

## **Attachment E: Confidentiality and Non-Disclosure Agreement**

This Confidentiality and Non-Disclosure Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_ 2020, by and between \_\_\_\_\_ hereinafter referred to as "Respondent," and the State of Florida, Department of Management Services, hereinafter referred to as "State."

Respondent warrants and represents that it intends to submit a Reply in response to the State's solicitation entitled ITN No.: DMS-19/20-030 Pharmacy Benefits Plan Management Services ("ITN"). In order to respond to the ITN, the State will provide Respondent with access to certain confidential information ("Confidential Health Information") that is considered Protected Health Information as defined in 45 C.F.R. § 160.103, Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended. The State will provide Confidential Health Information to Respondent in a limited data set in accordance with 45 CFR § 164.514. All such information provided by the State during this procurement process shall be considered Confidential Health Information regardless of the form, format, or media upon which or in which such information is contained or provided, regardless of whether it is oral, written, electronic, or any other form, and regardless of whether the information is marked as "Confidential Health Information."

As a condition for its receipt and access to the Confidential Health Information, Respondent agrees as follows:

1. Respondent shall not use the Confidential Health Information for any purposes other than to respond to this ITN.
2. Respondent will not use or disclose the Confidential Health Information except as provided in this Agreement.
3. Respondent must use appropriate safeguards to prevent the unauthorized use or disclosure of the Confidential Health Information.
4. Respondent will not disclose, publish, release, transfer, or disseminate any Confidential Health Information except to respond to the ITN.
5. Respondent shall be liable for any violations by any of its employees who are provided or given access to Confidential Health Information and for any access by unauthorized persons.
6. Respondent shall abide by the following procedures in handling the State's Confidential Health Information:
  - a. Respondent will password protect the Confidential Health Information upon receipt thereof.
  - b. Respondent shall only allow its authorized employees to access the Confidential Health Information.
  - c. Respondent will inform all employees who have access to the Confidential Health Information that:

- i. The employee is not to share the password or the State's Confidential Health Information with any unauthorized person;
    - ii. At the end of the solicitation process, the employee will delete the State's Confidential Health Information from any laptop, desktop, or any other electronic shared system under their control and will destroy any paper copies of the Confidential Health Information; and
    - iii. The employee must confirm to Respondent that he or she have so deleted or destroyed the Confidential Health Information.
  - d. Files and passwords will be provided separately to each employee.
  - e. Respondent will maintain a list of persons granted access ("Access List") to the State's Confidential Health Information. Employees expected to have access to the State's Confidential Health Information are to be listed in the chart on page 4 of this attachment. Respondent will update the list at the time it submits its Reply. Respondent has a continuing obligation to update the Access List.
7. Respondent must not render the Confidential Health Information such that the subject person can be identified, and Respondent must not contact the person who is the subject of the Confidential Health Information.
8. Respondent must report to the State any unauthorized access, use, or disclosure of Confidential Health Information within three (3) Calendar Days of discovery thereof.
9. If Respondent submits a Reply in response to this ITN, Respondent shall destroy the Confidential Health Information, including any copies, remaining in its possession within the later of five (5) Business Days of the State's notice of an intended award in connection with this solicitation or the conclusion of any legal proceeding or protest regarding the procurement. At that time, Respondent shall provide to the Procurement Officer a final Access List and a certification that it has complied with this requirement.

If Respondent does not submit a Reply in response to this ITN, Respondent shall destroy the Confidential Health Information, including any copies, by the time Replies are due. At that time, Respondent shall provide an Access List and certification to the Procurement Officer that it has complied with this requirement on or before the due date for Replies.
10. Respondent's employees who access the Confidential Health Information must agree to the restrictions set forth herein.
11. In the event the State suffers any losses, damages, liabilities, expenses or costs (including by way of example only, attorney's fees and disbursements) that are attributable, in whole or in part to any failure by Respondent or any employee of Respondent to comply with the requirements of this Agreement, Respondent shall hold harmless and indemnify the State and the State of Florida from and against any such losses, damages, liabilities, expenses and/or costs.

12. Respondent acknowledges that the disclosure of the Confidential Health Information may cause irreparable harm to the State and agrees that the State may obtain an injunction to prevent the disclosure, copying, or other impermissible use of the Confidential Health Information. The State's rights and remedies hereunder are cumulative, and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Health Information and/or to seek damages for Respondent's failure to comply with the requirements of this Agreement.
13. This Agreement shall be governed by the laws of the State of Florida. Respondent consents to personal jurisdiction in Florida state court, and exclusive venue shall be in Leon County, Florida.
14. The individual signing below warrants and represents that they are fully authorized to bind Respondent to the terms and conditions specified in this Agreement.

Respondent: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**RESPONDENT'S EMPLOYEES WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL HEALTH INFORMATION**

*(Respondents may submit separate, scanned pages of employees' signatures)*

<b>Printed Name, Address of Individual</b>	<b>Signature of Individual</b>	<b>Date</b>