



4050 Esplanade Way
Tallahassee, FL 32399-0950
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Ron DeSantis, Governor
Jonathan R. Satter, Secretary

ATTACHMENT A

DRAFT CONTRACT

FOR

GROUP VISION BENEFITS INSURANCE

RFP NO.: DMS-20/21-052

BETWEEN

STATE OF FLORIDA

DEPARTMENT OF MANAGEMENT SERVICES

AND

<< INSERT CONTRACTOR NAME >>

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Contract

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

WHEREAS, the Contractor responded to the Department's Request for Proposals (RFP) No.: DMS-20/21-052 for Group Vision Benefits Insurance (Services); and

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

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

Section 1 DEFINITIONS

1.1 Definitions

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

"Account Management Team" means the individuals required by Attachment 2: Administrative Requirements, II. Account Management, item 6.5.

{Insert Name}, Account Executive and Contract Manager
{Insert Name}, Executive Sponsor
{Insert Name}, Customer Service Manager
{Insert Name}, Claims
{Insert Name}, Networks
{Insert Name}, Eligibility/Billing
{Insert Name}, Support Services

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

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

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

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

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

1. This agreement, in the following order of precedence:
 - a. Attachment 1: Affidavits;
 - b. Attachment 2: Administrative Requirements;

- c. Attachment 3: Performance Guarantees;
- d. Attachment 4: Plan Benefits Schedule;
- e. Attachment 5: Approved Subcontractors;
- f. Attachment 6: Reporting and Deliverables;
- g. Attachment 7: Pricing;
- h. Attachment 8: Privacy, Security, and Confidentiality Business Associate Agreement; and
- i. RFP No.: DMS-20/21-052 and all addenda, in reverse order of posting on the Vendor Bid System

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

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

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

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

“Contract Administrator” means the person designated pursuant to section 11.5 of this Contract.

“Contract Manager” means those persons designated pursuant to section 11.6, of this Contract.

“Covered Benefits and Services” means the benefits and services that are required to be provided as described in the Plan Design.

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

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

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

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

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

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

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

“Implementation Date” means January 1, 2022 at 12:00 A.M., Eastern Time (EST), the anticipated first date Services are provided to Participants.

“Implementation Period” means the period between the Effective Date and the Implementation Date.

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

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

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

“Plan” means the Contractor’s awarded vision benefit plan design(s).

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

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

“RFP” means the Request for Proposals No.: DMS DMS-20/21-052 Group Vision Benefits Insurance, including all attachments and addenda to the Request for Proposals.

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

“Services” means supplemental group vision benefits insurance services to be performed by the Contractor as specified in this Contract, including the requirements of the Attachments to this Contract. The term “Services” includes, but is not limited to, all Deliverables and any unspecified service that is inherent in proper delivery of a specified service or Deliverable. During the term of the Contract, the Department will have the right to add or delete services and products. If the Department elects to add services or products, the Contractor and the Department will negotiate a mutually agreed amendment to the Contract.

“State” means the State of Florida.

“Subcontractor” means the Contractor’s Department-approved subcontractors and agents that deliver the Services required by this Contract. The term “Subcontractor” shall not include health care providers that have contracted with the Contractor to participate in Contractor’s provider networks under this Contract for any purpose.

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

Section 2 CONTRACT DOCUMENTS

2.1 Rules of Interpretation

The following rules of interpretation shall apply, unless otherwise indicated:

- a. Reference to, and the definition of, any document (including any attachments) shall be deemed a reference to such document as it may be amended, supplemented, revised or modified;
- b. The table of contents and section headings and other captions are for the purpose of reference only and do not limit or affect the content, meaning or interpretation of the text;
- c. Defined terms in the singular shall include the plural and vice versa and the masculine, feminine or neutral-genders shall include all genders;
- d. The words “hereof,” “herein,” “hereunder,” and words of similar import, shall refer to this Contract as a whole and not to any particular provision of this Contract;
- e. The words “include,” “includes”, and “including” are deemed to be inclusive and followed by the phrase “without limitation”;
- f. Any reference to a governmental entity or person shall include the governmental entity’s or person’s authorized successors and assigns; and
- g. The words “quarterly,” “on a quarterly basis,” “quarterly meeting” or other similar terms mean, unless otherwise stated herein, once every three (3) months, beginning January 1, 2022.

2.2 Hierarchy of Documents

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

Section 3 TERM, SCOPE, AND PAYMENTS

3.1 Term

3.1.1 Initial Term

The initial Term of the Contract is three (3) years and Services will commence on the Effective Date and end after 11:59:59 P.M. (EST), on December 31, 2024, unless extended, terminated, or renewed as provided herein. The Parties acknowledge that the Plan will not be implemented and administered under this Contract until January 1, 2022. While pre-implementation services will required, premium payments from Subscribers will not be collected until December 2021, for coverage effective January 1, 2022.

3.1.2 Renewals

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

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

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

control of the Contractor, as determined by the Department.

3.2 Department's Right to Terminate for Convenience

The Department, by sixty (60) Calendar Days advanced written notice to Contractor, may terminate the Contract for any reason or no reason at all when the Department determines in its sole discretion that it is in the Department's best interest to do so. The Contractor shall not perform any Services after the effective date of the termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor will not be entitled to recover any lost profits, consequential or indirect damages, or any other damages other than the payment amounts due for performance until the effective date of termination. If this Contract is terminated for convenience prior to January 1, 2022, the Department shall reimburse Contractor for direct costs actually incurred for Services authorized by the Department and satisfactorily performed prior to receipt of the notice of termination.

3.3 Scope of Work

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

3.4 Modifications and Changes

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

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

3.5 Department's Right to Suspend Work

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

3.6 Department's Obligation to Supply Data to Contractor

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

3.7 Bills for Travel

Bills for travel expenses are not permitted under this Contract.

