

ATTACHMENT A

**DRAFT CONTRACT
FOR
FULLY-INSURED HMO MEDICARE ADVANTAGE AND
PRESCRIPTION DRUG PLAN BENEFITS
DMS-18/19-054
BETWEEN
STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
AND
[INSERT CONTRACTOR NAME]**

Table of Contents

Section 1 DEFINITIONS	6
Section 2 CONTRACT DOCUMENTS.....	8
2.1 Rules of Interpretation.....	8
2.2 Hierarchy of Documents	9
Section 3 TERM, SCOPE OF SERVICES AND PAYMENTS.....	9
3.1 Term.....	9
3.1.1 Initial term	9
3.1.2 Renewals	9
3.2 Department's Right to Terminate for Convenience	9
3.3 Scope of Work.....	10
3.4 Department's Right to Suspend Work	10
3.5 Department's Obligation to Supply Data to Contractor.....	10
3.6 Bills for Travel.....	10
3.7 Payments	10
3.8 Specific Appropriation	10
Section 4 CONTRACT ADMINISTRATION	10
4.1 Ownership of Materials and Record Retention	10
4.2 Contractor Obligations	11
4.2.1 General.....	11
4.2.2 Major Organizational Changes.....	11
4.2.3 Subcontractors.....	11
4.2.4 Background Screening, Record Retention, and Warranty of Security.....	11
4.2.5 Work Locations, No Offshoring of Data	14
4.2.6 E-Verify.....	16
4.2.7 Scrutinized Companies – Termination by the Department	16
4.2.8 Removal or Replacement of Employees and Subcontractors for Cause	17
4.2.9 Employment of State Workers.....	17
4.2.10 Duty to Defend	17

4.3	Acceptance of Services	17
4.4	Warranty	17
Section 5 AUDIT RIGHTS		18
Section 6 DIVERSITY		18
Section 7 LIQUIDATED DAMAGES.....		19
7.1	Generally	19
7.2	Implementation Delays.....	19
7.3	Failure to Meet Performance Guarantees	19
Section 8 INSURANCE		20
8.1	Insurance Coverage	20
8.2	Performance Bond.....	20
Section 9 EVENTS OF DEFAULT AND REMEDIES		21
9.1	Contractor Events of Default.....	21
9.2	Department Remedies in the Event of Default.....	22
9.3	Department Events of Default.....	23
9.4	Contractor Remedies in the Event of Default.....	23
9.5	Rights Cumulative, No Waiver	23
Section 10 TERMINATION FOR CAUSE		23
10.1	Termination for Cause.....	23
10.2	Exclusive Remedy	24
10.3	State’s Right to Cure Contractor’s Default.....	24
Section 11 GENERAL PROVISIONS		24
11.1	Advertising	24
11.2	Assignment, Acquisition by Third Party.....	24
11.3	Change of Statute or Regulation or Governmental Restrictions	24
11.4	Compliance with Laws, Including HIPAA.....	25
11.5	Contract Administrator	26
11.6	Contract Managers	26
11.7	Dispute Resolution.....	27

11.8	Venue.....	27
11.9	Entire Contract.....	27
11.10	Execution in Counterparts	27
11.11	Force Majeure, Notice of Delay and No Damages for Delay.....	27
11.12	Changes	28
11.13	Further Assurances	28
11.14	Indemnification	28
11.15	Defense of Third-Party Claims.....	29
11.15.1	Notice of Claims.....	29
11.15.2	Department as Real Party in Interest	29
11.15.3	Contractor as Real Party in Interest	29
11.15.4	Cooperation in the Defense of Administrative and/or Legal Actions.....	29
11.15.5	Administrative Proceedings	30
11.15.6	Support and Communication with Contractor's Legal Affairs Department	
	30	
11.16	Independent Contractor Status.....	30
11.17	Inspection at Contractor Site.....	30
11.18	Intellectual Property.....	30
11.19	Lobbying and Integrity.....	30
11.20	Loss of Data.....	31
11.21	Modifications of Terms	31
11.22	Notices.....	31
11.23	Public Records	32
11.24	Contractor as an Agent.....	33
11.25	Rights to Records	33
11.26	Taxes	33
11.27	Waiver.....	33
11.28	Warranty of Authority.....	33
11.29	Warranty of Ability to Perform	33
11.30	Severability.....	34

11.31 Organizational Conflicts of Interest..... 34
11.32 Best Pricing Clause 34
11.33 Cooperation with the Inspector General..... 34

ATTACHMENTS:

- ATTACHMENT 1: AFFIDAVITS
- ATTACHMENT 2: PERFORMANCE GUARANTEES
- ATTACHMENT 3: ENROLLMENT FILE LAYOUT
- ATTACHMENT 4: ENROLLMENT FILE TRANSFER SCHEDULE
- ATTACHMENT 5: REPORTING AND DELIVERABLES

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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), 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 Request for Proposals (RFP) No. DMS-18/19-054 for Fully-Insured Health Maintenance Organization (HMO) Medicare Advantage and Prescription Drug Plans (MA-PD). The Parties enter into this Contract in accordance with the terms and conditions of the solicitation.

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

Section 1 DEFINITIONS

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

- 1.1 “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. Access to a computer system or network includes local and remote access.
- 1.2 “Account Management Team” means the individuals employed by the Vendor who will have primary responsibility for the Department’s account. Vendor shall provide a written list of its Account Management Team members within ten (10) calendar days of contract execution. Changes to the individuals listed shall be sent to the Department in writing, within ten (10) calendar days of the change.
- 1.3 “Business Day” means any day of the week excluding weekends and holidays observed by State agencies pursuant to subsection 110.117(1)(a)-(j), Florida Statutes.
- 1.4 “Calendar Day” means any day in a month, including weekends and holidays.
- 1.5 “Claim(s)” means an application for payment of or reimbursement for health care expenses incurred by Members, which is filed in accordance with the Centers for Medicare & Medicaid Services (CMS) and the Vendor.
- 1.6 “Confidential Information” means information in the possession or under control of the State or Vendor that is exempt from public disclosure pursuant to section 24, Article I of the Constitution of the State; the Public Records Law, Chapter 119, Florida Statutes; or to any other Florida law, federal law or regulation that serves to exempt information from public disclosure.
- 1.7 “Contract” means this agreement between the Department and Contractor.

