

Attachment A
DRAFT PROPOSED
CONTRACT
FOR
HEALTHCARE TRANSPARENCY SERVICES ENTITY
DMS-17/18-024
BETWEEN
STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
AND
[Vendor]

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ATTACHMENTS

- ATTACHMENT 1: AFFIDAVITS
- ATTACHMENT 2: STATEMENT OF WORK
- ATTACHMENT 3: PRIVACY, SECURITY, AND CONFIDENTIALITY, BUSINESS ASSOCIATE AGREEMENT

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Contract

This Contract is entered between [Vendor], with its principal corporate offices at [location], and the Florida Department of Management Services, with its principal offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950 (each, a “Party” and collectively, the “Parties”).

Recitals

WHEREAS, the Department issued Invitation to Negotiate No. DMS-17/18-024 to solicit firms interested in providing a Healthcare Transparency Services Entity; and

WHEREAS, Vendor responded to the ITN, and after the procurement process the Department awarded a contract to the Vendor.

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

Section 1 Definitions

1.1 Definitions

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

“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.

“Account Management Team” means the individuals employed by the Vendor who will have primary responsibility for the Department’s account.

“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.

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

“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 or federal law or regulation that serves to exempt information from public disclosure.

“Contract” means this agreement between the Department and Vendor, including Attachments 1–3 and all documents identified in Section 1.3 herein.

“Contract Administrator” means the person designated pursuant to subsection 11 of this Contract.

“Contract Manager” means those persons designated pursuant to subsection 11 of this Contract.

“Data” or “State of Florida Data” means representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, whether it is exempt, confidential,

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. Data may be in any form, including but not limited to, in storage media, stored in the memory of the computer, in transit or presented on a display device, or a hard copy. 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. Data includes the original form of the Data and all metadata associated with the Data.

“Department” means the Florida Department of Management Services.

“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 Vendor.

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

“Eligible Dependents” means enrolled dependents of Subscribers, as defined by the Florida Administrative Code and statutes.

“Eligible Service” means a healthcare service for which Members may shop on Contractor’s Online Transparency Website.

“Enrollee” or “Subscriber” means those persons as defined in subsection 110.123(2)(b), Florida Statutes.

“Implementation Date” means the date the Contract is fully executed by all Parties.

“Implementation Plan” means the written description provided by Service Provider, as approved by the Department, of the schedule of actions necessary to implement the services and begin fulfilling the Contract in a timely manner.

“ITN” means Invitation to Negotiate No. DMS-17/18-024, Healthcare Transparency Services Entity.

“High Quality Provider” means a healthcare provider or facility that has been identified as being high quality based on Contractor’s quality rating methodology.

“Lower Cost Eligible Service” means a healthcare service that is designated as a low-cost healthcare service based on Contractor’s reference-based price methodology.

“Member” or “Participant” means those persons as defined in subsection 110.123(2)(e), Florida Statutes.

“Notice” means written notification from one Party to the other Party regarding performance under the Contract.

“Online Transparency Program” means the program established under this Contract that allows Members to shop online for healthcare services and allows Enrollees to receive Reward Payments when eligible.

“Online Transparency Website” means Contractor’s website and mobile-optimized website or mobile application on which Members may shop for designated healthcare services.

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

“Plan Year” is based on the calendar year from January 1 to December 31.

“Reward Payment” means the amount of cost sharing that an Enrollee shall receive for utilizing the Online Transparency Website to select a Lower Cost Eligible Service from a High Quality Provider.

“Service Commencement Date” means January 1, 2019, at 12:01 A.M., Eastern Time, the first date Services are provided to Members.

“Service Provider,” “Vendor,” or “Contractor” means [TBD].

“Services” means services to be performed by Vendor 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. During the term of the Contract, the Department will have the right to add or delete Services. If the Department elects to add Services, the Vendor and the Department will negotiate a mutually agreed amendment to the Contract.

“Subcontractor” means the Vendor’s subcontractors and agents that deliver the Services required by this Contract. The term “Subcontractor” does not include healthcare providers.

1.2 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, 2019.

1.3 Hierarchy of Documents

If the Contract terms are inconsistent with statute, then the statute will prevail.

- 1.3.1 This contract document and all attachments.
- 1.3.2 ITN DMS-17/18-024 and all addenda, in reverse order of posting on the Vendor Bid System.
- 1.3.3 The Contractor's Best and Final Offer to ITN DMS-17/18-024.
- 1.3.4 The Contractor's response to ITN DMS-17/18-024.
- 1.3.5 The General Contract Conditions (PUR 1000, 2006 version), which are incorporated by reference and can be accessed at:

http://www.dms.myflorida.com/business_operations/state_purchasing/documents_forms_references_resources/purchasing_forms

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Section 2 Term, Scope of Services, and Payments

2.1 Term

2.1.1 Initial term

This Contract shall commence on the Service Commencement Date of January 1, 2019 and terminate on December 31, 2021 (three (3) years after the Service Commencement Date), unless extended, terminated or renewed as provided herein.

2.1.2 Renewals

The Department, at its sole option and discretion, may renew the Contract for up to three (3) years terms at the same prices as those specified in this Contract or lower negotiated prices. Such renewal will be binding on the Vendor 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 Vendor has satisfactorily performed its obligations under the Contract. The Department shall also consider whether Vendor 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 Vendor shall not charge any costs for renewing the Contract. The renewal is subject to appropriations by the legislature and is contingent upon the availability of funds.

Pursuant to chapter 287.057(12) Florida Statutes, as modified by chapter 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.

2.1.3 Department's Right to Terminate for Convenience

The Department, by sixty (60) Calendar Days advance written Notice to Vendor, 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. Vendor 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. Vendor 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. If this Contract is terminated for convenience prior to January 1, 2020, the Department shall reimburse Vendor for direct costs actually incurred for authorized Services satisfactorily performed prior to the Notice of termination.

