resolved by the mediation deadline, or by the end of any mutually agreed continuation

thereof, either (i) the Department, (ii) the Service Provider, or (iii) the mediator may give written notice declaring the mediation process terminated.

11.7.4.5 Obligation to Mediate

The Parties regard the obligation to mediate as an essential provision and one that is legally binding on each. Either party may bring an action to enforce this obligation in the State circuit court of Leon County, Florida.

11.7.5 Performance to Continue

Each Party will continue to perform its obligations under this Contract pending final resolution of any dispute arising out of this Contract.

11.7.6 Notice of Decision

If the procedures outlined in the Negotiation and Mediation sections do not resolve the dispute, the dispute will be decided by the Secretary of the Department or his/her designee, who will reduce the decision to writing and serve a copy to the Service Provider. The decision of the Secretary will be final and conclusive, unless within ten (10) Calendar Days of the date of receipt of the decision, the Service Provider filed a petition for administrative hearing pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Service Provider's ability to pursue any other action.

11.7.7 Payment of Fees and Costs

Except as provided by the indemnity clauses contained herein, the Department and Service Provider will each bear its own costs, attorney fees, and legal expenses incurred in connection with any negotiations, mediation, administrative proceeding, litigation, or appeal, pursuant to this Contract. The Parties will equally share the cost of the mediator.

11.8 Venue

The sole and exclusive venue of any legal action that arises out of or relates to the Contract shall be the state court in Leon County, Florida; in any such action, Florida law shall apply and the Parties waive any right to jury trial. This section shall survive termination of this Contract.

11.9 Entire Contract

This Contract constitutes the full and complete Contract of the Parties hereto and supersedes any prior contracts, arrangements and communications, whether oral or written, with respect to the subject matter hereof. Each Party acknowledges that it is entering into the Contract solely on the basis of the representations contained herein, and for its own purposes and not for the benefit of any third party.

11.10 Force Majeure, Notice of Delay and No Damages for Delay

Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Contractor or its employees or agents contributed to the delay, and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods or other similar cause wholly beyond Contractor's control, or for any of the foregoing that affect Subcontractors or suppliers if no alternate source of supply is available to Contractor. In case of any delay the Contractor believes is excusable, Contractor shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either within ten (10) Calendar Days after the cause that creates or will create the delay, if the Contractor could reasonably foresee that a delay could occur as a result, or if delay is not reasonably foreseeable, within five (5) Calendar Days after the date the Contractor first had reason to believe that a delay could result. No claim for damages, other than for an extension of time, shall be asserted against the Department. Contractor shall not be entitled to payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or

damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Contractor shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State, in which case the Department may accept allocated Services from Contractor, provided that Contractor grants preferential treatment to the Department with respect to Services subjected to allocation, and/or purchase from other sources (without recourse to and by Contractor for the related costs and expenses) to replace all or part of the Services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or terminate the Contract in whole or in part.

THE FOREGOING SHALL CONSTITUTE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing Notice in strict accordance with this paragraph is a condition precedent to such remedy.

11.11 Further Assurances

The Parties will, subsequent to the Effective Date, and without any additional consideration, execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of the Contract.

11.12 Indemnification

Contractor shall be liable for the actions of its employees, partners, Subcontractors, and all other agents and shall indemnify, defend, and hold harmless the State, and its officers, agents and employees, from suits, actions, damages and costs of every name and description, including attorneys' fees, arising from or relating to personal injury or wrongful death, damage to real or personal tangible property, or any other action alleged to be caused in whole or in part by Contractor, its employees, partners, Subcontractors, and all other agents; provided, however, that Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State.

Further, Contractor shall indemnify, defend, and hold harmless the State from any suits, actions, damages and costs of every name and description, including attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right. If any Service is the subject of an infringement suit, or in Contractor opinion is likely to become the subject of a suit, Contractor may at its sole expense procure for the State the right to continue using the Service or to modify it to become non-infringing. If Contractor is not reasonably able to modify or otherwise secure the State the right to continue using the Service, Contractor shall remove the Service and refund the State the amounts paid in excess of a reasonable rental for past use. The State shall not be liable for any royalties.

Contractor's obligations under the preceding two (2) paragraphs with respect to any legal actions are contingent upon the State giving Contractor written notice of any action or threatened action, the opportunity to participate in the defense of and settle any such action at Contractor's sole expense, and assistance in defending the action at Contractor's sole expense. Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State in any legal action without Contractor's prior written consent, which shall not be unreasonably withheld.

Contractor shall also indemnify, defend, and save harmless the Enrollees for any financial loss caused by the failure of Contractor, its officers, directors or agents to comply with the terms of this Contract.

This section shall survive termination of this Contract.

The Department and Contractor agree that: (i) providers are not the agents or employees of the Department or Contractor and (ii) providers are solely responsible for the services they deliver to

Participants, and neither the Department nor Contractor is responsible for the services delivered by providers.

11.13 Defense of Third-Party Claims

11.13.1 Notice of Claims

Contractor shall promptly, and in no event later than five (5) Business Days, notify the Department of any Plan-related legal actions or proceedings brought or initiated against Contractor, the Department or the Plan, of which Contractor becomes aware. The Department shall promptly notify Contractor of any Plan related legal actions or proceedings, brought or initiated against Contractor, the Department or the Plan, of which the Department becomes aware.

11.13.2 Department as Real Party in Interest

If a Participant files suit against Contractor regarding eligibility, enrollment, or coverage that is the legal administrative responsibility of the Department without previously requesting an administrative hearing pursuant to Chapter 120, Florida Statutes, Contractor shall file a motion to dismiss or any other appropriate motions and shall notify the Department of its action. Contractor shall, when possible, notify the Department prior to the filing of such motion and shall notify the Department no later than seven (7) Business Days after the filing of any such motion. Prior to filing any such motions, Contractor shall, when possible, advise the party filing the suit, as appropriate, that issues regarding eligibility, enrollment, or coverage that is the legal administrative responsibility of the Department require the exhaustion of administrative remedies and/or in such instances the real party in interest is the Department. In reference to legal proceedings regarding eligibility, enrollment, or coverage that is the legal administrative responsibility of the Department, the Department may support Contractor's motions, as specified in this section, to drop Contractor and/or to substitute the Department, if the Department is not already a party to the lawsuit, as the real party in interest when requested by Contractor. If the Department is a codefendant in any such lawsuit, the Department may support any appropriate motion(s) to drop Service Provider from the lawsuit.