- 1.8** “Contract Administrator” means the person designated pursuant to subsection 11.5 of this Contract.
- 1.9** “Contract Manager” means those persons designated pursuant to subsection 11.6 of this Contract.
- 1.10** “Contractor” means [_____].
- 1.11** “Covered Benefits and Services” means the benefits and services described in the Plan.
- 1.12** “Department” means the Florida Department of Management Services.
- 1.13** “Deliverables” mean those services, items and/or materials provided, prepared, and delivered to the Department in the course of performance under this Contract by the Contractor.
- 1.14** “Division” means the Department’s Division of State Group Insurance.
- 1.15** “Effective Date” means January 1, 2020 at 12:00 A.M., Eastern Time, the first date Services are provided to Members.
- 1.16** “Eligible Dependents” means enrolled dependents of Enrollees, as defined Florida Administrative Code and by statutes.
- 1.17** “Enrollee” means those persons as defined in subsection 110.123(2)(b), Florida Statutes who meet Medicare eligibility requirements for MA-PD plans.
- 1.18** “Implementation Date” means the date the Contract is fully executed by all Parties.
- 1.19** “Implementation Plan” means the written description provided by Contractor, as approved by the Department, of the schedule of actions necessary to implement the services and begin fulfilling the Contract in a timely manner.
- 1.20** “Member” means those persons defined as “health plan member” in subsection 110.123(2)(e), Florida Statutes.
- 1.21** “Notice” means written notification from one Party to the other Party regarding performance under the Contract.
- 1.22** “Performance Guarantees” means specific measurement indicators assigned to Contract tasks representing timeliness and quality of task output.
- 1.23** “Plan” is the Contractor’s awarded plan design(s).
- 1.24** “Plan Year” means the calendar year (January 1st to December 31st).
- 1.25** “RFP” means Request for Proposals No. DMS DMS-18/19-054 Fully-Insured Medicare Advantage and Prescription Drug Plan(s), including all attachments and addenda to the Request for Proposal.
- 1.26** “Run-Out Claims” means a Claim for medical expenses incurred by a Member during the term of the Contract, which is received by the Contractor after termination of the Contract

and within sixteen (16) months from the date that the health care services relating to such Claim were rendered.

- 1.27** “Services” means services to be performed by Contractor as specified in this Contract. The term “Services” includes but is not limited to, any unspecified Service that is inherent in proper delivery of a specified Service.
- 1.28** “State of Florida Data” means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, whether it is exempt, confidential, or 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. 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.
- 1.29** “Subcontractor” means the Contractor’s subcontractors and agents that deliver the Services required by this Contract. The term “Subcontractor” does not include health care providers.

Section 2 CONTRACT DOCUMENTS

2.1 Rules of Interpretation

In this Contract, unless otherwise indicated or otherwise required by the context, the following rules of interpretation shall apply:

- 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;
- 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;
- Defined terms in the singular shall include the plural and vice versa and the masculine, feminine or neutral-genders shall include all genders;
- 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;
- The words “include,” “includes” and “including” are deemed to be followed by the phrase “without limitation”;
- Any reference to a governmental entity or person shall include the governmental entity’s or person’s authorized successors and assigns; and
- 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, 2020.

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 order of precedence set forth below shall control.

The following order of precedence applies to this Contract:

1. This Contract document and all attachments
2. The RFP, which is incorporated herein by reference, and all attachments thereto
3. Contractor's Proposal to the RFP, including the Financial Proposal, which is incorporated herein by reference.
4. The General Contract Conditions - PUR 1000 form, which are incorporated by reference, and available at the weblink listed below.

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

In the event of any conflict between this Contract and any applicable federal or state statute, administrative rule or regulation; the statute, rule or regulation will control.

Section 3 TERM, SCOPE OF SERVICES AND PAYMENTS

3.1 Term

3.1.1 Initial term

The initial Contract term is two (2) years and Services will commence on the Effective Date and end at 11:59:59 P.M., on December 31, 2021, unless extended, terminated, or renewed as provided herein. The Parties acknowledge that the Plan will not be administered under this Contract until January 1, 2020. While implementation services will be required, premium payments from Enrollees will not be collected until December 2019, for coverage effective January 1, 2020.

3.1.2 Renewals

At its sole option and discretion, the Department may renew the Contract for up to three (3) additional one (1) year renewal terms. 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 the Contractor has satisfactorily performed its obligations under the Contract. The Department shall also consider whether the 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 fees and/or costs for renewing the Contract.

Pursuant to section 287.057(12), Florida Statutes, as modified by subsection 110.123(3)(d)(1), 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 the 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 interest to do so. The Contractor shall not perform

any Services after the effective date of the 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, consequential or indirect damages, or any other damages other than the payment amounts due for performance until the effective date 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. Contractor agrees to periodic reviews by the Department on 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 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.

3.5 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.

3.6 Bills for Travel

Bills for travel expenses are not permitted under this Contract.

3.7 Payments

The Contractor agrees to perform all Services for the compensation and financial arrangements set forth in Attachment C: Financial Proposal of the RFP. No additional compensation will be allowed.

3.8 Specific Appropriation

The funds from which the state will make payment for premiums under the Contract are non-operating authority granted by section 8, subsection (3)(c)3d of the General Appropriations Act, paid from the State Employees Group Health Insurance Trust Fund. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation authority by the Legislature.

Section 4 CONTRACT ADMINISTRATION

4.1 Ownership of Materials and Record Retention

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 payments to Contractor other than that specifically provided by the Contract. Data deemed proprietary, trade secret or confidential shall be subject to compliance with Florida Statutes and federal laws and regulations.

Contractor shall retain sufficient documentation to substantiate Claims for payment under this Contract, and all other records, electronic files, papers, and documents, which were made for

purposes of the Contract. Such records shall include magnetic tapes, CD-ROM, diskettes, or other electronic media files maintained by the Contractor directly relating to the Services, including file labels, complete file layouts, data element descriptions and detailed processing logic to assist the Department auditor in processing or utilizing files. Contractor shall retain all such records, papers, and documentation in compliance with record retention schedules published by the State of Florida Department of State.

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. The Contractor will meet or exceed the Minimum Service Requirements set forth in Attachment 2: Performance Guarantees.

4.2.2 Major Organizational Changes

The Parties agree that in order for efficient and effective communication to occur, clear lines of authority and areas of responsibility need to be identified for each Party. Each Party agrees to promptly notify the other in the event of any material change in personnel, address, or phone number.

The Contractor recognizes and agrees that award of the Contract was predicated upon features of Contractor's business organization as represented by the Contractor in their response to the RFP. If the Contractor transfers or sells fifty percent (50%) or more of its equity shareholder interests or allows a sale of substantially all of its assets, the Contractor shall notify the Department in writing no less than thirty (30) Calendar Days prior to such transfer or sale.

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 (including their key personnel and/or location of processes for the Services) without providing the Department prior Notice of at least sixty (60) Calendar Days or, in case of an emergency, as soon as practicable. Each approved Subcontractor will be subject to the same terms and conditions as outlined in this Contract.

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 before they have 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 ten (10) years where ten (10) years of historical information is available.

The minimum background check process will 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 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 will be 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 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.