2.2 Scope of Work

Vendor will provide all labor, materials and supplies necessary to provide the Services as described in this Contract, including but not limited to, providing all reports in Attachment 2: Statement of Work in the prescribed format, frequency, by the due date, and to the intended

recipient. Vendor agrees to periodic reviews by the Department on Vendor'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 Vendor at its expense, and Vendor will not be entitled to any compensation for such corrective work.

The Department, by written change order, may unilaterally require changes altering, adding to or deducting from the Services, provided that such changes are within the general scope of the Contract.

2.3 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 Vendor 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, Vendor will comply with the Notice.

2.4 Department's Obligation to Supply Data to Vendor

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

2.4.1 Bills for Travel

Bills for travel expenses are not permitted under this Contract.

2.4.2 Payments

The Vendor agrees to perform all Services for the compensation and financial arrangements set forth in this Contract. No additional compensation will be allowed unless specifically set forth in Exhibit ____ [to be inserted after negotiations]. The Vendor shall not receive compensation prior to the Service Commencement Date.

The annual compensation paid to the Vendor shall not exceed the annual net savings realized by the State of Florida resulting from Members' use of the Vendor's Services ("Realized Savings"). The Vendor shall annually refund the Department any amount of compensation that exceeds the Realized Savings.

For payment of administrative fees, this Contract is subject to the transaction fee contained in subsection 287.057(22)(c), Florida Statutes, and the Vendor will comply with the timely reporting and payment of such fee.

2.4.3 Specific Appropriation

The funds from which the state will make payment for services under the Contract are identified from line number ____ of the Fiscal Year 2018-2019 General Appropriations Act, Senate Bill _____. The Department of Management Services is authorized to submit budget amendments in

accordance with chapter 216, Florida Statutes, to increase Specific Appropriation ____ in the event administrative service payments exceed the amount of budget authority appropriated.

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

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Section 3 Contract Administration

3.1 Ownership of Materials and Record Retention

All Deliverables, papers, documents, materials, work, and other items prepared by Vendor 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 Vendor 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.

Vendor 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 Vendor 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. Vendor shall retain all such records, papers and documentation in compliance with record retention schedules published by the State of Florida Department of State.

3.2 Vendor Obligations

3.2.1 General

Vendor will provide any and all labor, materials and supplies necessary to perform the Services in the manner prescribed by this Contract. Vendor will meet or exceed the Service requirements set forth in Attachment 2: Statement of Work.

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

3.2.3 Subcontractors

Vendor 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.

Vendor 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 the express written consent of the Department. Vendor will give the Department prior Notice of at least sixty (60) Calendar Days or, in case of an emergency, as soon as practicable. Each approved subcontract will be subject to the same terms and conditions as the Contract.

3.2.4 Background Screening, Record Retention, and Warranty of Security

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

3.2.4.1 Background Screening

In addition to any background screening required by the Vendor as a condition of employment, the Vendor 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 Vendor 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 Vendor agrees that each Person will be screened as a prior condition for performing services or having access to State of Florida Data. The Vendor is responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Vendor will maintain documentation of the screening in the Person's employment file. The Vendor 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.

3.2.4.2 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 Vendor 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 Vendor 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 Vendor 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 Vendor determines that the Person should be allowed Access to State of Florida Data, then Vendor shall maintain all criminal background screening information and the rationale for such Access in the Person's employment file.

The Vendor shall require all Persons to self-report within three (3) business days of adjudication to the Vendor any adjudication of guilt as described above for the Disqualifying Offenses. The Vendor shall immediately disallow that Person Access to any State of Florida Data or from directly performing Services under the Contract. Additionally, the Vendor 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.

3.2.4.3 Refresh Screening

The Vendor 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.

3.2.4.4 Annual Certification

The Vendor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Department by December 31st of each Contract year.

3.2.4.5 Duty to Provide Secure Data

The Vendor 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 Vendor 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.

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

The Department reserves the right to audit the Vendor's background screening process upon two (2) days prior written notice to the Vendor during the Term of the Contract. Department will have the right to inspect the Vendor's working area, computer systems, and/or location upon two (2) business days prior written notice to the Vendor 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.

3.2.4.7 Record Retention

The Vendor 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 Vendor 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 Vendor 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 Vendor 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 3.2.4.6. 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 Vendor therefore agrees to credit the Department the sum of \$10,000 per event, for each breach of this subsection.

3.2.4.8 Indemnification

The Service Provider 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 section. The Vendor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this section for one (1) year following the breach.

3.2.5 Work Locations, No Offshoring of Data

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

(a) result in immediate and irreparable harm to the Department, entitling the Department to immediate injunctive relief, provided, however, this shall not constitute an admission by the Service Provider to any liability for damages under subsection (c) below or any claims, liability or damages to a third party, and is without prejudice to the Service Provider in defending such claims.

(b) entitle the Department to a credit of \$50,000 per violation, with a cumulative total cap of \$500,000 per event. This credit is intended only to cover the Department's internal staffing and administrative costs of investigations and audits of the transmittal of State of Florida Data outside the U.S.

(c) entitle the Department to recover damages, if any, arising from a breach of this Section 3.2.5 above and beyond those covered under subsection (b).

(d) constitute an Event of Default not subject to the dispute resolution provisions in Section 9 ("Dispute Resolution") of this Contract.

The credits in subsection (b) are a reasonable approximation of the internal costs for investigations and audits from a violation. The credits are in the nature of liquidated damages and not intended to be a penalty on the Service Provider. By executing this Contract, Service Provider acknowledges and agrees the costs intended to be covered by subsection (b) are not readily ascertainable and will be difficult to prove. Service Provider agrees that it will not argue, and is estopped from arguing, that such costs are a penalty or otherwise unenforceable. For purposes of determining the amount of credits due hereunder, a group of violations relating to a

common set of operative facts (e.g., same location, same time period, same off-shore entity) shall be treated as a single violation. The credits will be applied against the monthly invoices submitted by the Service Provider, and are exclusive of any other right to damages.