3.8 Payments

The Contractor agrees to perform all the Services for compensation and financial arrangements set forth in Attachment 7: Pricing. No additional compensation will be allowed. The Parties agree that payments under this Contract shall be made in accordance with section X, Payment Specifications, of Attachment 2: Administrative Requirements.

3.9 Appropriations

The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. No Departmental funds will be expended on this Contract.

3.10 Non-Exclusive Contract

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

Section 4 CONTRACT ADMINISTRATION

4.1 Ownership of Deliverables and Retention of Records

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

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

4.2 Contractor Obligations

4.2.1 General

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

4.2.2 Major Organizational Changes

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

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

4.2.3 Subcontractors

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

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

4.2.4 Background Screening, Record Retention, and Warranty of Security

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

4.2.4.1 Background Screening

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

"Access" means to review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form,

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

“Data” or “State of Florida Data” is as defined in section 1.1. The minimum background check process must include a check of the following databases through a law enforcement agency or a Professional Background Screener accredited by the National Association of Professional Background Screeners, the National Committee for Quality Assurance, or a comparable standard:

- Social Security Number Trace; and
- Criminal Records (Federal, State and County criminal felony and misdemeanor, national criminal database for all states which make such data available); The Contractor agrees that each Person has been screened as a prior condition for performing services or having access to State of Florida Data.

The Contractor is responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Contractor will maintain, or cause to be maintained, documentation of the screening in the Person’s employment file. The Contractor will abide by all applicable laws, rules, and regulations including, but not limited to, the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations, or ordinances. The Department may require the Contractor to exclude the Contractor’s employees, agents, representatives, or subcontractors based on the background check results.

4.2.4.2 Disqualifying Offenses

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

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

If the Contractor finds a Disqualifying Offense for a Person within the last six (6) years from the date of the court’s disposition, it may obtain information regarding the incident and determine whether that Person should continue providing Services

under the Contract or have Access to State of Florida Data. The Contractor will consider the following factors only in making the determination: i.) nature and gravity of the offense, ii.) the amount of time that lapsed since the offense, iii.) the rehabilitation efforts of the person and iv.) relevancy of the offense to the job duties of the Person. If the Contractor determines that the Person should be allowed Access to State of Florida Data, then Contractor shall maintain all criminal background screening information and the rationale for such Access in the Person's employment file.

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

4.2.4.3 Refresh Screening

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

4.2.4.4 Annual Certification

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

4.2.4.5 Duty to Provide Secure Data

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

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

The Department reserves the right to audit the Contractor's background screening process upon two (2) Business Days' prior written notice to the Contractor during the term of the Contract. The Department will have the right to inspect the Contractor's working area, computer systems, and/or location upon five (5) Business Days' prior written notice to the Contractor to ensure that Access to the State of Florida Data is secure and in compliance with the Contract and all applicable state and federal rules and regulations.

4.2.4.7 Record Retention

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

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

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

- 1) The identity of all individual(s) who Accessed State of Florida Data in any way, whether those individuals are authorized Persons or not;
- 2) The duration of the individual(s)' Access to State of Florida Data, including the time and date at which the Access began and ended;
- 3) The identity, form, and extent of State of Florida Data accessed, including, but not limited to, whether the individual Accessed partial or redacted versions of State of Florida Data, read-only versions of State of Florida Data, or editable versions of State of Florida Data; and
- 4) The nature of the Access to State of Florida Data, including whether State of Florida Data was edited or shared with any other individual or entity during the duration of the Access, and, if so, the identity of the individual or entity.

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

Failure to compile, retain, and disclose the written policy and information as required in this section shall be considered a breach of the Contract. The resulting damages to the Department from a breach of this section are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The Parties acknowledge that these financial consequences are liquidated damages, exclusive of any other right to damages, not intended to be a penalty, and solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department the sum of \$5,000 per event, for each breach of this section.

4.2.4.8 Indemnification

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

4.2.5 Work Locations, No Offshoring of Data

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

- (a) result in immediate and irreparable harm to the Department, entitling the Department to immediate injunctive relief, provided, however, this shall not constitute an admission by the Contractor to any liability for damages under subsection (c) below or any claims, liability, or damages to a third party, and is without prejudice to the Contractor in defending such claims.
- (b) entitle the Department to a credit of \$50,000 per violation, with a cumulative total cap of \$500,000 per event. This credit is intended only to cover the Department's internal staffing and administrative costs of investigations and audits of the transmittal of State of Florida Data outside the U.S.
- (c) entitle the Department to recover damages, if any, arising from a breach of this section and beyond those covered under subsection (b).
- (d) constitute an Event of Default not subject to the dispute resolution provisions in section 11.7 ("Dispute Resolution, Governing Law and Venue") 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 in subsection (b) are a reasonable approximation of the internal costs for investigations and audits from a violation. The credits are in the nature of liquidated damages and not intended to be a penalty on the Contractor. By executing this Contract, Contractor acknowledges and agrees the costs intended to be covered by subsection (b) are not readily ascertainable and will be difficult to prove. Contractor agrees that it will not argue, and is estopped from arguing, that such costs are a penalty or otherwise unenforceable. For purposes of determining the amount of credits due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same offshore entity) shall be treated as a single violation. The credits will be paid to the Department as prescribed by the Department, and are exclusive of any other right to damages.

4.2.5.1 Contractor's Responsibility to Notify Department

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

"Breach" means a confirmed event that compromises the confidentiality, integrity, or availability of information or State of Florida Data, or unauthorized access of State of Florida Data in electronic form containing personal information. Additional requirements related to breaches of HIPAA information are covered in Attachment 8: Privacy, Security, and Confidentiality Business Associate Agreement.