11.13.3 Contractor as Real Party in Interest

In the event a lawsuit is filed against Contractor, which raises a recognized cause of action or claim for relief based on Contractor's own policies or procedures to the administration of the Plan, Contractor shall, at its expense, defend such lawsuit. Contractor shall support the Department in any motion filed to drop the Department from any lawsuit where the damages sought by the filing litigant allegedly arise out of the policies and procedures of Contractor that do not concern eligibility, enrollment, or coverage that is the legal administrative responsibility of the Department.

11.13.4 Cooperation in the Defense of Administrative and/or Legal Actions

The Parties shall, upon request, cooperate fully with each other concerning any administrative or legal proceeding brought or initiated against them individually or jointly by Participants or other persons relating to the administration of the Plan or Contract. In this regard, the Parties shall use their best efforts to keep each other apprised of any significant developments relating to such litigation or proceedings and the status of such legal matters as may be requested by their respective attorneys. In all administrative or legal proceedings, Contractor shall make available all files and documents requested by Department and Contractor attorneys, investigate the facts related to allegations raised in the proceedings, and make available, as required by the Department, and at no additional cost, witnesses for depositions, administrative hearings, and/or trial in any such proceedings.

11.13.5 Administrative Proceedings

The Department, as an agency of the State, shall be responsible, in accordance with State law, for handling and defending any administrative actions or proceedings brought by Participants in accordance with sections 120.569, 120.57, or 120.574, Florida Statutes. Upon request, Contractor shall promptly provide the Department with all records, including but not limited to, materials, available data, schedules, guidelines, audit trail, protocols, or other materials that are necessary for the preparation of the defense in such proceedings.

11.13.6 Support and Communication with Contractor's Legal Affairs Department

Contractor shall, upon request of the Department, assist attorneys representing the Department by providing information and support in administrative and legal proceedings being contested by Participants. Contractor shall advise the Department in writing within thirty (30) Calendar Days after the Effective Date of the Contract of the representative who will assist the Department's attorneys.

Section 11.13 shall survive termination of this Contract.

11.14 Independent Contractor Status

Contractor, together with its agents, Subcontractors, officers, and employees, shall have and always retain under the Contract the legal status of an independent Contractor, and in no manner shall they be deemed employees of the State or deemed to be entitled to any benefits associated with such employment. Contractor remains responsible for all applicable federal, State, and local taxes and all FICA contributions.

11.15 Inspection at Contractor Site

The Department reserves the right to inspect, at any reasonable time with prior notice, the equipment or other facilities of a Contractor or Subcontractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

11.16 Intellectual Property

Any ideas, concepts, know-how, data processing techniques, software, documentation, diagrams, schematics, or blueprints developed exclusively by Contractor's personnel in connection with this Contract will be the exclusive property of the Department as part of delivering the required Services. Any joint or future software development effort will be subject to a separate agreement signed by Department and Contractor, wherein all ownership and license rights to such developed product shall be specified in detail. In the absence of such agreement, each Party shall maintain sole ownership of its own protectable proprietary materials, which are developed or owned solely by Department or Contractor, respectively.

11.17 Lobbying and Integrity

Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty, or offer, give, or agree to give to anyone any Gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of this provision, "Gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department's inspector general, or other authorized State official, Contractor shall provide any type of information the inspector general deems relevant to Contractor's integrity or responsibility. Such information may include, but shall not be limited to,

Contractor's business or financial records, documents or files of any type or form that refer to or relate to the Contract. Contractor shall retain such records for three (3) years after the expiration of the Contract or the period required by the general records schedules maintained by the Florida Department of State. Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the inspector general or other authorized State official for investigations of Contractor's compliance with the terms of this or any other agreement between Contractor and the State, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Contractor shall not be responsible to the Department for any costs of investigations that do not result in Contractor's suspension or debarment.

11.18 Loss of Data

In the event of loss of any State of Florida Data or record where such loss is due to the negligence of Contractor or any of its Subcontractors or agents, Contractor shall be fully responsible for recreating such lost State of Florida Data in the manner and on the schedule set by the Department, in addition to any other damages the Department may be entitled to by law or this Contract. Contractor shall bear the full cost for recreating any lost State of Florida Data and will not be entitled to any compensation by the Department for those costs. This section shall survive termination of this Contract.

11.19 Notices

All notices between the Parties regarding this Contract shall be in writing as follows:

To the Department by certified mail (return receipt requested), by reputable courier service, by electronic mail (read receipt requested), or delivered personally to:

[Insert Name]
[Insert Title]
[Address]
[City and Zip]
Telephone: []
Email: []

To the Contractor by certified mail (return receipt requested), by reputable courier service, by electronic mail (read receipt requested), or delivered personally to:

[Insert Name]
[Insert Title]
[Address]
[City and Zip]
Telephone: []
Email: []

The Parties agree that any change in the above-referenced address or name of the contact person shall be submitted in a timely manner to the other Party. All notices and other communications under this Contract shall be in writing and shall be deemed duly given when: 1) delivered in person to the recipient named above; 2) upon confirmation of courier delivery or electronic delivery to the intended recipient; or 3) three (3) Business Days after mailed by certified U.S. mail, return receipt requested, postage prepaid, addressed by name and address to the Party intended.

11.20 Cooperation with the Inspector General

Pursuant to section 20.055(5), Florida Statutes, the Contractor and any subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review or hearing.

11.21 Public Records

Any and all records produced or used regarding this Contract are subject to Florida's public records law, as set forth in Chapter 119 of the Florida Statutes. Service Provider must comply with all applicable provisions of Florida's public records law. Violation of this section shall constitute grounds for termination of the Contract.

11.21.1 Access to Public Records

The Department may unilaterally cancel this Contract for refusal by the Service Provider to comply with this section by not allowing public access to all documents, papers, letters, or other material made or received by the Service Provider in conjunction with the Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), Florida Statutes.

11.21.2 Redacted Copies of Confidential Information

If the Service Provider considers any portion of any documents, data, or records submitted to the Department to be confidential, proprietary, trade secret, or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, the Service Provider must simultaneously provide the Department with a separate redacted copy of the information it claims as Confidential and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Contract name and number, and shall be clearly titled "Confidential." The redacted copy should only redact those portions of material that the Service Provider claims is confidential, proprietary, trade secret, or otherwise not subject to disclosure.