3.2.5.1 Service Provider's Responsibility to Notify Department

For purposes of subsections 3.2.5.1 through 3.2.5.3, 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 Service Provider 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 Service Provider 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 Service Provider shall set up a conference call (via a telephone call and email) with the Department's Contract Manager and any necessary Service Provider parties. The conference call invitation shall contain a brief description of the nature of the event. When possible, a 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 Service Provider shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Service Provider shall provide the Department with final documentation of the incident including all actions that took place. If the Service Provider becomes aware of a Breach or Incident outside of normal

business hours, the Service Provider shall notify the Department's Contract Manager as soon as possible, and in all events, within 24 hours.

The Service Provider's failure to perform the obligations in this subsection 3.2.5.1 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.

3.2.5.2 Service Provider's Responsibility to Notify Members

The Service Provider 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 Service Provider or its Subcontractors no later than thirty (30) days after the determination of a Breach or reason to believe a Breach occurred. If the Service Provider 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 Service Provider or its Subcontractors. Nothing in this subsection will alter or replace the application of section 501.171, Florida Statutes, as to the Service Provider's obligations and liability for Breaches concerning confidential personal information.

3.2.5.3 Credit Monitoring and Notification

The Service Provider 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 one (1) year period of time following the Breach.

The Service Provider 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 Service Provider 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 Service Provider shall notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in the Fair Credit Reporting Act, 15 U.S. Code Section 1681a (p), of the timing, distribution, and content of the notices in subsection 3.2.5.2 ("Service Provider's Responsibility to Notify Members") of this Contract.

3.2.6 E-Verify

Pursuant to State Executive Order No.: 11-116, Vendor is required to utilize the Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by Vendor to work on this Contract during the Contract term. Also, Vendor 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.

3.2.7 Scrutinized Company List

If the Contract exceeds \$1,000,000.00 in total, not including renewal years, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List created pursuant to sections 215.4725, F.S. and 215.473 F.S., respectively. Pursuant to section 287.135(3), F.S., and 287.135(5), F.S., Contractor agrees the Customer may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel during the term of the Contract.

3.2.8 Removal or Replacement of Employees and Subcontractors for Cause

The Department may refuse access to or require replacement of any Vendor 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 Vendor 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 Vendor's employees, Subcontractors or agents.

3.2.9 Employment of State Workers

During the term of the Contract, Vendor shall not knowingly employ, subcontract with or sub-grant to any person (including any non-governmental entity in which such person has any employment or other material interest as defined by subsection 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.

3.3 Acceptance of Services

The Department will conduct its acceptance review in a manner so as to identify whether the Services materially fail to conform to the Contract. The Department shall Notify the Vendor 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, Vendor 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 Vendor's reply, the Department will either accept or reject the Vendor's reply (with or without modifications from the Department) and provide Notice of the Department's decision and proposed remedy, if any.

3.4 **Warranty**

Generally. Vendor 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 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 Vendor, and the Vendor will promptly correct, cure, replace or otherwise remedy such performance at no cost to the Department.

This section shall survive termination of this Contract.

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Section 4 Audit Rights

The Department has the right to conduct performance and/or compliance audits related to this Contract of any and all areas of Vendor and Subcontractors. The Department may at any time enter and inspect the Vendor'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 Vendor'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. Vendor 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. Vendor will make available all Data or information requested by the Department in furtherance of an audit.

Vendor 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 Vendor'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 inspections in a manner that minimizes disruption to Vendor'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.

Except for the annual SSAE 16 audit, the Department will be responsible for the independent third party auditor cost associated with any audit performed.

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Section 5 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. Vendor 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. Vendor 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 Vendor's compliance with this section.

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Section 6 Liquidated Damages

6.1 Generally

Time is of the essence in performing the Contract; this is true generally and particularly with respect to providing Services and meeting the Performance Guarantees. Vendor 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.

6.2 Failure to Meet Performance Guarantees

Vendor agrees to payment of additional liquidated damages if it fails to meet the 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 Vendor pursuant to this Contract for any calendar quarter will not exceed one hundred percent (100%) of the payment due under Section 2.4.2.

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 Vendor 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.

Vendor 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 Vendor with a Performance Guarantee report template which must be used. For each Performance Guarantee that the Vendor fails to meet, the Vendor 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 Vendor for payment.

The Department may require the Vendor 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 8: Events of Default and Remedies. However, if Vendor'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.

Vendor 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.

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

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Section 7 Insurance

7.1 Insurance Coverage

During the Contract term, Vendor 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 Vendor and performance may not commence on this Contract until such time as insurance is secured by the Vendor 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 Vendor'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 Vendor shall notify the Department immediately if the Vendor loses any liability insurance coverage.

Commercial General Liability. The Vendor must continuously maintain commercial general liability insurance (inclusive of any amounts provided by an umbrella or excess policy) in the face amount of twenty five million dollars (\$25,000,000).

Business Interruption Insurance. Vendor must continuously maintain business interruption insurance coverage in the face amount of twenty five million dollars (\$25,000,000).

Professional Indemnity Insurance. The Vendor must continuously maintain professional indemnity insurance that must cover professional liability and error and omissions in the face amount of twenty-five million dollars (\$25,000,000). Vendor 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 Vendor 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.

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

7.2 Performance Bond

In accordance with subsection 110.123(3)(d)2, prior to execution of this Contract, Vendor will deliver to the Department's Contract Manager a performance bond or irrevocable letter of credit in the amount of one million dollars (\$1,000,000) for the performance under the Contract. The bond or letter of credit shall be used to guarantee at least satisfactory performance by Vendor 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 four (4) 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 Vendor 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 Vendor'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 Vendor to perform the Services in accordance with the Contract. No payments shall be made to the Vendor until the performance bond is in place and approved by the Department in writing.

Upon execution of the Contract and each year following the Service Commencement Date, the Vendor shall provide the Department with a surety bond continuation certificate or other acceptable verification that the bond is valid and has been renewed for an additional year.