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

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

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

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

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

4.2.5.2 Contractor's Responsibility to Notify Participants

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

4.2.5.3 Credit Monitoring and Notification

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

The Contractor shall provide the Department of Legal Affairs written notice of a Breach that affects five hundred (500) or more Participants as soon as practicable, or within thirty (30) Calendar Days of the Breach. The Contractor shall provide the Department a copy of the written notice to the Department of Legal Affairs. If a Breach impacts

more than one thousand (1,000) Participants at a single time, the Contractor shall notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in the Fair Credit Reporting Act, 15 U.S. Code Section 1681a (p), of the timing, distribution, and content of the notices required pursuant to sections 4.2.5.1 (“Contractor’s Responsibility to Notify Department”) and 4.2.5.2 (“Contractor’s Responsibility to Notify Participants”) of this Contract.

4.2.6 E-Verify

The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security’s (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, Florida Statutes, and maintain a copy of such affidavit for the duration of the Contract. In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) days of Contract execution. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) Calendar Days to the Contract Manager identifying the new hire with its E-Verify case number.

This section serves as notice to the Contractor regarding the requirements of section 448.095, Florida Statutes, specifically sub-paragraph (2)(c)1, and the Department’s obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), Florida Statutes. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The Department reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.095(1), Florida Statutes.

4.2.7 Scrutinized Companies – Termination by the Department

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

4.2.8 Removal or Replacement of Employees and Subcontractors for Cause

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

4.2.9 Employment of State Workers

During the term of the Contract, Contractor shall not knowingly employ, subcontract with, or sub-grant to any person (including any non-governmental entity in which such person has

any employment or other material interest as defined by section 112.312(15), Florida Statutes) who is employed by the State or who has participated in the management or procurement of this Contract, except as provided in section 112.3185, Florida Statutes.

4.3 Healthcare Providers are Separate Independent Contractors

Neither Party, nor any of their officers or employees, provides vision care Services to Participants. The Parties expressly agree that vision care providers rendering vision care Services to Participants are not the employees or agents of the Contractor or the Department. In this regard, it is the express intent of the Parties herein that vision care providers not be considered or deemed their employees or agents, and the Parties hereby expressly disclaims any such relationship, actual or implied, with any health care provider. The Parties do not, by virtue of making coverage, benefit and payment decisions under the Plan, exercise any control or direction over the medical judgment or clinical decisions of any vision care provider.

4.4 Acceptance of Deliverables

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

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

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

4.5 Warranty

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

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

This section shall survive termination of this Contract.

Section 5 AUDIT RIGHTS

The Department has the right to conduct performance and/or compliance audits of any and all areas of the Contractor and/or Subcontractors activities related to this Contract. The Department may at any time enter and inspect the Contractor's physical facilities where operations required under this Contract are performed, within reasonable notice. Except in emergency situations, reasonable notice will be provided for audits conducted at Contractor's premises, which notice will not be less than 10 (ten) Business Days. Audits may include, but not be limited to, audits of procedures, computer systems, claims files, provider contracts, service records, accounting records, internal audits, quality control assessments, and any and all applicable provider contracts, including

contracts with pharmaceutical manufacturers, and service programs related to this Contract. Contractor will cooperate and work with any representatives selected by the Department to conduct said audits and inspections, including but not limited to, other state agencies. The Contractor will make available all data and information requested by the Department in furtherance of any audit. Prior to the commencement of this audit, the Contractor may request to enter into a mutually agreeable confidentiality agreement with any third-party auditor. However, no such agreement shall limit the Department's access to this audit report or any other document, and must be consistent with section 11.4 of this Contract, Article 1, section 24 of the Florida Constitution, and Chapter 119, Florida Statutes.

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

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

This provision does not operate to limit the rights of the Inspector General (as required by section 20.055, Florida Statutes) or other state agencies or officers, such as the state's Chief Financial Officer and the Office of the Auditor General, to perform audits and inspections. Contractor shall be responsible for any taxes or any other liabilities imposed as a result of such audits and inspections. The Department will be responsible for the independent third-party auditor costs associated with any audit performed.

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

Section 6 DIVERSITY

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

Section 7 LIQUIDATED DAMAGES

7.1 Generally

Time is of the essence in performing the Contract; this is true generally and particularly with respect to achieving an Implementation Date of January 1, 2022, and meeting the Performance Guarantees set forth in Attachment 3. Contractor acknowledges that untimely performance or other material noncompliance will damage the Department, but by their nature such damages are impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining the amount of damages will be multiple and complex, and will be dependent on many and variant factors, proof of which would be burdensome and require lengthy and expensive litigation, which the Parties desire to avoid. Accordingly, the Parties agree that it is in the Parties'

best interests to agree upon a reasonable amount of liquidated damages, which are not intended to be a penalty and are solely intended to compensate for unknown and unascertainable damages. The Parties acknowledge that liquidated damages are contemplated by section 110.123(3)(d)3, Florida Statutes.

7.2 Implementation Delays

- (a) Untimely Plan Implementation: If Contractor fails to achieve Plan implement by January 1, 2022, it will pay liquidated damages of **\$25,000** per Calendar Day, not to exceed \$500,000, unless any such delay is due to the Department’s failure to comply with the defined timeline. Contractor will pay this amount of liquidated damages for every full or partial Calendar Day until the Plan is fully implemented. A partial month delay will be treated as a full month and will not be pro-rated.