11.21.3 Request for Redacted Information

In the event of a public records or other disclosure request pursuant to Chapter 119, Florida Statutes, the Florida Constitution, or other authority, to which documents that are marked as "Confidential" are responsive, the Department will provide the Service Provider-redacted copies to the requestor. If a requestor asserts a right to materials, which Service Provider has identified as confidential, pursuant to section 11.21.2 of this Contract, the Department will notify the Service Provider such an assertion has been made. It is the Service Provider's responsibility to assert that the information in question is exempt from disclosure under Chapter 119 or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Service Provider under legal process, the Service Provider shall be responsible for defending its determination that the redacted portions of its records are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

11.21.4 Indemnification

The Service Provider shall protect, defend, and indemnify the Department for any and all claims arising from or relating to the Service Provider's determination that the redacted portions of its records are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If the Service Provider fails to submit a redacted copy of information it claims is Confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in answer to a public records request or other lawful request for these records.

11.21.5 Contractor as Agent

Solely for the purposes of this section, the Contract Manager is the agency's custodian of

public records. If, under this Contract, the Service Provider is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes, the Service Provider shall:

- a) Keep and maintain public records required by the public agency to perform the service.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.
- d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- e) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED FOR THE CONTRACT MANAGER.**

11.22 Rights to Records

Contractor agrees that all documents and materials prepared by Contractor for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without payments to Contractor other than that specifically provided by this Contract.

11.23 Taxes

The State does not pay federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on Contractor or for any taxes levied on employees' wages.

11.24 Waiver

The delay or failure by a Party to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

11.25 Warranty of Authority

Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective Party to the Contract.

11.26 Warranty of Ability to Perform

Contractor shall provide the Department appropriate documentation demonstrating that Contractor is in good standing and legally authorized to transact Services business in Florida. Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish Contractor's ability to satisfy Contract obligations. Contractor warrants that neither it nor any affiliate is currently on the Convicted Vendor List or Discriminatory Vendor List maintained pursuant to sections 287.133 and 287.134, Florida Statutes, or on any similar list maintained by any other state or the federal government. Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.

11.27 Severability

If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

11.28 Organizational Conflicts of Interest

By executing this Contract, Contractor represents that either it has disclosed all Organizational Conflicts of Interest to the Department in writing, or no Organizational Conflicts of Interest exist. The term "Organizational Conflicts of Interest" means the existence of any past, present, or currently planned interests of Contractor that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) relates to the Services and which may diminish Contractor's capacity to give impartial, technically sound, objective assistance and advice, or may give Contractor unfair negotiating advantage with respect to the Department.

11.29 Best Pricing Clause

Contractor acknowledges and recognizes that the State wants to take advantage of any improvements in pricing/fees over the course of the Contract period. To that end, the pricing indicated in this Contract is the guaranteed maximum price.

The Contractor's charges under this Contract will not exceed the Contractor's charges to any organization with enrollment equal to or less than the Contractor's Enrollee count. During the term of the Contract, if the Contractor implements or provides any other client, whether a public or private entity, with fewer enrollees, pricing terms more favorable than the pricing in this Contract, then Contractor agrees to offer equivalent pricing terms to the Department and the Department and Contractor may execute an amendment of this Contract to adopt the equivalent pricing terms if determined acceptable to the Department.

In order to appropriately compare pricing terms for this analysis, Contractor will (i) include consideration of co-payment/cost share amounts, which vary with plan design; (ii) make comparable adjustments to aggregate pricing terms of comparable clients, inclusive of the program savings, the retail and mail pricing for Brand and Generic Drugs, pricing for specialty drugs, administrative fees, Rebates and guarantees; (iii) provide for consideration of relevant plan design elements, including client formulary adoption, generic utilization drivers, mail pharmacy utilization drivers, specialty pharmacy program adoption, and retail network adoption; and (iv) adjust for varying clinical and other program services provided by Contractor.

The Service Provider agrees to annually submit to Department an affidavit from an authorized representative attesting that the Service Provider is in compliance with Attachment 1: Affidavit of Best Pricing. The affidavit shall be submitted to the Department no later than December 31st each year.

11.30 Convicted Vendor and Discriminatory Vendor Lists

Pursuant to sections 287.133 and 287.134, Florida Statutes, the following restrictions are placed on the ability of persons placed on the State's Convicted Vendor List or the Discriminatory Vendor List:

- 1) An entity or affiliate who has been placed on the State's Discriminatory Vendor List may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- 2) A person or affiliate who has been placed on the State's Convicted Vendor List following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section [287.017](#), Florida Statute, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the State's Convicted Vendor List.

11.31 Rehabilitation Act

If applicable to the supplies and services the Contractor provides to the Department, the Contractor shall ensure the electronic and information technology accessibility requirements of the Rehabilitation Act Amendments, 29 U.S.C. section 794, are met and provide a website where the compliance information on such supplies and services is available. The Electronic and Information Technology standard can be found at: <http://www.section508.gov/>.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

SO AGREED by the Parties' authorized representatives on the dates noted below:

DEPARTMENT OF MANAGEMENT SERVICES

Jonathan Satter, Secretary

Date

CONTRACTOR NAME

Signature

Print Name and Title

Date

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ATTACHMENT 1: AFFIDAVITS

This attachment provides the templates for the affidavits required by the Contract. Templates may be updated by the Department, with notification to the Service Provider. Such changes will not require a Contract amendment.

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AFFIDAVIT OF BEST PRICING

Regarding the Contract between

[_____] (the "Contractor")

And

State of Florida, Department of Management Services

Contract No.: DMS-19/120-030

Effective {Effective Date of Contract}

Pursuant to section 11.29 of the Contract, the undersigned Contractor hereby attests that the Contractor is in compliance with the Best Pricing clause in the Contract.

Contractor Name: [_____]

Contractor Federal Employer

Identification Number (FEIN #): _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ [2020]