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

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Section 8 Events of Default and Remedies

8.1 Vendor Events of Default

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

- Vendor fails to pay any sum of money due hereunder;
- Vendor fails to provide the Services required under this Contract;
- Vendor employs an unauthorized alien in the performance of any work required under this Contract;
- Vendor fails to correct work that the Department has rejected as unacceptable or unsuitable;
- Vendor discontinues the performance of the work required under this Contract;
- Vendor fails to resume work that has been discontinued within a reasonable time after Notice to do so;
- Vendor abandons the project;
- Vendor becomes insolvent or is declared bankrupt;
- Vendor files for reorganization under the bankruptcy code;
- Vendor commits any action of bankruptcy or insolvency, either voluntarily or involuntarily;
- Vendor fails to promptly pay any and all taxes or assessments imposed by and legally due the State or federal government;
- Vendor makes an assignment for the benefit of creditors without the approval of the Department;
- Vendor made or has made a material misrepresentation or omission in any materials provided to the Department;
- Vendor commits any material breach of this Contract;
- Vendor fails to furnish and maintain the performance bond;
- Vendor 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 Vendor's performance of its obligations hereunder becomes insolvent or unsatisfactory;
- Vendor utilizes a Subcontractor in the performance of the work required by this Contract which has been placed on the State's Convicted Vendor List;
- Vendor is suspended or is removed as an authorized Vendor by any State or federal agency; or Vendor is convicted of a felony; or is placed on the State's Convicted Vendor List; or if Vendor's license is suspended or revoked.
- Vendor 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 Vendor in conjunction with this Contract and not otherwise deemed confidential, proprietary or a trade secret;
- Vendor refuses to allow auditor access as required by the Contract;
- Vendor's license to provide Services in the State is suspended or revoked;

- Violation of subsection 3.2.5, or Vendor's permitting State Data to be transmitted, viewed, or accessed outside of the United States;
- Vendor's change of Subcontractors in violation of subsection 3.2.3, Subcontractors, of the Contract;
- Upon discovery, Vendor fails to Notify the Department within seven (7) Calendar Days of problems or issues impacting provision of Services;
- For any other cause whatsoever that Vendor 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 2.4.2, Payments ; or
- Failure to meet the same monthly Performance Guarantee for at least three (3) months.

8.2 Department Remedies in the Event of Default

Upon the occurrence of an Event of Default on the part of Vendor, the Department is entitled at its sole discretion, to any one or all of the following remedies:

- Terminate this Contract; and
- Institute legal proceedings against Vendor to collect payment of any damages or sums owed by Vendor hereunder, including liquidated damages and the costs of re-procurement, and such equitable relief as is appropriate.

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

8.3 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.

8.4 Vendor Remedies in the Event of Default

Upon occurrence of an “Event of Default” on the part of the Department, Vendor is entitled to any one or all of the following remedies.

- a. Equitable Relief.
- b. Monetary Damages. Vendor is entitled to recover any compensation due under subsection 2.4.2 for Services actually provided in accordance with the Contract but not paid by the Department. Vendor 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 Vendor as the result of termination, Vendor will have satisfied all undisputed obligations to third parties relating to the Contract.

8.5 Rights Cumulative, No Waiver

The rights and remedies provided and available to the Department and Vendor 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.

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Section 9 Termination for Cause

9.1 Termination for Cause

The Department may terminate the Contract if Vendor commits an Event of Default under subsection 8.1 of this Contract. Vendor shall be liable for any re-procurement costs. Vendor shall continue work on any work not terminated. Except for Event of Default of Subcontractors, Vendor 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 Vendor. 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 Vendor and the Subcontractor, and without the fault or negligence of either, Vendor 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 Vendor to meet the required delivery schedule. If, after termination, it is determined that Vendor 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.

9.2 Exclusive Remedy

Vendor agrees that the provisions of section 9 shall be its exclusive remedy for termination and that Vendor is not entitled to, and will not seek, any other reimbursement or payment, claims or damages, including but not limited to lost profits, consequential or indirect damages, home office overhead, or costs for accelerating performance.

9.3 State's Right to Cure Service Provider's Default

If Service Provider 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 Service Provider 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 Service Provider. 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), which together will be repaid to the Department by Service Provider promptly when billed therefor.

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Section 10 Transition Services

In the event of termination or expiration of the Contract, Vendor shall work with the Department in good faith to transition or phase out the Services of the Contract.

Transition services shall be provided for up to twelve (12) months, unless otherwise waived by the Department, and such services shall include:

- Continued provision of specified, identifiable Services;
- Vendor's cooperation with the Department and/or another Vendor designated by the Department in connection with the transfer of Services to such other Vendor;
- Notification of current procedures;
- Listing of equipment and software licenses then used to provide the Services;
- Explanations of operations to new Vendor;
- Submission of a schedule for transition activities; and
- In post-migration status, answering reasonable questions on an as-needed basis.

The transition services rendered during the term of the Contract shall be provided at no additional cost.

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

Vendor shall, upon written Notice, furnish phase-out Services for up to six (6) months after the Contract terminates and negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program, subject to Department approval, necessary to avoid interruption of the Services.

Within thirty (30) Business Days from the date of termination or expiration of the Contract, Vendor shall deliver to the Department all related files, records or other documentation related to the Services. Attorney-client and work product privileged information and proprietary and competitively sensitive trade secret information belonging to the Vendor shall not be subject to this provision.

This section shall survive termination of this Contract.

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Section 11 General Provisions

11.1 Advertising

Vendor 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 Vendor'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, Members, or potential or actual Subcontractors. Within a reasonable time after the execution of the Contract, the Parties may issue a mutually agreeable joint press release regarding the Contract and the Services to be provided hereunder.

Vendor will not use the State seal, name or logo of the Department or State, or Vendor's relationship to the Plan, for any purpose without the prior written consent of the Department.

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

11.2 Assignment, Acquisition by Third Party

The Vendor 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 Vendor's organization, if any, will operate to release the Vendor from its liability for the prompt and effective performance of its obligations under this Contract.