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

<u>Milestone</u>	<u>Completion Date</u>	<u>Liquidated Damages</u>
<u>Eligibility</u>		
Automation finalized	October 28, 2021	\$10,000/day
Load open enrollment eligibility	December 10, 2021	\$10,000/day
Mail identification cards	December 17, 2021	\$10,000/day
Load production enrollment file	December 31, 2021	\$10,000/day
<u>Finance</u>		
<u>Finalize billing arrangements</u>	October 8, 2021	\$10,000/day

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

7.3 Failure to Meet Performance Guarantees

- a. Contractor agrees to payment of additional liquidated damages in the form of Performance Guarantees if it fails to meet the performance standards set forth within Attachment 3: Performance Guarantees.
- b. 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. In accepting any form of liquidated damages, the Department does not waive its right to pursue other remedies provided for under this Contract for other breaches.
- c. Notwithstanding anything in the Contract to the contrary, the total of any and all liquidated damages paid or to be paid by Contractor pursuant to this Contract for any calendar quarter will not exceed one hundred percent (100%) of the payment due under section 3.8 above.
- d. Upon mutual agreement of the Parties, Performance Guarantees may be suspended from time to time for special circumstances. Suspension of a Performance Guarantee will not excuse Contractor from accumulating data relevant to that Performance Guarantee and reporting such data to the Department as part of the management reports delivered pursuant to this Contract.

- e. Contractor will provide the Department with a Performance Standards Guarantee Report for all Performance Guarantees prescribed by Attachment 3: Performance Guarantees, on a quarterly basis. The Department may, at its option, provide Contractor with a Performance Guarantee report template, which must be used. For each Performance Guarantee that the Contractor fails to meet, based on the Performance Standards Guarantee Report, the Contractor will provide appropriate payment to the Department within forty-five (45) Calendar Days of the end of the reporting quarter. The Department is not required to notice or invoice the Contractor for payment.
- f. The Department may require the Contractor to propose and implement a reasonable Corrective Action Plan to address and correct the root causes of any missed Performance Guarantee.
- g. The inclusion of the Performance Guarantees in this Agreement is intended to address unsatisfactory performance in the context of ongoing operations without resorting to the default provisions set forth in section 9 of the Contract. However, if Contractor's performance falls below the minimum level of performance (as contained in Attachment 3: Performance Guarantees) for the same Performance Guarantee for three (3) measurement periods and such failure is not otherwise excused, then the Department may declare an Event of Default and pursue alternative remedies in lieu of accepting Performance Guarantees.
- h. Contractor will be excused for failing to meet any Performance Guarantee to the extent such failure is caused by the Department not performing any of its obligations under the Contract.
- i. Contractor will advise the Department in writing as soon as possible of any circumstance or occurrence, which could excuse or affect Contractor's ability to achieve any of the Performance Guarantees. In all such cases, Contractor will cause to make all reasonable efforts to achieve the Performance Guarantees.

Section 8 INSURANCE

8.1 Insurance Coverage

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

- a.) Commercial General Liability. The Contractor must continuously maintain commercial general liability insurance (inclusive of any amounts provided by an umbrella or excess policy) in the face amount of **\$5,000,000**.
- b.) Business Interruption Insurance. Contractor must continuously maintain business interruption insurance coverage in the face amount of **\$5,000,000**.
- c.) Workers' Compensation Insurance. The Contractor shall continuously maintain workers' compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all Subcontractors to similarly provide workers' compensation insurance for all of the latter's employees. In the event work is being performed by the Contractor under the Contract and any class of employees performing the work is not protected under Workers'

Compensation statutes, the Contractor must provide, and cause each Subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of employees not otherwise protected.

- d.) Professional Indemnity Insurance. The Contractor must secure and continuously maintain professional indemnity insurance that must cover professional liability and error and omissions in the face amount of **\$5,000,000**. Contractor will indemnify, defend, and hold harmless the Department and its employees and agents, from and against any third-party claims, demands, loss, damage, or expense caused by Contractor in connection with the performance of the Services related to professional liability and error and omissions. Each insurance certificate for such policy must include an agreement that the insurer will provide thirty (30) Calendar Days prior written notice to the Department of cancellation for any coverage.

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

8.2 Performance Bond

In accordance with section 110.123(3)(d)2, Florida Statutes, within thirty (30) days of executing the Contract, Contractor shall deliver to the Department's Contract Manager, without additional cost to the Department, a performance bond or, if approved by the Department, a negotiable irrevocable letter of credit or other form of security (collectively the bond) for the performance of work under the Contract in the amount of **\$2,000,000**. The bond or letter of credit shall be used to guarantee at least satisfactory performance by Contractor throughout the term of the Contract (including renewal years). The bond shall be annually maintained throughout the term of the Contract, issued by a reliable surety company which is licensed to do business in the State of Florida, and otherwise approved by the Department, and must include the following conditions:

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

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

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

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

Section 9 EVENTS OF DEFAULT AND REMEDIES

9.1 Contractor Events of Default

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

- (a) Contractor fails to pay any sum of money due hereunder;
- (b) Contractor fails to provide the Services required under this Contract;
- (c) Contractor employs an unauthorized alien in the performance of any work required under this Contract;
- (d) Contractor fails to correct work that the Department has rejected as unacceptable or unsuitable;
- (e) Contractor discontinues the performance of the work required under this Contract;
- (f) Contractor fails to resume work that has been discontinued within the time prescribed by the Department in its notice;
- (g) Contractor abandons the project;
- (h) Contractor becomes insolvent or is declared bankrupt;
- (i) Contractor files for reorganization under the bankruptcy code;
- (j) Contractor commits any other action towards the initiation of bankruptcy or insolvency proceedings, either voluntarily or involuntarily;
- (k) Contractor fails to promptly pay any and all taxes or assessments imposed by and legally due the Department, State or federal government;
- (l) Contractor makes an assignment for the benefit of creditors without the approval of the Department;
- (m) Contractor makes or has made a material misrepresentation or omission in any materials provided to the Department;
- (n) Contractor commits any material breach of this Contract;
- (o) Contractor transfers ownership in violation of the Contract;
- (p) Contractor fails to furnish and maintain the performance bond;
- (q) Contractor fails to procure and maintain the required insurance policies and coverages required by this Contract;
- (r) The Department determines that the surety company issuing a bond securing Contractor's performance of its obligations hereunder becomes insolvent or unsatisfactory;
- (s) Contractor utilizes a Subcontractor in the performance of the work required by this Contract, which has been placed on the State's Convicted Vendor List or Discriminatory Vendor List;
- (t) Contractor is suspended or is removed as an authorized Contractor by any State or federal agency; or Contractor is convicted of a felony; is placed on the State's Convicted Vendor List or Discriminatory Vendor List; or has its license is suspended or revoked;
- (u) Contractor refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by Contractor in conjunction with this Contract and not otherwise deemed confidential, proprietary or a trade secret;
- (v) Contractor refuses to allow any access required to comply with the audit provisions of by the Contract;
- (w) Contractor's license to provide vision insurance Services in the State is suspended or revoked;
- (x) Violation of section 4.2.5 (Work Locations, No Offshoring of Data), or Contractor's permitting State of Florida Data to be transmitted, viewed, or accessed outside of the United States;
- (y) Contractor's change of Subcontractors in violation of section 4.2.3, Subcontractors, of the Contract;