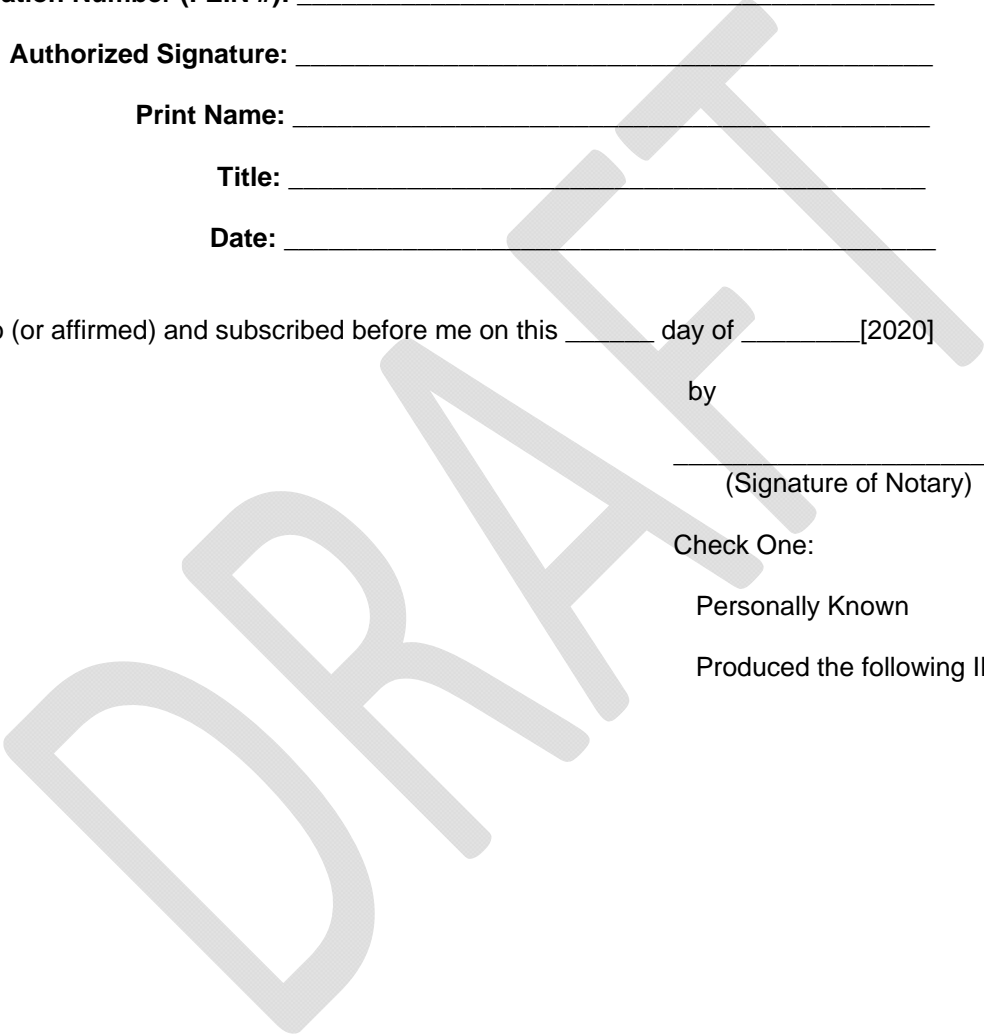
by

(Signature of Notary)

Check One:

Personally Known

Produced the following ID



AFFIDAVIT OF WARRANTY OF SECURITY

Regarding the Contract between

[_____] (the "Contractor")

And

State of Florida, Department of Management Services

Contract No.: DMS-19/120-030

Effective {Effective Date of Contract}

Pursuant to section 4.2.4 of the Contract, the undersigned Contractor hereby attests that the Contractor is in compliance with the requirements of Warranty of Security clause in the Contract.

Contractor Name: [_____]

Contractor Federal Employer

Identification Number (FEIN #): _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ [2020]

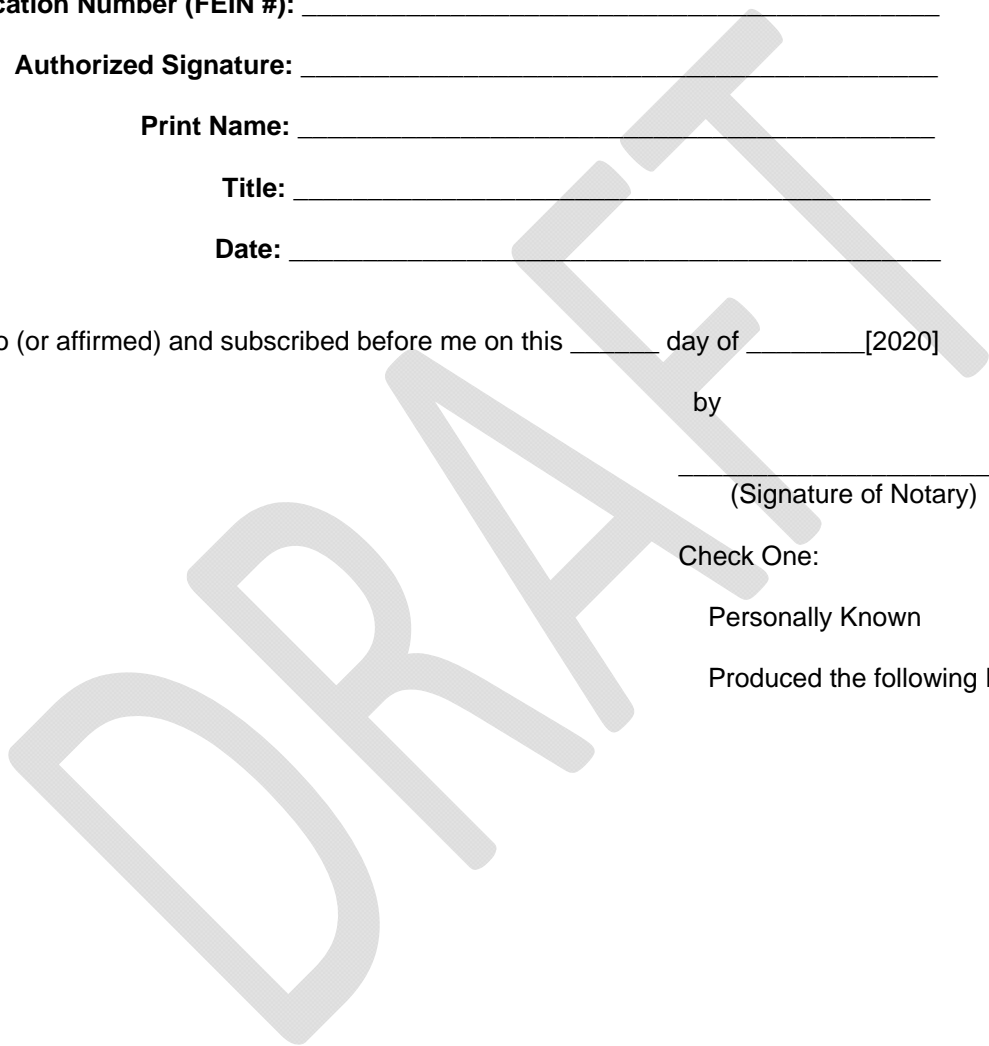
by

(Signature of Notary)

Check One:

Personally Known

Produced the following ID



AFFIDAVIT OF NO OFFSHORING

Regarding the Contract between
[_____] (the "Contractor")

And

State of Florida, Department of Management Services

Contract No.: DMS-19/120-030

Effective {Effective Date of Contract}

Pursuant to section 4.2.5 of the Contract, the undersigned Contractor hereby attests that the Contractor and do not utilize offshore Subcontractors in the performance of this Contract and are in compliance with the Subcontractor clause of the Contract.