11.3 Change of Statute or Regulation or Governmental Restrictions

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

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

Service Provider will not be entitled to an equitable adjustment or any additional compensation for any changes made to the Benefits Document, the Plan, statutes, or Chapter 60A-1 of the

Florida Administrative Code, even if such Changes are attributable directly or indirectly to a state statute, law or other any action by Florida Legislature which is intended to modify the Plan, the Benefits Document, the State Group Insurance Program.

11.4 Compliance with Laws, Including HIPAA

Generally: Vendor 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, chapter 110.123, Florida Statutes, and chapter 60P, Florida Administrative Code, govern the Contract. By way of further non-exhaustive example, Vendor 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 Vendor shall notify the Department immediately if the Vendor 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): Vendor 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. Vendor shall commit to implementation and compliance by the statutory deadlines set forth in the statute and associated regulations. Vendor shall assist the State in implementing its compliance with this legislation as it relates to HMO Services including but not limited to properly executed Business Associate, Confidentiality, HIPAA-AS and addenda to HIPAA-AS agreements (combined) as set out herein.

Any documents, reports, etc., provided to the Department by the Vendor with any portion marked "Proprietary and/or Trade Secret", the Vendor must simultaneously provide a redacted copy along with a non-redacted copy of the document, report, etc.

Public Entity Crimes: A person or affiliate who has been placed on the convicted Vendor list following a conviction for a public entity crime, as defined in section 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 Service Provider, 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: Service Provider will make all necessary reports to the Internal Revenue Service regarding benefit payments made to health care Service Providers as required by law.

Equal Employment Opportunity: Service Provider will not discriminate in its employment practices based on race, color, religion, age, sex, marital status, political affiliation, national origin or handicap, except as provided by law.

Notice to the Department of Changes: In the event Service Provider 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 material change or impact, either directly or indirectly, the Plan, this Contract, the health industry or the responsibilities of the Parties hereunder, Service Provider 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.

Under section 20.055(5), Florida Statutes, it is the duty of every state employee, agency, contractor, and Subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

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 execution of the Contract, the Contract Administrator is:

Maureen Livings
Departmental Purchasing
Department of Management Services
4050 Esplanade Way, Suite 335.2Z
Tallahassee, FL 32399-0950
Telephone: 850-410-2404
Email: maureen.livings2@dms.myflorida.com

The Department will provide Notice to Vendor 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:

[TBD]

Vendor's Account Manager is:

[TBD]

[TBD]

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 Vendor 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 section 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 section shall survive termination of this Contract.

11.9 Entire Contract

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

11.10 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

Vendor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Vendor 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 Vendor's control, or for any of the foregoing that affect Subcontractors or suppliers if no alternate source of supply is available to Vendor. In case of any delay Vendor believes is excusable, Vendor 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 first arose, if Vendor 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 Vendor 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. Vendor 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 Vendor 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 Vendor, provided that Vendor grants preferential treatment to the Department with respect to Services subjected to allocation, and/or purchase from other sources (without recourse to and by Vendor 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 VENDOR'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 Vendor, 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

Vendor 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 Vendor, its employees, partners, Subcontractors, and all other agents; provided, however, that Vendor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State.

Further, Vendor 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 Vendor's opinion is likely to become the subject of a suit, Vendor 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 Vendor is not reasonably able to modify or otherwise secure the State the right to continue using the Service, Vendor 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.

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

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

This section shall survive termination of this Contract.

The Department and Vendor agree that: (i) health care providers are not the agents or employees of the Department or Vendor and neither party renders medical services or treatments to Plan Participants and (ii) health care providers are solely responsible for the health care they deliver to Plan Participants, and neither the Department nor Vendor 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

Vendor 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 Vendor, the Department or the Plan, of which Vendor becomes aware. The Department shall promptly notify Vendor of any Plan-related legal actions or proceedings, brought or initiated against Vendor, 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 Vendor 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, Vendor shall file a motion to dismiss or any other appropriate motions and shall notify the Department of its action. Vendor 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, Vendor 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 Vendor's motions, as specified in this subsection, to drop Vendor 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 Vendor. If the Department is a codefendant in any such lawsuit, the Department may support any appropriate motion(s) to drop Vendor from the lawsuit.

11.15.3 Vendor as Real Party in Interest

In the event a lawsuit is filed against Vendor which raises a recognized cause of action or claim for relief based on Vendor's own policies or procedures to the administration of the Plan, Vendor shall, at its expense, defend such lawsuit provided. Vendor 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 Vendor 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, Vendor shall make available all files and documents requested by Department and Vendor 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, Vendor 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 Vendor's Legal Affairs Department

Vendor 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. Vendor shall advise the Department in writing within thirty (30) Calendar Days after the execution 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 Vendor Status

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

11.17 Inspection at Vendor Site

The Department reserves the right to inspect, at any reasonable time with prior Notice, the equipment or other facilities of a Vendor 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 Vendor'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 Vendor, 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 Vendor, respectively.

11.19 Lobbying and Integrity

Vendor 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, Vendor shall provide any type of information

the inspector general deems relevant to Vendor's integrity or responsibility. Such information may include, but shall not be limited to, Vendor's business or financial records, documents or files of any type or form that refer to or relate to the Contract. Vendor shall retain such records for the longer of 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. Vendor agrees to reimburse the State for the reasonable costs of investigation incurred by the inspector general or other authorized State official for investigations of Vendor's compliance with the terms of this or any other agreement between Vendor and the State which results in the suspension or debarment of Vendor. 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. Vendor shall not be responsible to the Department for any costs of investigations that do not result in Vendor'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 Vendor or any of its Subcontractors or agents, Vendor 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. Vendor shall bear the full cost for recreating any lost Data and will not be entitled to any compensation by the Department for those costs. This section 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 Vendor. No oral agreements or representations shall be valid or binding upon the Department or Vendor. Vendor may not unilaterally modify the terms of the Contract by incorporating terms onto Vendor's order or fiscal forms or other documents forwarded by Vendor for payment. The Department's acceptance of Service or processing of documentation on forms furnished by Vendor 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
Contract Manager (TBD)
4050 Esplanade Way, Suite 215.4Y
Tallahassee, FL 32399