- (z) The Contractor, upon discovery or notice thereof, fails to notify the Department within seven (7) Calendar Days of problems or issues impacting provision of Services or compliance with the terms of the Contract not already subject to a shorter notification timeframe set forth herein;
- (aa) For any other cause whatsoever that Contractor fails to perform in accordance with the Contract, including, but not limited to, failure to meet performance standards and/or pay associated guarantees;
- (bb) Failure to meet the same Performance Guarantee for at least three (3) performance periods.

9.2 Department Remedies in the Event of Default

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

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

In the event of the Contractor's default, all State agencies will be advised not to do business with Contractor without written approval from the Division of State Purchasing, until such time as Contractor reimburses the Department for all re-procurement and transition costs in accordance with paragraph (3)(c) of Rule 60A-1.006, Florida Administrative Code.

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

9.3 Department Events of Default

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

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

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

9.4 Contractor Remedies in the Event of Default

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

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

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

9.5 Rights Cumulative, No Waiver

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

Section 10 TRANSITION SERVICES

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

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

- i. Continued provision of specified, identifiable Services according to the same terms and conditions provided in the Contract;
- ii. Contractor's cooperation with the Department and/or another vendor(s) designated by the Department in connection with the transfer of Services to such other vendor(s);
- iii. Notification of current procedures;
- iv. Listing of equipment and software licenses then used to provide the Services;
- v. Explanations of operations to new Contractor;
- vi. Submission of a schedule for transition activities;
- vii. Return of Department-owned materials being utilized by Contractor; and
- viii. In post-migration status, answering reasonable questions on an as-needed basis.

The transition services rendered during the term of the Contract shall be provided at no additional cost. Transition services rendered after the term of the Contract shall be provided at no cost. The Contractor acknowledges that additional Services may be required to be performed after the twelve (12) month transition period noted above as specified in Attachment 2: Administrative Requirements and that such Services must continue in accordance with the terms and conditions of the Contract and must be provided at no cost.

Contractor 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. Contractor's failure to cooperate with a succeeding vendor in ensuring continuity of Services is default and breach of Contract, which shall entitle the Department to damages. Contractor shall provide experienced personnel during the transition period to ensure that the Services required by the Contract are maintained at the same required level of proficiency subject to the required Performance Guarantees and to furnish phase-out training to either the Department or another vendor.

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

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

This section shall survive termination of this Contract.

Section 11 GENERAL PROVISIONS

11.1 Advertising

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

11.2 Assignment, Acquisition by Third Party

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

11.3 Change of Statute or Regulation or Governmental Restrictions

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

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

Contractor will not be entitled to an equitable adjustment or any additional compensation for any changes made to the Plan Benefits Schedule, 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 Plan Benefits Schedule, or the State Group Insurance Program.

11.4 Compliance with Laws, Including HIPAA

- (a) Generally: Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, section 110.123 of the Florida Statutes and Chapter 60P of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, Contractor shall comply with the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination. The Contractor shall notify the Department immediately if the Contractor loses any licenses.
- (b) Anti-Kickback Statute: Each Party certifies that it will not violate the following laws with respect to the performance of its obligations under this Contract: the federal 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.
- (c) Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA): Contractor shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its rules and regulations, including but not limited to the

provisions governing the privacy and security of records as well as administrative simplification. Contractor shall commit to implementation and compliance by the statutory deadlines set forth in the statute and associated regulations. Contractor shall assist the State in implementing its compliance with this legislation as it relates to employee health benefits including but not limited to, executing Attachment 8: Privacy, Security, and Confidentiality Business Associate Agreement.

- (d) Public Entity Crimes: A person or affiliate who is placed on the Convicted Vendor List following a conviction for a public entity crime, as defined in section 287.133(1)(g), Florida Statutes, may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, Subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.
- (e) Internal Revenue Service Reporting: Contractor will make all necessary reports to the Internal Revenue Service regarding benefit payments made to health care Contractors as required by law.
- (f) Equal Employment Opportunity: Contractor will not discriminate in its employment practices based on race, color, religion, age, sex, marital status, political affiliation, national origin or handicap, except as provided by law.

11.5 Contract Administrator

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

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

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

11.6 Contract Managers

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

Savetra Robinson
State Group Insurance
Department of Management Services
4050 Esplanade Way, Suite 217
Tallahassee, FL 32399-0950
Telephone: 850-921-4536
Email: Savetra.Robinson@dms.fl.gov

Contractor's Account Manager is:

[Insert Name]

[Insert Title]

[Address]

[City and Zip]

Telephone: []

Email: []

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

11.7 Dispute Resolution, Governing Law and Venue

Any dispute concerning performance of the Contract shall be decided by the Department's Contract Manager, who will reduce the decision to writing and serve a copy to the Contractor. The decision of the Department's Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, Florida Statutes, and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

This section shall survive termination of this Contract.

11.8 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.

11.9 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.