4.2.4.2 Disqualifying Offenses

If at any time it is determined that a Person has a criminal misdemeanor or felony record regardless of adjudication (e.g., adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) 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:

- Computer related or information technology crimes
- Fraudulent practices, false pretenses and frauds, and credit card crimes
- Forgery and counterfeiting
- Violations involving checks and drafts
- Misuse of medical or personnel records
- Felony 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 from directly performing 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 an annual certification demonstrating compliance with the Warranty of Security to the Department by December 31st of each Contract year.

4.2.4.5 Duty to Provide 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 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 scope of work set forth in this 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) days prior written Notice to the Contractor during the term of the Contract. 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 subsection 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 subsection shall be included in the Department's audit and screening abilities as defined in subsection 4.2.4.6. The written policy and information required in this subsection 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 subsection shall be considered a breach of the Contract. The resulting damages to the Department from a breach of this subsection 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 subsection.

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 related to a breach of this subsection. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this subsection for a period of one (1) year following the breach.

4.2.5 Work Locations, No Offshoring of Data

Contractor, 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 Contractor 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 Contractor 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 subsection and beyond those covered under subsection (b).
- (d) constitute an Event of Default not subject to the dispute resolution provisions in subsection 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 Contractor. By executing this Contract, Contractor acknowledges and agrees the costs intended to be covered by subsection (b) are not readily

ascertainable and will be difficult to prove. Contractor 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 off-shore entity) shall be treated as a single violation. The credits will be applied against the monthly invoices submitted by the Contractor, and are exclusive of any other right to damages.

4.2.5.1 Contractor's Responsibility to Notify Department

For purposes of subsections 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.

“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 Member 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 subsection 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 subsection (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 Members

The Contractor shall pay all costs to notify all Members whose State of Florida Data was accessed by any Breach, unauthorized access or transmission caused by the Contractor or 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. The Department shall pay all costs to notify such persons related to any Breach not caused by the Contractor or its Subcontractors. Nothing in this subsection will alter or replace the application of section 501.171, Florida Statutes, as to the Contractor's obligations and liability for Breaches concerning confidential personal information.

4.2.5.3 Credit Monitoring and Notification

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

The Contractor shall provide the Department of Legal Affairs written notice of a Breach that affects 500 or more Members 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 Members at a single time, the Contractor 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 subsections 4.2.5.1 ("Contractor's Responsibility to Notify Department") and 4.2.5.2 ("Contractor's Responsibility to Notify Members") of this Contract.

4.2.6 E-Verify

Pursuant to State 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 subsection 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in boycott operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is 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 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 agents.

4.2.9 Employment of State Workers

During the term of the Contract, Contractor shall not knowingly employ, subcontract with or subgrant 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 performance or procurement of this Contract, except as provided in section 112.3185, Florida Statutes.

4.2.10 Duty to Defend

The Contractor shall, at no additional cost to the Department, defend the Department, the State and/or Members against any litigation brought by any health care provider(s) seeking payment for covered services in excess of the applicable payment negotiated by the Contractor. The Contractor agrees to pay all resulting damages awarded or settlement amounts in any such litigation, provided that the Department, the State, and/or the affected Members provided timely written notification to the Contractor of such litigation and provided that the Contractor had sole control of the defense of such litigation and any related settlement negotiations.

The Department and Contractor agree that neither the Department nor the Contractor is responsible for the health care that is delivered by health care providers, except as otherwise provided in the Contract. The defense of litigation and indemnification obligations of this Contract do not apply to any portion of any loss relating to the acts or omissions of health care providers with respect to Members.

4.3 Acceptance of Services

The Department will conduct its acceptance review in a manner to identify whether the Services materially fail to conform to the Contract. The Department shall Notify the Contractor in writing of material failures of a Service to conform to the Contract ("Notice of Nonconformity"), specifying how the Service materially fails to meet the requirements of the Contract. Within five (5) Business Days of Notice of the Nonconformity, Contractor will give Notice of either:

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

Within ten (10) Business Days of Notice of the Contractor's reply, 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 subsection shall survive termination of this Contract.

Section 5 AUDIT RIGHTS

The Department has the right to conduct performance and/or compliance audits related to this Contract of any and all areas of Contractor and Subcontractors. The Department may at any time enter and inspect the Contractor's physical facilities where operations required under this Contract are performed, with reasonable Notice. Except in emergency situations, reasonable Notice will be provided for audits conducted at Contractor's premises. 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 healthcare provider contracts 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. Contractor will make available all data or information requested by the Department in furtherance of an 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 subsection 11.4 of this Contract, Article 1, section 24 of the Florida Constitution, and Chapter 119, Florida Statutes.

Contractor recognizes and acknowledges that released statements from its healthcare 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. Department will use reasonable efforts to minimize the number and duration of such audits or inspections conducted and to conduct such audits and risks in a manner that minimizes disruption to Contractor's business operation.

This provision will not limit the rights of 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 independently of, or in conjunction with the Department.

The Department will be responsible for the independent third-party auditor cost associated with any audit performed.

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 providing Services on the Effective Date and meeting the Performance Guarantees. 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 and required by subsection 110.123(3)(d)3, Florida Statutes.

7.2 Implementation Delays

Untimely Implementation of Services. If Contractor fails to fully implement Services by the Effective Date, it shall pay liquidated damages of \$10,000 per Calendar Day, not to exceed \$100,000, unless any such delay is due to the Department's failure to comply with the defined timeline. Contractor will pay this amount of liquidated damages for every full or partial Calendar Day until Services are fully implemented.

7.3 Failure to Meet Performance Guarantees

Contractor agrees to payment of liquidated damages if it fails to meet the Minimum Service Requirements set forth in Attachment 2: Performance Guarantees.

Liquidated damages are intended only to cover the Department's internal staffing and administrative costs and the diminished value of the Services provided under the Contract.

Notwithstanding anything in the Contract to the contrary, the total of any and all liquidated damages paid or to be paid by Contractor pursuant to this Contract for any calendar quarter will not exceed one hundred percent (100%) of the payment due under subsection 3.7.

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.

Contractor will provide the Department with a Performance Guarantee report showing Service levels as set forth in Attachment 2: Performance Guarantees. The Department may, at its option, provide Contractor with a Performance Guarantee report template, which must be used. For each Performance Guarantee that the Contractor fails to meet, the Contractor will remit appropriate payment to the Department within forty-five (45) Calendar Days of the end of the reporting quarter. The Department is not required to Notice or invoice the Contractor for payment.

The Department may require the Contractor to propose and implement a reasonable corrective action plan to address and correct the root cause of any missed Performance Guarantee.

The inclusion of the Performance Guarantees in this Contract is intended to address unsatisfactory performance in the context of ongoing operations without resort to the default provisions set forth in Section 9: Events of Default and Remedies. However, if Contractor's performance falls below the minimum level of performance for the same Performance Guarantee

for three (3) quarters and such failure is not otherwise excused, then the Department may declare an Event of Default.