To the Vendor by certified mail, return receipt requested, by reputable courier service, or delivered personally to:

[TBD]

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 Cooperation with the Inspector General

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

11.24 Public Records

11.24.1 Access to Public Records

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

11.24.1 Redacted Copies of Confidential Information

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

11.24.3 Request for Redacted Information

In the event of a public records or other disclosure request pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, to which documents that are marked as "Confidential" are responsive, the Department will provide the Service Provider-redacted copies to the requestor. If a requestor

asserts a right to the Confidential Information, the Department will notify the Service Provider such an assertion has been made. It is the Service Provider's responsibility to assert that the information in question is exempt from disclosure under Chapter 119 or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Service Provider under legal process, the Department shall give the Service Provider prompt notice of the demand prior to releasing the information labeled "Confidential" (unless otherwise prohibited by applicable law). The Service Provider shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

11.24.4 Indemnification

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

11.24.5 Contractor as Agent

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

- a) Keep and maintain public records required by the public agency to perform the service.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Service Provider 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 Service Provider or keep and maintain public records required by the public agency to perform the service. If the Service Provider transfers all public records to the public

agency upon completion of the Contract, the Service Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Service Provider keeps and maintains public records upon completion of the Contract, the Service Provider 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 SERVICE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SERVICE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED FOR THE CONTRACT MANAGER.**

11.25 Rights to Records

Vendor agrees that all documents and materials prepared by Vendor 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 Vendor 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 Vendor 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

Vendor shall provide the Department appropriate documentation demonstrating that Vendor is in good standing and legally authorized to transact Services business in Florida. Vendor 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 Vendor's ability to satisfy Contract obligations. Vendor warrants that neither it nor any affiliate is currently on the convicted Vendor list maintained pursuant to section 287.133, Florida Statutes, or on any similar list maintained by any other state or the federal government. Vendor 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, Vendor 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 Vendor that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) relates to the Services and which may diminish Contactor's capacity to give impartial, technically sound, objective assistance and advice, or may give Vendor unfair negotiating advantage with respect to the Department.

11.32 Best Pricing Clause

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

Service Provider's pricing under this Contract will not exceed Service Provider's pricing then in effect for substantially the same services to any organization with enrollment equal to or less than the Service Provider's Subscriber count at the relevant time. During the term of the Contract, if Service Provider implements or provides any other client, whether a public or private entity, with fewer enrollees such pricing more favorable than the pricing in this Contract, then Service Provider agrees to offer equivalent pricing terms to the Department and the Department and Service Provider will execute an amendment of this Contract.

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

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

DEPARTMENT OF MANAGEMENT SERVICES

Signature: _____
Erin Rock, Secretary

Date: _____

[VENDOR]

Signature: _____

**Print Name
and Title:** _____

Date: _____

DRAFT

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 Vendor. Such changes will not require a Contract amendment.

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AFFIDAVIT OF NO OFFSHORING

Regarding the Contract between

[TBD] (the "Vendor")

And

State of Florida, Department of Management Services

Contract No.: DMS-17/18-024

Pursuant to subsection 3.2.5 of the Contract, the undersigned vendor hereby attests that the vendor 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.

Vendor Name: [TBD]

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

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ 2018

by _____

(Signature of Notary)

Check One:

Personally Known

Produced the following ID

AFFIDAVIT OF WARRANTY OF SECURITY

Regarding the Contract between

[TBD] (the "Vendor")

And

State of Florida, Department of Management Services

Contract No.: DMS-17/18-024

Effective [TBD]

Pursuant to subsection 3.2.4 of the Contract, the undersigned vendor hereby attests that the vendor is in compliance with the Warranty of Security clause in the Contract.

Vendor Name: [TBD]

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

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ 2018

by _____

(Signature of Notary)

Check One:

Personally Known

Produced the following ID

AFFIDAVIT OF BEST PRICING

Regarding the Contract between

[TBD] (the "Vendor")

And

State of Florida, Department of Management Services

Contract No.: DMS-17/18-024

Effective [TBD]

Pursuant to subsection 11.32 of the Contract, the undersigned vendor hereby attests that the vendor is in compliance with the Best-Pricing clause in the Contract.

Vendor Name: [TBD]

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

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ 2018

by

(Signature of Notary)

Check One:

Personally Known

Produced the following ID

ATTACHMENT 2: STATEMENT OF WORK

See Attachment C of the ITN for the Statement of Work.

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ATTACHMENT 3:
PRIVACY, SECURITY, AND CONFIDENTIALITY
BUSINESS ASSOCIATE AGREEMENT

This Privacy, Security, and Confidentiality Business Associate Agreement (“Agreement”) is between the State of Florida Department of Management Services (“Agency”), and _____ (“Business Associate”), (each individually, a “Party,” and collectively, the “Parties”), with an effective date of _____, 2018.

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

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

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

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

1. Definitions

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

- (a) “Agency” means the Florida Department of Management Services (“DMS”), an executive agency of the State of Florida, and the Division of State Group Insurance (“DSGI”) with its principle place of business at 4050 Esplanade Way, Suite 215, Tallahassee, FL 32399-0950.
- (b) “Agreement” means this Privacy, Security, and Confidentiality Business Associate Agreement.
- (c) “Breach” when referring to a breach of Protected Health Information or PHI means the acquisition, access, use, or disclosure of PHI that is not permitted by 45 C.F.R. § 164, subpart E, which compromises the security

or privacy of PHI. See definition of “Protected Health Information” or “PHI,” herein.