Contractor Name: [_____]

Contractor Federal Employer

Identification Number (FEIN #): _____

Authorized Signature: _____

Print Name: _____

Title: _____

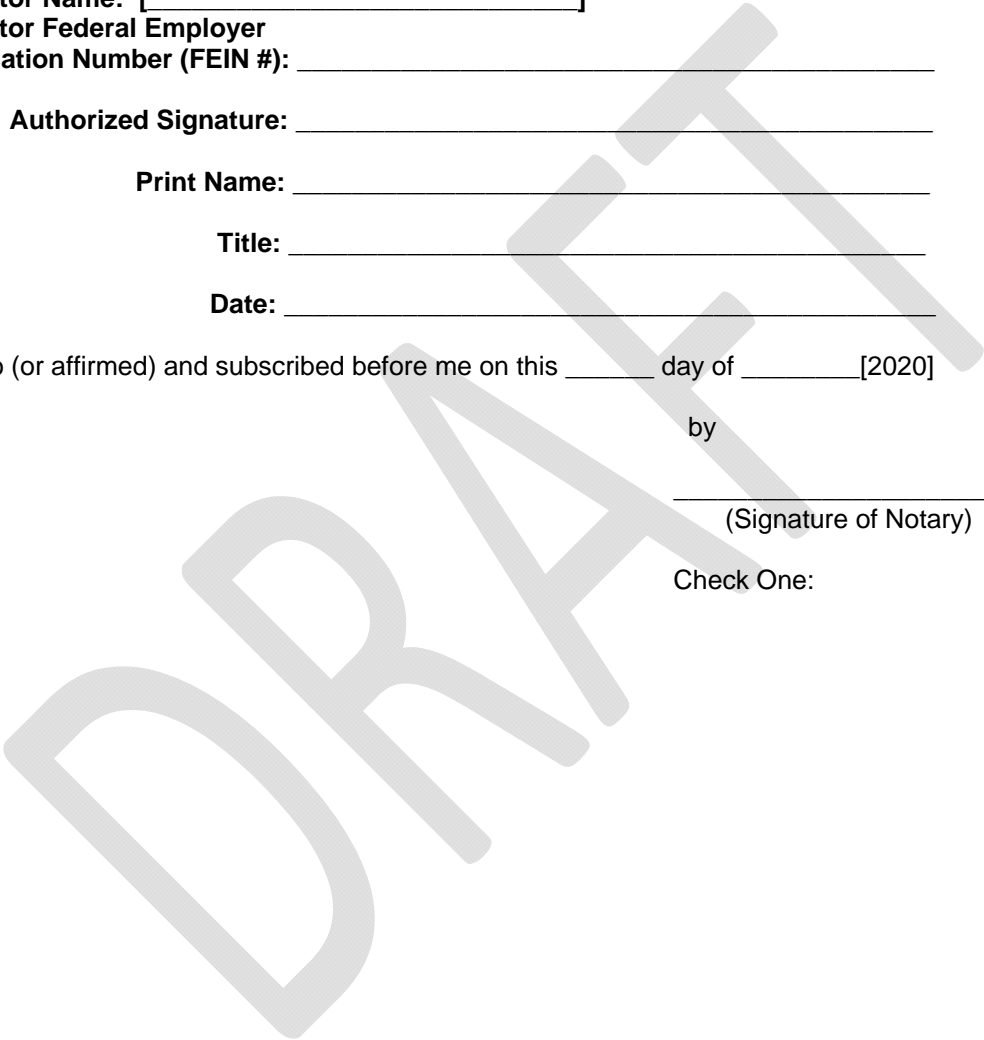
Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ [2020]

by

(Signature of Notary)

Check One:



ATTACHMENT 2: ADMINISTRATIVE REQUIREMENTS

**See Service Provider's Reply to Attachment B: Technical Reply,
Tab TR-5: Administrative Requirements of the ITN.**

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ATTACHMENT 3: PERFORMANCE GUARANTEES

**See Service Provider's Reply to Attachment B: Technical Reply,
Tab TR-6: Performance Guarantees of the ITN.**

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ATTACHMENT 4: PPO PLAN BOOKLET WITH SUMMARY OF MATERIAL MODIFICATIONS

**See Appendix 6: 2019 State Employees' PPO Plan Booklet and Benefits Document
and Appendix 7: 2020 Summary of Material Modifications of the ITN.**

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ATTACHMENT 5: APPROVED SUBCONTRACTORS

**See Service Provider's Reply to Attachment B: Technical Reply,
Tab TR-10: Subcontractor Questionnaire of the ITN.**

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ATTACHMENT 6: FEES, CLAIMS, CLINICAL PROGRAMS, AND DRUG LISTS

**See Service Provider's Reply to Attachment C: Financial Reply,
Tabs FR-1: Instructions through FR-9: Alternative Cost Management Programs of the ITN.**

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ATTACHMENT 7: PRIVACY, SECURITY, AND CONFIDENTIALITY

BUSINESS ASSOCIATE AGREEMENT

This Privacy, Security, and Confidentiality Business Associate Agreement (“Agreement”) is between the State of Florida Department of Management Services (“Agency”), and {Insert Contractor Name} (“Business Associate”), (each individually, a “Party,” and collectively, the “Parties”), with an effective date of the last date of execution below.

WHEREAS, Business Associate has agreed to perform services for or on behalf of Covered Entity;

WHEREAS, such services may involve the use or disclosure of Protected Health Information that are protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. §§ 160 and 164, the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), and the regulations promulgated thereunder; and section 110.123(9), Florida Statutes; and

WHEREAS, this Agreement is intended to satisfy the requirements for Business Associate contracts under 45 C.F.R. § 164, subparts C and E, and the HITECH Act, and to address the confidentiality requirements of section 110.123(9), Florida Statutes.

NOW THEREFORE, in consideration of the mutual covenants provided herein and other good and valuable consideration, Covered Entity hereby agrees to provide certain information to Business Associate, and Business Associate hereby agrees to comply with this Agreement; the applicable provisions of 45 C.F.R. §§ 160 and 164; the HITECH Act; and sections 110.123(9) and 501.171, Florida Statutes; and to assist Covered Entity with its compliance therewith, as follows:

1. DEFINITIONS

Terms used but not otherwise defined in this Agreement shall have the same meaning as defined in 45 C.F.R. §§ 160 and 164 and/or the HITECH Act.