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.

Contractor will advise the Department in writing as soon as possible of any circumstance or occurrence, which could excuse or affect Contractor's ability to achieve any of the Performance Guarantees. In all such cases, Contractor will cause to make all reasonable efforts to achieve the Performance Guarantees.

Section 8 INSURANCE

8.1 Insurance Coverage

During the Contract term, Contractor will, at its sole expense, continuously maintain commercial insurance of such a type and with such terms and limits as may be reasonably associated with this Contract and as required by law. Providing and maintaining adequate insurance coverage is a material obligation of Contractor 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.

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 five million dollars (\$5,000,000).

Business Interruption Insurance. Contractor must continuously maintain business interruption insurance coverage in the face amount of five million dollars (\$5,000,000).

Professional Indemnity Insurance. The Contractor must continuously maintain professional indemnity insurance that must cover professional liability and error and omissions in the face amount of five million dollars (\$5,000,000). 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 will provide thirty (30) Calendar Days prior written Notice to the Department of cancellation for any coverage.

8.2 Performance Bond

In accordance with subsection 110.123(3)(d)2, Florida Statutes, prior to execution of the Contract, Contractor will deliver to the Department's Contract Manager a performance bond or irrevocable letter of credit in the amount not to exceed twenty percent (20%) of the annual Contract amount, as determined by the Department. 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 and shall be in effect for two (2) years thereafter, issued by a reliable surety company, which is licensed to do business in the State of Florida, as determined by the Department, and must include the following conditions:

Obligee: The Department shall be named as the beneficiary of the bond. The insurer or bonding company shall be obliged to cover the full cost of performance loss suffered by the State of Florida.

Notice of Attempted Change: The Contractor shall provide Department with ninety (90) Calendar Days prior written Notice or immediate Notice upon knowledge of any attempt to cancel or to make any other material change in the status, coverage, or scope of the required bond or of the Contractor's failure to pay bond premiums.

Premiums: The Department shall not be responsible for any premiums or assessments on the bond.

Purpose of Bond: The performance bond is to protect the Department and the State against any loss sustained through failure of the Contractor to perform the Services in accordance with the Contract.

Upon execution of the Contract and by Contract year start each year following 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 subsection, 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:

- Contractor fails to pay any sum of money due hereunder;
- Contractor fails to provide the Services required under this Contract;
- Contractor employs an unauthorized alien in the performance of any work required under this Contract;
- Contractor fails to correct work that the Department has rejected as unacceptable or unsuitable;
- Contractor discontinues the performance of the work required under this Contract;
- Contractor fails to resume work that has been discontinued within a reasonable time after Notice to do so;
- Contractor abandons the project;
- Contractor becomes insolvent or is declared bankrupt;
- Contractor files for reorganization under the bankruptcy code;
- Contractor commits any action of bankruptcy or insolvency, either voluntarily or involuntarily;
- Contractor fails to promptly pay any and all taxes or assessments imposed by and legally due the State or federal government;
- Contractor makes an assignment for the benefit of creditors without the approval of the Department;

- Contractor makes or has made a material misrepresentation or omission in any materials provided to the Department;
- Contractor commits any material breach of this Contract;
- Contractor fails to furnish and maintain the performance bond;
- Contractor fails to procure and maintain the required insurance policies and coverages required by this Contract;
- The Department determines that the surety issuing a bond securing Contractor's performance of its obligations hereunder becomes insolvent or unsatisfactory;
- Contractor utilizes a Subcontractor in the performance of the work required by this Contract, which has been placed on the State's Convicted Contractor List;
- Contractor is suspended or is removed as an authorized Contractor by any State or federal agency; or Contractor is convicted of a felony; or is placed on the State's Convicted Vendor List; or if Contractor's license is suspended or revoked.
- 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 a trade secret;
- Contractor refuses to allow auditor access as required by the Contract;
- Contractor's license to provide Services in the State is suspended or revoked;
- Violation of subsection 4.2.4.5, or Contractor's permitting State of Florida Data to be transmitted, viewed, or accessed outside of the United States;
- Contractor's change of Subcontractors in violation of subsection 4.2.3, Subcontractors, of the Contract;
- Upon discovery, Contractor fails to Notify the Department within seven (7) Calendar Days of problems or issues impacting provision of Services;
- For any other cause whatsoever that Contractor fails to perform in an acceptable manner
- Failure to provide complete paid Claims data to the Department's Health Insurance Management Information System Vendor;
- Failure to timely report and pay the transaction fee contained in subsection 287.057(22)(c), Florida Statutes, as detailed in subsection 3.7, Payments; or
- Failure to meet the same monthly Performance Guarantee for at least three (3) months.

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 at its sole discretion, to any one or all of the following remedies:

- Terminate this Contract;
- 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
- 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 Purchasing, until such time as Contractor reimburses the State for all re-procurement and transition costs.

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, constitutes 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 or all of the following remedies.

- a. Equitable Relief.
- b. Monetary Damages. Contractor is entitled to recover any compensation due under subsection 3.7, Payments, for Services provided in accordance with the Contract but not paid by the Department. Contractor is not entitled to, and will not seek, any other reimbursement or payment, or damages, including but not limited to lost profits, consequential or indirect costs or damages. 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.

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, shall 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 TERMINATION FOR CAUSE

10.1 Termination for Cause

The Department may terminate the Contract if Contractor commits an Event of Default under subsection 9.1 of this Contract. Contractor shall be liable for any re-procurement costs. Contractor shall continue work on any work not terminated. Except for 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 Contractor and the Subcontractor, and without the fault or negligence of either, 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 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. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under the Contract.

10.2 Exclusive Remedy

Contractor agrees that the provisions of Section 9 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.

10.3 State's Right to Cure Contractor's Default

If Contractor commits an "Event of Default" in the performance of any term, provision, covenant, or condition on its part to be performed hereunder, the Department may, upon Notice to Contractor after the expiration of any curative periods for which provision is made in this Contract, perform the same for the account 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 Comptroller (or successor), will be repaid to the Department by Contractor or promptly when billed.

Section 11 GENERAL PROVISIONS

11.1 Advertising

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 Enrollees, network health care providers, or potential or actual 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.

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.

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

The 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 Contractor knows or should have known that any federal or state policies, operating procedures, laws, rules, or regulations 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"), Contractor will promptly notify the Department, indicating the specific law, rule, regulation, draft or pending legislation, and/or policies and procedures.

Contractor 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 Contractor 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 Contractor.

11.4 Compliance with Laws, Including HIPAA

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, section 110.123 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 Contractor shall notify the Department immediately if the Contractor loses any licenses.

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 anti-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.

Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA): Contractor shall 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 HMO Services including but not limited to properly executed Privacy, Security, and Confidentiality Business Associate Agreement.

Public Entity Crimes: A person or affiliate who is placed on the convicted Vendor list following a conviction for a public entity crime, as defined in subsection 287.133(1)(g), Florida Statutes, may not submit a bid or proposal on a contract to provide any goods or services to a public entity, may not submit a bid or proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids or proposals 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 Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted Vendor list.

Internal Revenue Service Reporting: Contractor will make all necessary reports to the Internal Revenue Service regarding benefit payments made to health care Contractors as required by law.

Equal Employment Opportunity: Contractor 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.

Notice to the Department of Changes: In the event Contractor becomes aware that any federal or state policies, operating procedures, laws, rules, or regulations applicable to this Contract have been or will be changed, created or otherwise modified so as to materially change or impact (either directly or indirectly) the Plan, this Contract, the health industry or the responsibilities of the Parties hereunder; Contractor will immediately notify the Department, indicating the specific law, rule, regulation, draft or pending legislation, and/or policies and procedures. The Parties may renegotiate the relevant portions of the Contract necessary to preserve compliance and the original intent of the Parties, to the extent permitted 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 335.3Z
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 Implementation Date, the Department's Contract Manager is:

Greg Mauldin
State Group Insurance
Department of Management Services
4050 Esplanade Way, Suite 217.2Y
Tallahassee, FL 32399-0950
Telephone: 850-921-4590
Email: Gregory.Mauldin@dms.myFlorida.com

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

The Parties acknowledge that efforts should always be made to avoid Disputes through good communication and prompt requests for clarification and information. If a Dispute arises under this Contract, (a "Dispute") the Parties agree that the following procedures shall be the sole and exclusive procedures for resolution.

Negotiations. The Parties will attempt in good faith to resolve any Dispute. Managers of the Department and Contractor who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of the Services at issue will promptly enter into negotiations to settle the Dispute. To the extent permitted by law, all negotiations shall be treated as confidential settlement negotiations for purposes of discovery and admissibility in any later legal action.

Legal Action. The Parties will allow for at least thirty (30) Calendar Days of executive level negotiations, commencing on the date the aggrieved Party provides formal Notice of the Dispute to the other Party. If a Dispute is not resolved within this timeframe, either Party may bring an action in the state court in Leon County, Florida.

This subsection shall survive termination of this Contract.

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. This subsection 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 Execution in Counterparts

The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one (1) and the same instrument.

11.11 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.

11.12 Changes

The Department may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Department may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld.

11.13 Further Assurances

The Parties will, subsequent to the Implementation 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 this Contract.

11.14 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's 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 subsection shall survive termination of this Contract.

The Department and Contractor agree that: (i) health care providers are not the agents or employees of the Department or Contractor and neither party renders medical services or treatments to Members and (ii) health care providers are solely responsible for the health care they deliver to Members, and neither the Department nor Contractor is responsible for the health care that is delivered by health care providers.

11.15 Defense of Third-Party Claims

11.15.1 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.

11.15.2 Department as Real Party in Interest

If a Member 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 subsection, 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 Contractor from the lawsuit.

11.15.3 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.

11.15.4 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 Plan Enrollees 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.

11.15.5 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 Members 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.

11.15.6 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 Members. 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.

Subsection 11.15 shall survive termination of this Contract.

11.16 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.

11.17 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.

11.18 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.

11.19 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.

11.20 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 subsection shall survive termination of this Contract.

11.21 Modifications of Terms

The Contract contains all the terms and conditions agreed upon by the Parties, which shall govern all transactions under the Contract. 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 Contractor. 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 shall not constitute amendment to this Contract or waiver of a default.

11.22 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 or delivered personally to:

Department of Management Services
Division of State Group Insurance
Greg Mauldin
4050 Esplanade Way, Suite 217.2Y
Tallahassee, FL 32399

To the Contractor by certified mail, return receipt requested, by reputable courier service, 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 either when delivered in person to the recipient named above, upon confirmation of courier delivery to the intended recipient; or 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.

11.23 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. Contractor must comply with all applicable provisions of Florida's public records law. Violation of this subsection shall constitute grounds for termination of the Contract.

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this subsection by not allowing public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from subsection 24(a) of Article I of the State Constitution and subsection 119.07(1), F.S., or applicable state or federal law.

Solely for the purposes of this subsection, the Contract Manager is the agency custodian of public records.

If, under a resulting contract, the Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, F.S. The Contractor 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, F.S., 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 PROVIDED FOR THE CONTRACT MANAGER.**

11.24 Contractor as an Agent

In the event the Contractor receives a public records request directly, the Contractor shall notify the Department immediately in writing of such inquiry. Any response or material responding to such inquiry shall be coordinated in consultation with Department prior to dissemination by the Contractor. The Department may unilaterally terminate this Contract for refusal by the Contractor to comply with Chapter 119, Florida Statutes, or this subsection by not allowing public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from subsection 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes.

11.25 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.

11.26 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 the Contractor or for any taxes levied on employees' wages.

11.27 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.

11.28 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.

11.29 Warranty of Ability to Perform

Contractor shall provide the Department appropriate documentation demonstrating that the Contractor is in good standing and legally authorized to transact Services 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 Contractor List maintained pursuant to section 287.133, 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.

11.30 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.

11.31 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 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.

11.32 Best Pricing Clause

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

Contractor's fully-insured premiums under this Contract will not exceed Contractor's fully-insured premiums then in effect for substantially the same services to any organization with the same or fewer enrollees than the Contractor's subscriber count at the relevant time. During the term of the Contract, if Contractor implements or provides any other client, whether a public or private entity, with the same or fewer enrollees with premium pricing more favorable than the pricing in this Contract, then Contractor agrees to offer equivalent pricing terms to the Department and the Department and Contractor will execute an amendment of this Contract.

The Contractor agrees to annually submit to Department an affidavit from an authorized representative attesting that the Contractor is in compliance with Attachment 1: Affidavit of Best Pricing. The affidavit will be submitted to the Department by December 31st each year.

11.33 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.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

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

DEPARTMENT OF MANAGEMENT SERVICES

Signature:

Katherine Parrish, Director
Division of Finance and Administration

Date:

(CONTRACTOR NAME)

Signature:

Print Name and Title:

Date:

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 Contractor. Such changes will not require a Contract amendment.

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AFFIDAVIT OF NO OFFSHORING

Regarding the Contract between

[_____] (the "Contractor")

And

State of Florida, Department of Management Services

Contract No.: DMS-18/19-054

Pursuant to subsection 4.2.5 of the Contract, the undersigned vendor hereby attests that the Contractor and covered entities do not utilize offshore Subcontractors in the performance of this Contract and is in compliance with the Subcontractor clause in the Contract.