- (d) “Business Associate” refers to _____, who hereby agrees to provide services to the Division of State Group Insurance as a business associate, as that term is defined in 45 CFR §160.103.
- (e) "Covered Entity" means the State of Florida’s Division of State Group Insurance (“DSGI”).
- (f) “Contract” means the contract awarded to the Business Associate pursuant to DMS-17/18-024.
- (g) “Individual” has the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- (h) “Parties” mean collectively the Agency and Business Associate. A “Party” means either the Agency or Business Associate.
- (i) “Protected Health Information” or “PHI” means individually identifiable health information as defined in 45 C.F.R. § 160.103, whether secured or unsecured, and in any type of format.
- (j) “Plans” means the insurance coverages offered through Covered Entity, as authorized in section 110.123, Florida Statutes.
- (k) “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information set forth in 45 C.F.R. § 160 and 45 C.F.R. § 164, subparts A and E, as amended.
- (l) “Secretary” means the Secretary of the U.S. Department of Health and Human Services or designee.
- (m) “Security Rule” means the security provisions set forth in 45 C.F.R. § 160 and § 164, subparts A and C, as amended.

2. Obligations and activities of Business Associate

Business Associate Agrees to:

- (a) Comply with all applicable provisions of 45 C.F.R. §§ 160 and 164, subparts A, C, and E; the HITECH Act; sections 110.123(9) and section 501.171, Florida Statutes; and the terms of this Agreement.
- (b) Not use or further disclose PHI other than as permitted or required by Sections 3 and 7 of this Agreement or as required under federal or Florida law.
- (c) Ensure the confidentiality, integrity, and availability of all Electronic PHI Business Associate creates, receives, maintains, or transmits.

- (d) Ensure that every agent and subcontractor that creates, receives, maintains, or transmits PHI complies with the restrictions and conditions contained in this Agreement, HIPAA, and the HITECH Act.
- (e) Make any amendment(s) to PHI in a designated record set that Covered Entity or an Individual directs or agrees to pursuant to 45 C.F.R. § 164.526, in a prompt and reasonable manner or take other measures as necessary to satisfy Covered Entity obligation(s) under 45 C.F.R. § 164.526.
- (f) Create and retain all records necessary to determine compliance with HIPAA, the Privacy Rule, Security Rule, and HITECH Act.
- (g) Make its internal practices, books, and records available to the Secretary in a time and manner designated by Covered Entity or the Secretary, for purposes of determining compliance with HIPAA, the Privacy Rule, Security Rule, and HITECH Act.
- (h) Cooperate with any investigations by the Secretary to determine compliance with HIPAA, the Privacy Rule, Security Rule, and HITECH Act.
- (i) Document disclosures of PHI and provide to an Individual, at the request of Covered Entity or an Individual, an accounting of such disclosures in accordance with 45 C.F.R. § 164.528. Business Associate shall assist Covered Entity in complying with HIPAA regulations relating to the required Disclosure, Amendment, or Accounting.
- (j) Certify that it is in compliance with all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (“EDI”) Standards, in accordance with 45 C.F.R. § 162; and the Annual Guidance as issued by the Secretary pursuant to the HITECH Act, section 13401. Business Associate further agrees to ensure that every agent and subcontractor that conducts standard transactions on its behalf, agrees to comply with the EDI Standards and the Annual Guidance.
- (k) Use the Minimum Necessary type and amount of PHI required to perform services in accordance with 45 C.F.R. § 164, subpart E.
- (l) Comply with all requirements of 45 C.F.R. § 164, subpart E, that apply to Covered Entity to the extent Business Associate carries out any obligations(s) of the Covered Entity under subpart E.

3. Permitted and required uses and disclosures of PHI by Business Associate

- (a) Except as expressly permitted in this Agreement or in writing by Covered Entity, Business Associate shall not divulge, disclose, or communicate PHI to any third party in violation of this Agreement without prior written approval from Covered Entity.

- (b) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (c) Business Associate must comply with 45 C.F.R. § 164, subpart E, and may not use or disclose PHI in violation of 45 C.F.R. § 164, subpart E.
- (d) Business Associate may use and disclose PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- (e) Business Associate may use and/or disclose PHI for Business Associate's proper management and administration, provided that: (1) Business Associate obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (2) the person notifies Business Associate of any instances of the Breach of PHI for which it is aware. Business Associate also may make disclosures that are required by law. Business Associate's use of PHI as described in this paragraph is subject to and limited as described in 45 C.F.R. § 164.504(e)(2) and (4).
- (f) Business Associate may create a Limited Data Set only as necessary and required for the purpose of performing its obligations and services for Covered Entity, provided that Business Associate complies with the provisions of this Agreement.
- (g) Business Associate shall disclose PHI when required by the Secretary to investigate or determine Covered Entity or Business Associate's compliance with 45 C.F.R. § 164, subpart E.
- (h) Business Associate shall provide access to PHI in a designated record set as required under 45 C.F.R. § 164.524.
- (i) Business Associate shall, upon request by Covered Entity or Individual, disclose PHI to Covered Entity, Individual, or Individual's designee, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §§ 164.502(a)(4)(ii), 164.524(c)(2)(ii), and 164.524(c)(3)(ii) with respect to an Individual's request.

4. Obligations of Covered Entity

Covered Entity Agrees to:

- (a) Notify Business Associate, upon request, of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.

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

5. PHI Security Requirements

- (a) Protection of Protected Health Information. Business Associate shall protect against any reasonably anticipated threats or hazards to the confidentiality, security, or integrity of PHI and protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under 45 C.F.R. § 164, subpart E. Business Associate shall implement policies and procedures to prevent, detect, contain, and correct security violations.
- (b) Security of Electronic Protected Health Information. Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards to prevent security violations and the unpermitted acquisition, access, use, or disclosure of PHI in accordance with 45 C.F.R. § 164, subpart C.
- (c) Business Associate's due diligence. Business Associate shall make a good-faith effort to identify any unpermitted access, acquisition, use, or disclosure of any type of PHI or unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- (d) Compliance. Business Associate shall ensure that its agents and subcontractors comply with 45 C.F.R. § 164, subparts A, C, and E, and all applicable standards relating to all Electronic PHI.
- (e) Compliance Date. Business Associate certifies compliance with this section of the Agreement on or before the date on which its representative signs this Agreement as set forth in the signature blocks at the end of this document.