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

Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Contractor or its employees or agents contributed to the delay, and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods or other similar cause wholly beyond Contractor's control, or for any of the foregoing that affect Subcontractors or suppliers if no alternate source of supply is available to Contractor. In case of any delay the Contractor believes is excusable, Contractor shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either within ten (10) Calendar Days after the cause that creates or will create the delay, if the Contractor could reasonably foresee that a delay could occur as a result, or if delay is not reasonably foreseeable, within five

(5) Calendar Days after the date the Contractor first had reason to believe that a delay could result. No claim for damages, other than for an extension of time, shall be asserted against the Department. Contractor shall not be entitled to payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Contractor shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State, in which case the Department may accept allocated Services from Contractor, provided that Contractor grants preferential treatment to the Department with respect to Services subjected to allocation, and/or purchase from other sources (without recourse to and by Contractor for the related costs and expenses) to replace all or part of the Services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or terminate the Contract in whole or in part.

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

11.11 Further Assurances

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

11.12 Indemnification

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

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

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

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

Contractor shall, at no additional cost to the Department, defend the Department, the State, and/or Participants against any litigation brought by providers for payment of goods or services in excess of the applicable payment negotiated between the Contractor and the providers, and which relates to the performance of this Contract. The Contractor agrees to pay all costs, damages, awards, attorney's fees, and settlement amounts in any such litigation, provided that the Department, the State, and/or the affected Participants provided timely written notification to the Contractor of such litigation and provided that the Contractor had sole control of the defense of such litigation and any related settlement negotiations.

This section shall survive termination of this Contract.

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

11.13 Defense of Third-Party Claims

11.13.1 Notice of Claims

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

11.13.2 Department as Real Party in Interest

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

11.13.3 Contractor as Real Party in Interest

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

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

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

11.13.5 Administrative Proceedings

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

11.13.6 Support and Communication with Contractor's Legal Affairs Department

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

Section 11.13 shall survive termination of this Contract.

11.14 Right of Setoff

The State may, in addition to other remedies available to it at law or equity and upon notice to Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against the State. The State may set off any liability or other obligation of Contractor or its affiliates to the State against any payments due Contractor under any contract with the State.

Premium must be paid per the policy. The setoff of any liabilities of other Contractor entities may not be applied toward premiums for this agreement.

11.15 Independent Contractor Status

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

11.16 Inspection at Contractor Site

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

11.17 Intellectual Property

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

11.18 Lobbying and Integrity

Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty, or offer, give, or agree to give to anyone any Gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of this provision, "Gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department's inspector general, or other authorized State official, Contractor shall provide any type of information the inspector general deems relevant to Contractor's integrity or responsibility. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or relate to the Contract. Contractor shall retain such records for three (3) years after the expiration of the Contract or the period required by the general records schedules maintained by the Florida Department of State. Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the inspector general or other authorized State official for investigations of Contractor's compliance with the terms of this or any other agreement between Contractor and the State, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Contractor shall not be responsible to the Department for any costs of investigations that do not result in Contractor's suspension or debarment.

11.19 Loss of Data

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

11.20 Notices

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

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

Department of Management Services
Division of State Group Insurance
Savetra Robinson
4050 Esplanade Way, Suite 217.1Z
Tallahassee, FL 32399
Telephone: 850-921-4536
Email: Savetra.Robinson@dms.fl.gov

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

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

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

11.21 Cooperation with the Inspector General

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

11.22 Public Records

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

11.22.1 Access to Public Records

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

11.22.2 Redacted Copies of Confidential Information

If the Contractor 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 Contractor 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 Contractor claims is confidential, proprietary, trade secret, or otherwise not subject to disclosure.

11.22.3 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 Contractor-redacted copies to the requestor. If a requestor asserts a right to materials, which Contractor has identified as confidential, pursuant to section 11.22.2 of this Contract, the Department will notify the Contractor such an assertion has been made. It is the Contractor'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 Contractor under legal process, the Contractor shall be responsible for defending its determination that the redacted portions of its records are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

11.22.4 Indemnification

The Contractor shall protect, defend, and indemnify the Department for any and all claims arising from or relating to the Contractor's determination that the redacted portions of its records are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If the Contractor 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.

11.22.5 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 Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes. The Contractor shall:

- a) Keep and maintain public records required by the public agency to perform the service.

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

11.23 Rights to Records

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

11.24 Taxes

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

11.25 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.

11.26 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.

11.27 Warranty of Ability to Perform

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

11.28 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.

11.29 Organizational Conflicts of Interest

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

11.30 Best Pricing Clause

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

The Contractor's premium pricing under this Contract will not exceed the Contractor's pricing for substantially the same Plan(s) provided to any other substantially similar clients. During the term of the Contract, if Contractor provides substantially the same Plan(s) to any other substantially similar clients, whether a public or private entity, with pricing terms more favorable than the premium pricing in this Contract, then Contractor agrees to offer equivalent pricing terms to the Department and the Department and Contractor may execute an amendment of this Contract to adopt the equivalent pricing terms if determined acceptable to the Department. In addition, Services and programs not currently part of the benefits offered to Participants, but offered to substantially similar clients, shall be proposed for the Department's consideration to offer to Participants for the same or lower price. This does not include or apply to other Plan Design offerings. New offerings shall not be added or incorporated under this provision.