Contractor Name: [_____]

Contractor's Federal Employer Identification Number (FEIN #): _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ [2019]

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-18/19-054

Effective January 1, 2020

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

Contractor Name: [_____]

**Contractor's Federal
Employer Identification
Number (FEIN #):** _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ [2019]

by _____

(Signature of Notary)

Check One:

Personally Known

Produced the following ID

AFFIDAVIT OF BEST PRICING

Regarding the Contract between

[_____] (the "Contractor")

And

State of Florida, Department of Management Services

Contract No.: DMS-18/19-054

Effective January 1, 2018

Pursuant to subsection 11.32 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 _____ [2019]

by

(Signature of Notary)

Check One:

Personally Known

Produced the following ID

ATTACHMENT 2: PERFORMANCE GUARANTEES

PG #	Standard/Goal		Measurement Criteria	Measurement Frequency	Amount of Risk
PG-1	Final Implementation Plan	a.) Contractor shall provide the Final Implementation Plan, inclusive of all the details described in RFP No. DMS-18/19-054, subsection 6.2, to the Department no later than the date specified.	Delivery no later than ten (10) Business Days following Contract execution	One-time measurement	\$1,000 per day for each Calendar Day past the due date that the Final Implementation Plan, inclusive of all details, is not received by the Department
PG-2	Quarterly Meetings	The Account Management Team will attend and participate in all quarterly performance meetings via phone or in-person.	One-hundred percent (100%) attendance as required	Quarterly	\$2,000 per meeting at which each member of the Account Management Team is not in attendance unless pre-approved by the Department
PG-3	Open Enrollment Benefit Fairs	Contractor shall have qualified representatives at each annual open enrollment meeting and/or benefit fair sponsored by the Department or its designee in the counties in which Contractor provides services for Members.	One-hundred percent (100%) of benefit fairs will be staffed as required	Annually	\$10,000 per benefit fair not staffed as required

PG-4	Plan Performance Review	Within ten (10) Calendar Days following delivery of a performance review from the Department, Contractor shall develop and submit, if applicable, a corrective action plan (CAP) approved by the Department, and implement such plan within the time prescribed in the approved CAP.	Contractor shall submit, if applicable, an approvable CAP within ten (10) Calendar Days and implement as agreed to in the CAP. If the submitted CAP is not approved, Contractor shall revise the CAP, incorporating any feedback by the Department, and resubmit within five (5) Business Days. Measurement methodology shall be measured from date of delivery of the plan performance review in Calendar Days	No specified frequency	\$250 per Calendar Day late beyond the due date(s)
PG-5	Service Level / Average Speed to Answer	Inbound customer calls received by the customer service unit shall be answered by a live agent within the specified target time threshold. Target time threshold is measured from time the call is presented in the call queue for an agent and does not include any time used to navigate the automated system upon entering the call queue, if applicable.	Calls shall be answered within an average of thirty (30) seconds or less	Quarterly	\$2,000 per percentage point less than one hundred percent (100%)

PG-6	Member Satisfaction Survey	Measured as the percentage of Members conveying a satisfaction level in response to a Department approved Member Satisfaction Survey.	a.) Initial Contract year: The level of overall satisfaction will be greater than or equal to ninety percent (90%)	One time measurement	\$50,000 when the overall satisfaction is less than ninety percent (90%)	
			b.) Subsequent Contract years: The level of overall satisfaction will be greater than or equal to ninety-two percent (92%)	Annually	\$50,000 when the overall satisfaction is between 90 and 91.9 percent. An additional \$5,000 per percentage point below ninety percent (90%).	
PG-7	Accuracy and Timeliness/First Call Resolution/ Written Inquiry Response Time	a.) Percent of callers who receive accurate information. Calls requiring additional research are excluded from the computation of this metric.	Ninety-five percent (95%) of callers receive accurate information. Contractor must evaluate a statistically valid sample of inquiries with reports provided quarterly.	Quarterly	\$2,000 for each full percentage point below ninety-five percent (95%)	
			b.) Percent of inquiries resolved during the initial call (excluding appeals, billing, errors and escalations).	Ninety percent (90%) of all inquiries resolved during initial call. Contractor must evaluate a statistically valid sample of inquiries. Reports to be provided quarterly.	Quarterly	\$2,000 for each full percentage point below ninety percent (90%)
			c.) Percent of written inquiries responded to by a customer service representative.	Ninety-five percent (95%) within ten (10) Business Days	Quarterly	\$2,000 for each full percentage point below ninety-five percent (95%)
PG-8	Plan Data	a.) Contractor shall submit a complete file of	One-hundred percent (100%) of medical paid	Monthly	\$1,000 per day for each Business Day that any	

		all paid Claims activity to the Department and/or its authorized representative in the time frame and format specified by the Department.	Claims activity shall be delivered no later than the 25th Calendar Day following the reporting month		such data is not provided as required
PG-9	Eligibility	a.) Routine Updates: Eligibility files shall be accurately and timely loaded within the time specified.	One-hundred percent (100%) within two (2) Business Days of receipt of a usable eligibility file	Quarterly	\$2,000 for each day over the deadline, per incident
		b.) Non-routine Updates: Ad hoc or non-routine manual enrollment updates at the request of the Department or its designee shall be completed in the time frame specified.	One-hundred percent (100%) within the same Business Day if requested during normal business hours; otherwise, during the next Business Day	Quarterly	\$1,000 for each day over the deadline, per incident
		c.) Eligibility Discrepancies: Eligibility discrepancies shall be reported by Contractor to the Department and eligibility Contractor in the time frame specified.	One-hundred percent (100%) within two (2) Business Days of receipt	Monthly	\$1,000 for each day over the deadline, per incident
PG-10	Timeliness of the Delivery of Reports and Deliverables	Reports and Deliverables shall be delivered to the Department and/or the Department's designee within the time period	a.) Due weekly: Within two (2) Business Days of receipt of the enrollment file	Weekly	\$250 per day for each Business Day past the due date that a report or Deliverable is not received

		specified in this PG, or by a later date, if requested by the Department.	b.) Due monthly: By the due date specified in the Minimum Service Requirements	Monthly	\$250 per day for each Calendar Day past the due date that a report or Deliverable is not received
		Note: the amount at risk applies to <u>each</u> report outlined in RFP No. DMS-18/19-054, subsection 6.5.	c.) Due quarterly: Within forty-five (45) Calendar Days of end of the reporting quarter or otherwise specified in the Minimum Service Requirements	Quarterly	\$250 per day for each Calendar Day past the due date that a report or Deliverable is not received
			d.) Due annually: Within forty-five (45) Calendar Days of the end of the reporting year or as otherwise specified in the Minimum Service Requirements	Annually	\$250 per day for each Calendar Day past the due date that a report or Deliverable is not received