- (a) “Agency” means the Florida Department of Management Services (“DMS”), an executive agency of the State of Florida, and the Division of State Group Insurance (“DSGI”) with its principle place of business at 4050 Esplanade Way, Suite 215, Tallahassee, FL 32399-0950.
- (b) “Agreement” means this Privacy, Security, and Confidentiality Business Associate Agreement.
- (c) “Breach” when referring to a breach of Protected Health Information or PHI means the acquisition, access, use, or disclosure of PHI that is not permitted by 45 C.F.R. § 164, subpart E, which compromises the security or privacy of PHI. See definition of “Protected Health Information” or “PHI,” herein.
- (d) “Business Associate” refers to {Insert Contractor Name}, who hereby agrees to provide services to the Division of State Group Insurance as a business associate, as that term is defined in 45 CFR §160.103.
- (e) “Covered Entity” means the State of Florida’s Division of State Group Insurance (“DSGI”).
- (f) “Contract” means the contract awarded to the Business Associate pursuant to DMS-19/20-030.

- (g) "Individual" has the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- (h) "Parties" mean collectively the Agency and Business Associate. A "Party" means either the Agency or Business Associate.
- (i) "Protected Health Information" or "PHI" means individually identifiable health information as defined in 45 C.F.R. § 160.103, whether secured or unsecured, and in any type of format.
- (j) "Plans" means the insurance coverages offered through Covered Entity, as authorized in section 110.123, Florida Statutes.
- (k) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information set forth in 45 C.F.R. § 160 and 45 C.F.R. § 164, subparts A and E, as amended.
- (l) "Secretary" means the Secretary of the U.S. Department of Health and Human Services or designee.
- (m) "Security Rule" means the security provisions set forth in 45 C.F.R. § 160 and § 164, subparts A and C, as amended.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate Agrees to:

- (a) Comply with all applicable provisions of 45 C.F.R. §§ 160 and 164, subparts A, C, and E; the HITECH Act; sections 110.123(9) and section 501.171, Florida Statutes; and the terms of this Agreement.
- (b) Not use or further disclose PHI other than as permitted or required by Sections 3 and 7 of this Agreement or as required under federal or Florida law.
- (c) Ensure the confidentiality, integrity, and availability of all Electronic PHI Business Associate creates, receives, maintains, or transmits.
- (d) Ensure that every agent and subcontractor that creates, receives, maintains, or transmits PHI complies with the restrictions and conditions contained in this Agreement, HIPAA, and the HITECH Act.
- (e) Make any amendment(s) to PHI in a designated record set that Covered Entity or an Individual directs or agrees to pursuant to 45 C.F.R. § 164.526, in a prompt and reasonable manner or take other measures as necessary to satisfy Covered Entity obligation(s) under 45 C.F.R. § 164.526.
- (f) Create and retain all records necessary to determine compliance with HIPAA, the Privacy Rule, Security Rule, and HITECH Act.

- (g) Make its internal practices, books, and records available to the Secretary in a time and manner designated by Covered Entity or the Secretary, for purposes of determining compliance with HIPAA, the Privacy Rule, Security Rule, and HITECH Act.
- (h) Cooperate with any investigations by the Secretary to determine compliance with HIPAA, the Privacy Rule, Security Rule, and HITECH Act.
- (i) Document disclosures of PHI and provide to an Individual, at the request of Covered Entity or an Individual, an accounting of such disclosures in accordance with 45 C.F.R. § 164.528. Business Associate shall assist Covered Entity in complying with HIPAA regulations relating to the required Disclosure, Amendment, or Accounting.
- (j) Certify that it is in compliance with all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (“EDI”) Standards, in accordance with 45 C.F.R. § 162; and the Annual Guidance as issued by the Secretary pursuant to the HITECH Act, section 13401. Business Associate further agrees to ensure that every agent and subcontractor that conducts standard transactions on its behalf, agrees to comply with the EDI Standards and the Annual Guidance.
- (k) Use the Minimum Necessary type and amount of PHI required to perform services in accordance with 45 C.F.R. § 164, subpart E.
- (l) Comply with all requirements of 45 C.F.R. § 164, subpart E, that apply to Covered Entity to the extent Business Associate carries out any obligations(s) of the Covered Entity under subpart E.

3. PERMITTED AND REQUIRED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

- (a) Except as expressly permitted in this Agreement or in writing by Covered Entity, Business Associate shall not divulge, disclose, or communicate PHI to any third party in violation of this Agreement without prior written approval from Covered Entity.
- (b) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (c) Business Associate must comply with 45 C.F.R. § 164, subpart E, and may not use or disclose PHI in violation of 45 C.F.R. § 164, subpart E.
- (d) Business Associate may use and disclose PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- (e) Business Associate may use and/or disclose PHI for Business Associate’s proper management and administration, provided that: (1) Business Associate obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (2) the person notifies Business Associate of any instances of the Breach of PHI for which it is aware. Business

Associate also may make disclosures that are required by law. Business Associate's use of PHI as described in this paragraph is subject to and limited as described in 45 C.F.R. § 164.504(e)(2) and (4).

- (f) Business Associate may create a Limited Data Set only as necessary and required for the purpose of performing its obligations and services for Covered Entity, provided that Business Associate complies with the provisions of this Agreement.
- (g) Business Associate shall disclose PHI when required by the Secretary to investigate or determine Covered Entity or Business Associate's compliance with 45 C.F.R. § 164, subpart E.
- (h) Business Associate shall provide access to PHI in a designated record set as required under 45 C.F.R. § 164.524.
- (i) Business Associate shall, upon request by Covered Entity or Individual, disclose PHI to Covered Entity, Individual, or Individual's designee, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §§ 164.502(a)(4)(ii), 164.524(c)(2)(ii), and 164.524(c)(3)(ii) with respect to an Individual's request.

4. OBLIGATIONS OF COVERED ENTITY

Covered Entity Agrees to:

- (a) Notify Business Associate, upon request, of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.
- (b) Notify Business Associate of any changes in, or revocation of, Authorization by an Individual or his or her personal representative regarding the use or disclosure PHI, if such changes affect Business Associate's use or disclosure thereof.
- (c) Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, if such changes affect Business Associate's use or disclosure thereof.
- (d) Not provide Business Associate with more PHI than that which is minimally necessary for Business Associate to provide the services and, where possible, Covered Entity shall provide any PHI needed by Business Associate to perform the services in the form of a Limited Data Set, in accordance with 45 C.F.R. § 164.504(e)(3)(iv).
- (e) Not request Business Associate to use or disclose PHI in any manner that would violate HIPAA, the HITECH Act, or Florida law.