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

11.31 Convicted Vendor and Discriminatory Vendor Lists

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

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

11.32 Rehabilitation Act

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

SIGNATURE PAGE IMMEDIATELY FOLLOWS

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

FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

Jonathan Satter, Secretary

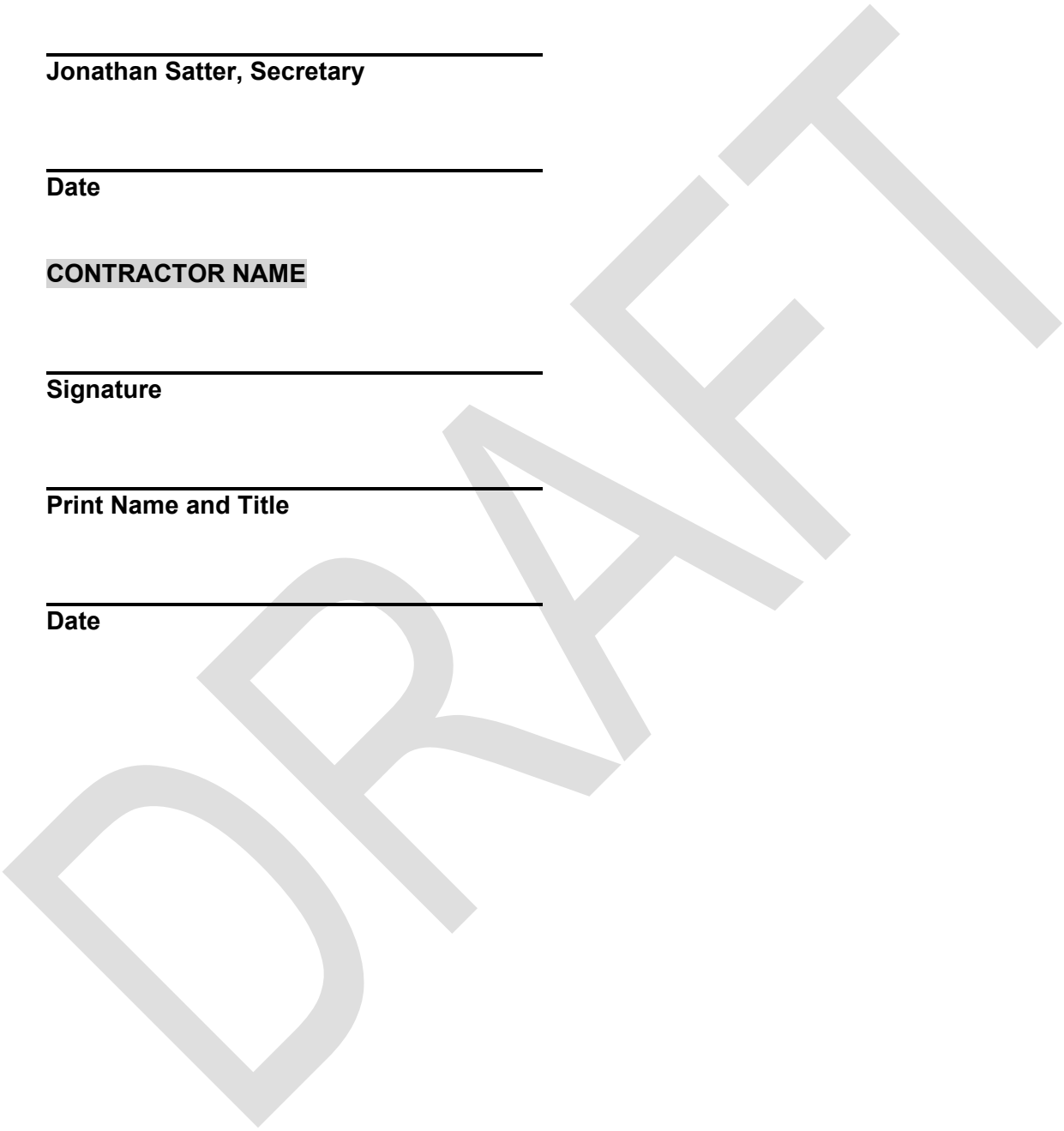
Date

CONTRACTOR NAME

Signature

Print Name and Title

Date



ATTACHMENT 1: AFFIDAVITS

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

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AFFIDAVIT OF BEST PRICING

Regarding the Contract between

[_____] (the "Contractor")

And

State of Florida, Department of Management Services

Contract No.: DMS-20/21-052

Effective {Effective date of Contract}

Pursuant to section 11.30, of the Contract, the undersigned Contractor hereby attests that the Contractor is in compliance with the Best-Pricing clause in the Contract.

Contractor Name: [_____]

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

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ [2021]

by

(Signature of Notary)

Check One:

- Personally Known
- Produced the following ID

AFFIDAVIT OF WARRANTY OF SECURITY

Regarding the Contract between

[_____] (the "Contractor")

And

State of Florida, Department of Management Services

Contract No.: DMS-20/21-052

Effective {Effective date of Contract}

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

Contractor Name: [_____]

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

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ [2021]

by _____

(Signature of Notary)

Check One:

- Personally Known
- Produced the following ID

AFFIDAVIT OF NO OFFSHORING

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

State of Florida, Department of Management Services
Contract No.: DMS-20/21-052
Effective {Effective date of Contract}

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

Contractor Name: []

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

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn to (or affirmed) and subscribed before me on this _____ day of _____ [2021]

by _____

(Signature of Notary)

Check One:

- Personally Known
- Produced the following ID

ATTACHMENT 2: ADMINISTRATIVE REQUIREMENTS

See section 6, Administrative Requirements, of the RFP.

[Enter section 6, Administrative Requirements, of the RFP.]

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ATTACHMENT 3: PERFORMANCE GUARANTEES

PG #	Performance Indicator	Standard/Goal	Measurement Criteria	Frequency of Measurement	Liquidated Damages	Measurement Methodology
I. Implementation						
1	Final Implementation Plan AR-6.1	The Contractor shall provide the Final Implementation Plan, as described in AR-6.1 of RFP No.: DMS-20/21-052, section 6, to the Department no later than the date specified.	Delivery no later than ten (10) Business Days following execution of the Contract	One (1) time measurement	\$1,000 per day for each Calendar Day past the due date that the Final Implementation Plan, inclusive of all details, is not received by the Department.	Department will confirm receipt and provide approval of Contractor's final Implementation Plan within ten (10) Business Days following mutual execution of the Contract. If the Implementation Plan is submitted, but is not subsequently approved by the Department, the Contractor will have an additional three (3) Business Days to submit a revised Implementation Plan. The final Implementation Plan must be approved by the Department.
II. Account Management						
2	Quarterly Meetings AR-6.6	The Account Management Team shall attend and participate in all quarterly performance meetings in-person or via telephone or in-person and in accordance with AR-6.6 of RFP No.:	One-hundred percent (100%) attendance	Quarterly	\$500 per meeting in which each member of the Account Management Team is not in attendance unless an absence is pre-approved by the Department.	Department will confirm Account Management Team attendance.