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ATTACHMENT 3: ENROLLMENT FILE INTERFACE LAYOUT

HMO Enrollment file

Header Record

Field Name	Field Length	Field Type	Decimal Offset	Position (if fixed)	Field Description	Valid Values
Client Code	3	N		1-3	Client Specific Code	
Filler	1	X		4	Space Fill	
Record Count	9	N		5-13	# of records on the file	
Filler	1	X		14	Space Fill	
Run Date	8	N		15-22	Date file was created	Formatted YYYYMMDD
Filler	1	X		23	Space Fill	
Coverage Period	6	N		24-29	Coverage Period	Formatted YYYYMM

Detail Record

PLAN TYPE	3	N		1	Plan type code of the HMO that the subscriber belongs to	
SSN	9	N		4	SSN of the subscriber	
NAME	28	X		13	Name of the subscriber	FORMAT: Last name[,]First name[space]Middle Initial If field value is more than 28 characters when concatenated, truncate field from right end Field will be all UPPER CASE.
DATE OF BIRTH	8	N		41	Birthday of the subscriber	Formatted YYYYMMDD
SEX	1	X		49	Sex of the subscriber	M for male, F for female
MAILING ADDRESS	60	X		50	Mailing Address of the subscriber	Field should be forced to UPPER CASE

MAILING CITY	30	X		110	Mailing City of the subscriber	Field should be forced to UPPER CASE
MAILING STATE	2	X		140	Mailing State of the subscriber	Field should be forced to UPPER CASE
MAILING ZIP	9	X		142	Mailing Zip code of the subscriber	
HOME ADDRESS	60	X		151	Home Address of the subscriber	Field should be forced to UPPER CASE
HOME CITY	30	X		211	Home City of the subscriber	Field should be forced to UPPER CASE
HOME STATE	2	X		241	Home State of the subscriber	Field should be forced to UPPER CASE
HOME ZIP	9	X		243	Home Zip code of the subscriber	
HOME COUNTY CODE	2	N		251	Home county of the subscriber	01 = ALACHUA 02 = BAKER 03 = BAY 04 = BRADFORD 05 = BREVARD 06 = BROWARD 07 = CALHOUN 08 = CHARLOTTE 09 = CITRUS 10 = CLAY 11 = COLLIER 12 = COLUMBIA 13 = DADE 14 = DESOTO 15 = DIXIE 16 = DUVAL 17 = ESCAMBIA 18 = FLAGLER

						19 = FRANKLIN 20 = GADSDEN 21 = GILCHRIST 22 = GLADES 23 = GULF 24 = HAMILTON 25 = HARDEE 26 = HENDRY 27 = HERNANDO 28 = HIGHLANDS 29 = HILLSBOROUGH 30 = HOLMES 31 = INDIAN RIVER 32 = JACKSON 33 = JEFFERSON 34 = LAFAYETTE 35 = LAKE 36 = LEE 37 = LEON 38 = LEVY 39 = LIBERTY 40 = MADISON 41 = MANATEE 42 = MARION 43 = MARTIN 44 = MONROE 45 = NASSAU 46 = OKALOOSA 47 = OKEECHOBEE 48 = ORANGE 49 = OSCEOLA 50 = PALM BEACH
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						51 = PASCO 52 = PINELLAS 53 = POLK 54 = PUTNAM 55 = ST JOHNS 56 = ST LUCIE 57 = SANTA ROSA 58 = SARASOTA 59 = SEMINOLE 60 = SUMTER 61 = SUWANNEE 62 = TAYLOR 63 = UNION 64 = VOLUSIA 65 = WAKULLA 66 = WALTON 67 = WASHINGTON 99 = OUT OF STATE blank = UNKNOWN
WORK COUNTY CODE	2	N		253	Work county of the subscriber	01 = ALACHUA 02 = BAKER 03 = BAY 04 = BRADFORD 05 = BREVARD 06 = BROWARD 07 = CALHOUN 08 = CHARLOTTE 09 = CITRUS 10 = CLAY 11 = COLLIER 12 = COLUMBIA 13 = DADE

						14 = DESOTO 15 = DIXIE 16 = DUVAL 17 = ESCAMBIA 18 = FLAGLER 19 = FRANKLIN 20 = GADSDEN 21 = GILCHRIST 22 = GLADES 23 = GULF 24 = HAMILTON 25 = HARDEE 26 = HENDRY 27 = HERNANDO 28 = HIGHLANDS 29 = HILLSBOROUGH 30 = HOLMES 31 = INDIAN RIVER 32 = JACKSON 33 = JEFFERSON 34 = LAFAYETTE 35 = LAKE 36 = LEE 37 = LEON 38 = LEVY 39 = LIBERTY 40 = MADISON 41 = MANATEE 42 = MARION 43 = MARTIN 44 = MONROE 45 = NASSAU
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						46 = OKALOOSA 47 = OKEECHOBEE 48 = ORANGE 49 = OSCEOLA 50 = PALM BEACH 51 = PASCO 52 = PINELLAS 53 = POLK 54 = PUTNAM 55 = ST JOHNS 56 = ST LUCIE 57 = SANTA ROSA 58 = SARASOTA 59 = SEMINOLE 60 = SUMTER 61 = SUWANNEE 62 = TAYLOR 63 = UNION 64 = VOLUSIA 65 = WAKULLA 66 = WALTON 67 = WASHINGTON 99 = OUT OF STATE blank = UNKNOWN (or no work county since retirees would not have a work county)
COVERAGE CODE	2	N		255	Coverage code of the subscriber	01 = Active Employee Individual, 02 = Active Employee Family, 22 = Spouse Program, 09 = COBRA Individual, 10 = COBRA Family, 11 = COBRA Extension Individual, 12 COBRA Extension Family, 61 = Early Retiree Individual, 62 = Early Retiree Family,

						63 = Medicare I, 64 = Medicare II, 65 = Medicare III
COVERAGE DATE	8	N		257	Coverage effective date of the subscriber	Formatted YYYYMMDD
IDENTIFIER	2	N		265	Enrollment category of the subscriber	00 = not an OPS employee 01 = OPS employee
SAMAS ORG CODE	11	N		267	Samas org of the subscriber	If employee status is "Retiree", field is populated with "99999999". Else if employee status is "Retired Teacher", field is populated with "88888888". Else if employee status is "Vested Legislator", field is populated with "66666666". Else if employee status is COBRA, field is populated with "77777777". Else if employee status is "Laid Off", field is populated with "33333333" Else if employee is an "Active Employee" and is a University Or Benefits Only EE, then field is populated with data from ZBI_SAMAS_BEN_O table(see below), otherwise field is populated with information based on where they work at.
COVERAGE TERM DATE	8	N		278	Coverage Term Date	FORMAT MMDDYYYY If a subscriber was dropped in a month prior to the current coverage month, the Coverage Term Date will be passed on the file only once. If the subscriber is termed in the current month or is in a status of non-payment, the subscriber will continue on the file with the Term Date populated.