6. Notification and reporting requirements

- (a) Reporting of Security Incidents. Within two (2) business days of discovery, Business Associate will report to the Covered Entity any Security Incident that involves the (1) unpermitted acquisition, access, use, or disclosure of PHI; and/or (2)(a) modification or destruction of Electronic PHI or (b) interference with system operations in an information system containing Electronic PHI. For any other type of Security Incident, Business Associate shall report such incident to Covered Entity upon request. Such reports shall include a description of the incident, identification of any Individuals affected (if any), and the types of PHI involved (if any). The day the Security Incident is discovered or would have been discovered with the exercise of reasonable diligence will be considered the first business day of the reporting period.
- (b) Notification to Covered Entity regarding a Breach of PHI. Within two (2) business days of discovery, Business Associate will notify Covered Entity of any Breach of unsecured PHI in accordance with 45 C.F.R. § 164.410. Within two (2) business days of discovery, Business Associate will notify Covered Entity of any other unpermitted acquisition, access, use, or disclosure of PHI not provided for in this Agreement. The notice pursuant to this subparagraph shall comply with the notification requirements of 45 C.F.R. § 164.410(c), including the identification of each affected Individual, the types of PHI involved in the breach, and a description of the incident. The day the breach is discovered or would have been discovered with the exercise of reasonable diligence will be considered the first business day of the reporting period.
- (c) Notification to Individuals. In the case of a Breach regarding unsecured PHI, Business Associate shall first notify Covered Entity of the details of the breach. Upon approval by Covered Entity, Business Associate shall notify each Individual whose unsecured PHI was breached in accordance with 45 C.F.R. § 164.404. Notification shall be in writing and delivered by first-class mail to the Individual, the Individual's personal representative, or the Individual's next of kin (if the individual is deceased) at the last known address of the Individual, next of kin, or personal representative, as applicable. The notification may be delivered by e-mail if requested by the recipient. When there is insufficient or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes written or electronic notification, a substitute form of notice shall be provided. When there are ten (10) or more Individuals for whom there is insufficient or outdated contact information, Business Associate shall place a conspicuous posting on its web site or run the notice in major print or broadcast media, including major media in the geographic areas where the Individuals likely reside. In any case deemed by Business Associate to require urgency due to possible imminent misuse of unsecured

PHI, Business Associate may also provide information to Individuals by telephone or other means, as appropriate.

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

7. Security and confidentiality under Florida law

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

with subpoena requiring the production of Covered Entity's records or information, Business Associate shall immediately contact the Department of Management Services, Office of the General Counsel, at (850) 487-1082.

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

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

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

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

8. Term and Termination of Agreement

- (a) Term. This Agreement shall commence as of the effective date of this Agreement and will naturally terminate on the later of (i) the last of the Parties' related agreements for Business Associate's Services terminate, or

(ii) when all of the PHI in Business Associate's possession, custody, or control is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provision in this section.

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

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

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

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

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

If it is not feasible for Business Associate to obtain any PHI in the possession of the subcontractor or agent, Business Associate shall provide a written explanation to Covered Entity and require the subcontractor or agent to agree to extend any and all protections, limitations, and restrictions set forth in this Agreement to the subcontractor or agent's use or disclosure

of any PHI retained after the termination of this Agreement, and to limit any further use or disclosure to the purposes that make the return or destruction of the PHI not feasible.

9. Miscellaneous

- (a) **Material breach.** A violation of any provision of this Agreement shall be deemed a material breach of this Agreement and the Contract.
- (b) **Warranties and representations.** Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, or HITECH Act will be adequate or satisfactory for Business Associate's own purposes.
- (c) **Assignment.** Business Associate shall not assign either its obligations or benefits under this Agreement without the express written consent of Covered Entity, which shall be at the sole discretion of Covered Entity. Given the nature of this Agreement, neither subcontracting nor assignment by Business Associate is anticipated and the use of those terms herein does not indicate permission to assign or subcontract has been granted.
- (d) **Regulatory References.** A reference in this Agreement to a section of HIPAA, the Privacy Rule, the Security Rule, or HITECH Act means the section as in effect or as amended and for which compliance is required.
- (e) **Amendment.** Upon the enactment of any law or regulation affecting the use or disclosure of PHI, Standard Transactions, the security of PHI, HIPAA, or the HITECH Act; the publication of any decision of a court of the United States or any state relating to any such law; or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either Party may, by written notice to the other Party, amend this Agreement in such manner as such Party determines necessary to comply with such law or regulation. If the other Party disagrees with such Amendment, it shall notify the first Party in writing within thirty (30) calendar days' notice. If the Parties are unable to agree on an Amendment within thirty (30) calendar days thereafter, then either of the Parties may terminate the Agreement on thirty (30) calendar days written notice to the other Party.
- (f) **Survival.** The rights and obligations of Business Associate under Section 8 of this Agreement shall survive the termination of this Agreement.
- (g) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HITECH Act, and Florida Statutes.
- (h) **No third party beneficiary.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person

other than the Parties and the respective successors or assignees of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

- (i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida to the extent not preempted by applicable federal law.
- (j) Venue. The venue of any proceedings shall be the appropriate federal or state court in Leon County, Florida.
- (k) Indemnification and performance guarantees. Business Associate shall indemnify, defend, and hold harmless the Agency, State of Florida, and individuals covered by the Plans for any financial loss as a result of the claims brought by third parties and which are caused by the failure of Business Associate, its officers, directors, or agents to comply with the terms of this Agreement.
- (l) Independent entities. Business Associate and Covered Entity are independent entities, and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between Business Associate and Covered Entity. Neither Business Associate nor Covered Entity will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent, except as otherwise expressly provided in this Agreement.
- (m) Conflicts. In the event that any terms of this Agreement are inconsistent with the terms of any other contract between the Parties, the terms of this Agreement shall control.

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