5. PHI SECURITY REQUIREMENTS

- (a) Protection of Protected Health Information. Business Associate shall protect against any reasonably anticipated threats or hazards to the confidentiality, security, or integrity of PHI and protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under 45 C.F.R. § 164, subpart E. Business Associate shall implement policies and procedures to prevent, detect, contain, and correct security violations.

- (b) Security of Electronic Protected Health Information. Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards to prevent security violations and the unpermitted acquisition, access, use, or disclosure of PHI in accordance with 45 C.F.R. § 164, subpart C.
- (c) Business Associate's due diligence. Business Associate shall make a good-faith effort to identify any unpermitted access, acquisition, use, or disclosure of any type of PHI or unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- (d) Compliance. Business Associate shall ensure that its agents and subcontractors comply with 45 C.F.R. § 164, subparts A, C, and E, and all applicable standards relating to all Electronic PHI.
- (e) Compliance Date. Business Associate certifies compliance with this section of the Agreement on or before the date on which its representative signs this Agreement as set forth in the signature blocks at the end of this document.

6. NOTIFICATION AND REPORTING REQUIREMENTS

- (a) Reporting of Security Incidents. Within two (2) Business Days of discovery, Business Associate will report to the Covered Entity any Security Incident that involves the (1) unpermitted acquisition, access, use, or disclosure of PHI; and/or (2)(a) modification or destruction of Electronic PHI or (b) interference with system operations in an information system containing Electronic PHI. For any other type of Security Incident, Business Associate shall report such incident to Covered Entity upon request. Such reports shall include a description of the incident, identification of any Individuals affected (if any), and the types of PHI involved (if any). The day the Security Incident is discovered or would have been discovered with the exercise of reasonable diligence will be considered the first Business Day of the reporting period.
- (b) Notification to Covered Entity regarding a Breach of PHI. Within two (2) Business Days of discovery, Business Associate will notify Covered Entity of any Breach of unsecured PHI in accordance with 45 C.F.R. § 164.410. Within two (2) Business Days of discovery, Business Associate will notify Covered Entity of any other unpermitted acquisition, access, use, or disclosure of PHI not provided for in this Agreement. The notice pursuant to this subparagraph shall comply with the notification requirements of 45 C.F.R. § 164.410(c), including the identification of each affected Individual, the types of PHI involved in the breach, and a description of the incident. The day the breach is discovered or would have been discovered with the exercise of reasonable diligence will be considered the first Business Day of the reporting period.
- (c) Notification to Individuals. In the case of a Breach regarding unsecured PHI, Business Associate shall first notify Covered Entity of the details of the breach. Upon approval by Covered Entity, Business Associate shall notify each Individual whose unsecured PHI was breached in accordance with 45 C.F.R. § 164.404. Notification shall be in writing and delivered by first-class mail to the Individual, the Individual's personal representative, or the Individual's next of kin (if the individual is deceased) at the last known address of the Individual, next of kin, or personal representative, as applicable. The notification may be delivered by e-mail if

requested by the recipient. When there is insufficient or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes written or electronic notification, a substitute form of notice shall be provided. When there are ten (10) or more Individuals for whom there is insufficient or outdated contact information, Business Associate shall place a conspicuous posting on its web site or run the notice in major print or broadcast media, including major media in the geographic areas where the Individuals likely reside. In any case deemed by Business Associate to require urgency due to possible imminent misuse of unsecured PHI, Business Associate may also provide information to Individuals by telephone or other means, as appropriate.

- (d) Notification to Media. When Business Associate reasonably believes there has been a Breach of unsecured PHI involving more than 500 persons, after prior approval by Covered Entity, Business Associate shall provide notice to prominent media outlets serving the state or the relevant portion of the state involved, in accordance with 45 C.F.R. § 164.406.
- (e) Notification to the Secretary. Business Associate shall cooperate with Covered Entity to provide notice to the Secretary of the Breach of unsecured PHI in accordance with 45 C.F.R. § 164.408. When Business Associate reasonably believes that there has been a Breach of Unsecured PHI involving 500 or more individuals, such notice must be provided immediately. If the breach was with respect to fewer than 500 individuals, Business Associate may maintain a log of the breach and annually submit such log to Covered Entity so that it may satisfy its obligation to notify the Secretary of breaches.
- (f) Content of Notices. All notices must comply with the minimum notice provisions set forth in 45 C.F.R. §§ 164.404, 164.406, 164.408, 164.410, and section 13402(f) of the HITECH Act, as applicable, except that any references therein to a “covered entity” shall be read as references to Business Associate.
- (g) Financial Responsibility. Business Associate shall be responsible for reasonable costs related to the notices required under this Agreement.
- (h) Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate regarding the unauthorized access, acquisition, use, or disclosure of any type of PHI in violation of this Agreement.

7. SECURITY AND CONFIDENTIALITY UNDER FLORIDA LAW

- (a) Business Associate agrees to observe the confidentiality requirements of section 110.123(9), Florida Statutes. In general, the referenced statute provides that patient medical records and medical claim records of state employees, former state employees, and their covered dependents are confidential and exempt from the provisions of section 119.07(1), Florida Statutes. Any person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation, including those residing or existing internal and external to Covered Entity’s computer system, commits an offense in violation of section 815.04, Florida Statutes.

- (b) These confidentiality requirements protect the disclosure of all Covered Entity's records and information, in whatever form, including the copying or verbally relaying of confidential information. If Business Associate is served with subpoena requiring the production of Covered Entity's records or information, Business Associate shall immediately contact the Department of Management Services, Office of the General Counsel, at (850) 487-1082.

A subpoena is an official summons issued by a court or an administrative tribunal, which requires the recipient to do one or more of the following:

- i. Appear at a deposition to give sworn testimony and/or require that certain records be brought to be examined as evidence.
 - ii. Appear at a hearing or trial to give evidence as a witness and/or require that certain records be brought to be examined as evidence.
 - iii. Produce certain records for examination.
- (c) Business Associate acknowledges that the confidentiality requirements herein apply to all its agents and subcontractors. Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions, against Covered Entity, including costs and attorneys' fees, resulting from Business Associate's breach of this Agreement.
- (d) Business Associate shall take reasonable measures to protect and secure electronic data that contains personal information in accordance with section 501.171, Florida Statutes (the "Florida data breach notification law"). The Parties expressly acknowledge and agree that the terms and provisions of this Agreement are intended to also control with respect to "Personal Information" as defined in, and addressed by section 501.171, that Business Associate creates, maintains, or receives. As such, any references to Protected Health Information and HIPAA in this Agreement shall include, respectively, Personal Information and the confidentiality, security and reporting obligations, under the Florida data breach notification law.