FIRST NAME	40	X		286	Subscriber's First Name	Field will be all UPPER CASE.
MIDDLE INITIAL	1	X		326	Subscriber's Middle Initial	Field will be UPPER CASE.
LAST NAME	40	X		327	Subscriber's Last Name	Field will be all UPPER CASE.
SUB PREVIOUS SSN	9	N		367	Previous SSN of subscriber if it had been corrected	If the subscriber has an SSN correction performed, populate in the former (incorrect SSN) in this field. Otherwise it is blank
PRIMARY PHONE NUMBER	10	N		376	Primary phone number for subscriber	Primary phone number for subscriber if known otherwise blank
ALTERNATE PHONE NUMBER	10	N		386	Alternate phone number for subscriber	Alternate phone number for subscriber if known otherwise blank
WORK PHONE NUMBER	10	N		396	Work phone number for subscriber	Work phone number for subscriber if known otherwise blank (or no work phone since retirees would not have a work phone)
DEPENDENT COUNT	2	N		406	Count of # dependents for the subscriber	
DEPENDENT DATA				408	This field occurs 20 times with the information of the rest of the fields below	
RELATIONSHIP CODE	2	N			Relationship the dependent has to the subscriber	2 = Spouse 3 = Child 4 = Legal Guardianship 5 = Grandchild 6 = Child 7 = Foster Child 8 = Step Child 9 = Unborn Child 90 = Over-age dependent Child

DEPENDENT SSN	9	N			SSN of the dependent	
DEPENDENT NAME	28	X			Name of the dependent	FORMAT: Last name[,]First name[space]Middle Initial If field value is more than 28 characters when concatenated, truncate field from right end Field will be all UPPER CASE.
DEPENDENT BIRTH DATE	8	N			Birthday of the dependent	Formatted YYYYMMDD
DEPENDENT ELIGIBLE DATE	8	N			Date the dependent became eligible	Formatted YYYYMMDD If no value, zero fill
DEPENDENT INELIGIBLE DATE	8	N			Date the dependent became ineligible	Formatted YYYYMMDD. If no value (active records), zero fill
DEPENDENT SEX	1				Sex of the dependent	M for male, F for female, a space for unborn child.
DEPENDENT FIRST NAME	40	X			Dependent's First Name	Field will be all UPPER CASE.
DEPENDENT MIDDLE INITIAL	1	X			Dependent's Middle Initial	Field will be UPPER CASE.
DEPENDENT LAST NAME	40	X			Dependent's Last Name	Field will be all UPPER CASE.

The file format is fixed and contains multiple record types. The length is 3307.

For Field Type, N means Numeric and X means Alphanumeric.

ATTACHMENT 4: ENROLLMENT FILE TRANSFER SCHEDULE

2019 Schedule, for illustrative purposes only.

Month End	Monthly Carrier Files	Weekly Vendor Files			
		File # 1	File # 2	File # 3	File # 4
Coverage Month	Date file sent to the vendors from PF	Date file sent to the vendors from PF *	Date file sent to the vendors from PF *	Date file sent to the vendors from PF *	Date file sent to the vendors from PF *
Jan-19	12/27/2018	1/5/2019	1/12/2019	1/19/2019	
Feb-19	1/29/2019	2/2/2019	2/9/2019	2/16/2019	
Mar-19	2/26/2019	3/2/2019	3/9/2019	3/16/2019	3/23/2019
Apr-19	3/27/2019	4/6/2019	4/13/2019	4/20/2019	
May-19	4/29/2019	5/4/2019	5/11/2019	5/18/2019	
Jun-19	5/29/2019	6/1/2019	6/8/2019	6/15/2019	6/22/2019
Jul-19	6/26/2019	7/6/2019	7/13/2019	7/20/2019	
Aug-19	7/29/2019	8/3/2019	8/10/2019	8/17/2019	8/24/2019
Sep-19	8/28/2019	9/7/2019	9/14/2019	9/21/2019	
Oct-19	9/27/2019	10/5/2019	10/12/2019	10/19/2019	
Nov-19	10/29/2019	11/2/2019	11/9/2019	11/16/2019	
Dec-18	11/25/2019	12/7/2019	12/14/2019	12/21/2019	
Jan-20	12/30/2019	1/4/2020	1/11/2020	1/18/2020	1/25/2020

ATTACHMENT 5: REPORTING AND DELIVERABLES

ATTACHMENT 5: REPORTING AND DELIVERABLES				
FREQUENCY	REPORT NUMBER	REPORT NAME	DUE DATE	FILE LAYOUT
Weekly				
	1	Reject Records Report	w/in 2 business days starting w/ 1st full day file is available	Department-prescribed format.
	2	Duplicate Records Report	w/in 2 business days starting w/ 1st full day file is available	Department-prescribed format.
	3	Address Errors Report	w/in 2 business days starting w/ 1st full day file is available	Department-prescribed format.
	4	System Generated Subscriber Drop Report	w/in 2 business days starting w/ 1st full day file is available	Department-prescribed format.
Monthly				
	5	Background Checks/Persons with Disqualifying Offenses	15th of following month	
	6	Paid Claims File - to Dept/HIMIS	25th of following month	
	7	Paid Claims Summary Report	25th of following month	
	8	Part C and Part D Medicare Membership report (MMR)	w/in 15 days of receipt from CMS	As received from CMS – provide data key as needed

	9	Enrollee Invoice	10th of following month	Excel format, tab 1. Must include enrollment file Member detail matching invoiced amount on subsequent tab(s)
Quarterly				
	10	Executive Summary	w/in 45 days of quarter end	Department-prescribed format.
	11	Performance Guarantee Report	w/in 45 days of quarter end	Department-prescribed format.
	12	Key Metric Cost and Utilization Report	w/in 45 days of quarter end	Department-prescribed format.
	13	Trend Analysis Report	w/in 45 days of quarter end	Department-prescribed format.
	14	Network Provider Add / Delete Report	w/in 45 days of quarter end	
	15	Trend Analysis Report	w/in 45 days of quarter end	
	16	Clinical Program Report	w/in 45 days of quarter end	Department-prescribed format.
Annually				
	17	Renewal Report	TBD	Department-prescribed format.
	18	Subscriber Satisfaction Survey	w/in 45 days of year end	Department-prescribed format.
	19	Performance Bond and Insurance	w/in 45 days of year end or 45 days of policy renewal.	Department-prescribed format.
	20	Part C and Part D Model Output Report (MOR)	w/in 45 days of receipt from CMS	As received from CMS – provide data key as needed