Within two (2) days of discovery, Business Associate shall report any breach of security to Covered Entity and shall provide Covered Entity with all information required under section 501.171(6)(a), Florida Statutes.

- (e) Unless otherwise agreed to in writing, Business Associate will not allow any data, PHI, Electronic PHI, or other information to be accessed or stored outside of the United States.

8. TERM AND TERMINATION OF AGREEMENT

- (a) Term. This Agreement shall commence as of the Effective Date of this Agreement and will naturally terminate on the later of (i) the last of the Parties' related agreements for Business Associate's Services terminate, or (ii) when all of the PHI in Business Associate's possession, custody, or control is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provision in this section.

- (b) Termination for cause. Without limiting any other termination rights, the Parties may have, Covered Entity may terminate this Agreement upon discovery of a material breach. Covered Entity shall provide Business Associate an opportunity to cure the breach or end the violation. If the Business Associate does not cure the breach or end the violation within a reasonable time as specified by Covered Entity, Covered Entity shall have the right to immediately terminate the Agreement. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (c) Return or destruction of PHI upon termination. Upon notice of termination of this Agreement, Business Associate shall destroy or return to Covered Entity any and all PHI created or received by Business Associate.

Within fifteen (15) Calendar Days of any notice of termination of this Agreement, Business Associate shall notify Covered Entity in writing as to whether Business Associate elects to return or destroy such PHI.

Except as provided in subsection (d), within thirty (30) Calendar Days of the notice of termination of this Agreement, Business Associate shall return to Covered Entity or destroy any and all PHI maintained by Business Associate in any form and shall retain no copies thereof. Business Associate also shall recover and return or destroy, within such time period, any and all PHI in the possession of its subcontractors or agents.

If Business Associate elects to destroy PHI, Business Associate shall obtain written confirmation from Covered Entity that such actions will not violate the State of Florida's record retention policies. Upon destruction, Business Associate shall provide written certification to Covered Entity that such PHI has been destroyed. If any subcontractor or agent of Business Associate elects to destroy PHI, Business Associate will require such subcontractor or agent to provide written certification to Business Associate and to Covered Entity when such PHI has been destroyed.

- (d) If it is not feasible for Business Associate to return or destroy any PHI, Business Associate shall notify Covered Entity in writing that Business Associate has determined that it is not feasible to return or destroy the PHI and the specific reasons for such determination.

If it is not feasible for Business Associate to obtain any PHI in the possession of the subcontractor or agent, Business Associate shall provide a written explanation to Covered Entity and require the subcontractor or agent to agree to extend any and all protections, limitations, and restrictions set forth in this Agreement to the subcontractor or agent's use or disclosure of any PHI retained after the termination of this Agreement, and to limit any further use or disclosure to the purposes that make the return or destruction of the PHI not feasible.

9. MISCELLANEOUS

- (a) **Material breach.** A violation of any provision of this Agreement shall be deemed a material breach of this Agreement and the Contract.
- (b) **Warranties and representations.** Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, or HITECH Act will be adequate or satisfactory for Business Associate's

own purposes.

- (c) **Assignment.** Business Associate shall not assign either its obligations or benefits under this Agreement without the express written consent of Covered Entity, which shall be at the sole discretion of Covered Entity. Given the nature of this Agreement, neither subcontracting nor assignment by Business Associate is anticipated and the use of those terms herein does not indicate permission to assign or subcontract has been granted.
- (d) **Regulatory References.** A reference in this Agreement to a section of HIPAA, the Privacy Rule, the Security Rule, or HITECH Act means the section as in effect or as amended and for which compliance is required.
- (e) **Amendment.** Upon the enactment of any law or regulation affecting the use or disclosure of PHI, Standard Transactions, the security of PHI, HIPAA, or the HITECH Act; the publication of any decision of a court of the United States or any state relating to any such law; or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either Party may, by written notice to the other Party, amend this Agreement in such manner as such Party determines necessary to comply with such law or regulation. If the other Party disagrees with such Amendment, it shall notify the first Party in writing within thirty (30) Calendar Days' notice. If the Parties are unable to agree on an Amendment within thirty (30) Calendar Days thereafter, then either of the Parties may terminate the Agreement on thirty (30) Calendar Days written notice to the other Party.
- (f) **Survival.** The rights and obligations of Business Associate under Section 8 of this Agreement shall survive the termination of this Agreement.
- (g) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HITECH Act, and Florida Statutes.
- (h) **No third party beneficiary.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assignees of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- (i) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida to the extent not preempted by applicable federal law.
- (j) **Venue.** The venue of any proceedings shall be the appropriate federal or state court in Leon County, Florida.
- (k) **Indemnification and performance guarantees.** Business Associate shall indemnify, defend, and hold harmless the Agency, State of Florida, and individuals covered by the Plans for any financial loss as a result of the claims brought by third parties and which are caused by the failure of Business Associate, its officers, directors, or agents to comply with the terms of this Agreement.
- (l) **Independent entities.** Business Associate and Covered Entity are independent entities, and this Agreement will not establish any relationship of partnership, joint

venture, employment, franchise, or agency between Business Associate and Covered Entity. Neither Business Associate nor Covered Entity will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent, except as otherwise expressly provided in this Agreement.

- (m) Conflicts. In the event that any terms of this Agreement are inconsistent with the terms of any other contract between the Parties, the terms of this Agreement shall control.
- (n) Requirement to cooperate with the inspector general. Under section 20.055(5), Florida Statutes, it is the duty of every state employee, agency, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.
- (o) Public Records. Solely for the purposes of this section, the contract manager is the agency custodian of public records. If, under this Agreement, the Business Associate is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes, the Business Associate shall:
 - i. Keep and maintain public records required by the public agency to perform the service;
 - ii. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if the Business Associate does not transfer the records to the public agency; and
 - iv. Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the Business Associate or keep and maintain public records required by the public agency to perform the service. If the Business Associate transfers all public records to the public agency upon completion of the Agreement, the Business Associate shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Business Associate keeps and maintains public records upon completion of the Agreement, the Business Associate shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

v. IF THE BUSINESS ASSOCIATE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BUSINESS ASSOCIATE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED FOR THE CONTRACT MANAGER.

FLORIDA DEPARTMENT OF
MANAGEMENT SERVICES

{INSERT CONTRACTOR NAME}

Jennifer Lloyd, DSGI Director

Signature

Date

Print Name and Title

Approved as to legality and form:

Date

DMS Legal

Date