		DMS-20/21-052, section 6.				
3	Plan Performance Review	Within ten (10) Calendar Days following delivery of a performance review from the Department, the Contractor shall develop and submit a corrective action plan (CAP) approved by the Department.	<p>a) Contractor shall submit such CAP(s), to the Department for approval, and if approved, implement within ten (10) Calendar Days. If the Department does not approve the CAP(s), Contractor shall revise, to incorporate Department feedback, and resubmit within five (5) Business Days.</p> <p>b) Contractor shall complete implementation of the approved corrective action plan within thirty (30) Calendar Days.</p>	No specified frequency	<p>\$2,500 per Calendar Day late beyond the ten (10) Calendar Days.</p> <p>\$5,000 per Calendar Day beyond the thirty (30) Calendar Days.</p>	Measurement from the date of delivery of the Plan Performance Review in Calendar Days.

III. Support Services						
4	Benefit Fairs and Open Enrollment Events AR-6.7	The Contractor shall guarantee trained staffing at each annual open enrollment meeting and/or benefit fair sponsored by the Department or its designee, in accordance with AR-6.7 of RFP No.: DMS-20/21-052, section 6.	One-hundred percent (100%) of benefit fairs and open enrollment meetings shall be staffed by trained personnel	Annually	\$5,000 per benefit fair not staffed	Department will confirm attendance.
5	ID Cards AR-6.9	a) Implementation: ID cards shall be mailed to Participants no later than December 17, 2021.	Ninety-nine percent (99%) no later than December 17, 2021.	One (1) time measurement	\$1,000 per percentage point, or fraction thereof, less than ninety-nine percent (99%).	Contractor shall mail ID cards to Participants by December 17, 2021, provided that a processable enrollment file is received by the Contractor.
		b) Maintenance: ID cards throughout the calendar year shall be mailed within the time specified.	Ninety-nine percent (99%) or more within ten (10) Business Days of receipt of eligibility file.	Quarterly	\$1,000 per percentage point, or fraction thereof, less than ninety-nine percent (99%).	Maintenance ID card turnaround means (i) the number of maintenance ID cards that are processed by Contractor for Participants within ten (10) Business Days, divided by (ii) the total number of maintenance ID cards processed by Contractor for Participants.
		c) Open Enrollment (excluding Fall 2021): ID cards shall be mailed within the time specified.	Ninety-nine percent (99%) or more shall be mailed within ten (10) Business	Annually	\$1,000 per percentage point, or fraction thereof, less than ninety-nine percent (99%).	Contractor shall mail ID cards to Participants by December 17, 2021 annually, provided that a processable enrollment file is received by the Contractor (files

			Days of receipt of enrollment file.			typically sent at the end of November or beginning of December).
6	ID Card Accuracy AR-6.9	One hundred percent (100%) of Member ID cards will be accurate upon initial distribution to Participants compared to the enrollment file.	Measured as a percentage of the total number of ID cards as shown by an internal audit conducted by Contractor or Contractor's Subcontractor on a statistically valid sample.	Quarterly	\$1,000 per percentage point, or fraction thereof, less than one hundred percent (100%).	Measured by an internal audit of a statistically valid sample, the number of ID cards without errors distributed, divided by the total number of ID cards distributed.
IV. Customer Service						
7	Average Speed to Answer AR-6.16	The Customer Service Unit phone line shall answer calls within an average of thirty (30) seconds. Measurement shall be from the initial ring.	Ninety-nine percent (99%) of calls shall be answered within an average of thirty (30) seconds or less	Quarterly	\$1,000 per percentage point, or fraction thereof, less than ninety-nine percent (99%).	"Average Speed to Answer" means (i) the total number of seconds from the time a caller is queued and the call is answered for all calls queued to a Member Service Representative or Integrate Voice Response Unit (IVRU), divided by (ii) the total calls handled by a Member Service Representative or IVRU of the member service telephone line.
8	Call Abandonment Rate AR-6.16	The call abandonment rate of the dedicated toll-free customer service phone line	Less than or equal to three percent (3%).	Quarterly	\$5,000 per percentage point, or fraction thereof, greater than three percent (3%).	The call abandonment rate percentage represents the number of calls in queue in which the caller has hung up the phone before the Member Service Representative or IVRU

		shall not exceed the specified rate.				has answered the call divided by the total calls offered.
9	Subscriber Satisfaction Survey AR-6.31	a.) Initial Contract year: The level of overall Subscriber satisfaction, with Services provided by the Contractor, as measured one (1) time by a State-approved satisfaction survey instrument, will be greater than or equal to ninety percent (90%)	The Contractor will conduct a State-approved Subscriber Satisfaction Survey containing a State designed overall satisfaction question. Approval of the survey includes approval of survey methodology and the methodology in obtaining the result as a percentage.	One (1) time measurement	\$2,500 per percentage point, or fraction thereof, below ninety percent (90%).	Measurement of the difference between overall satisfaction (measured by survey as a percent of Subscribers satisfied) and ninety percent (90%).
		b.) Initial Contract Term and Renewal Contract Term. The level of overall Subscriber satisfaction, with Services provided by the Contractor, as measured annually by a State-approved Subscriber satisfaction survey, will be greater than or equal to ninety-two percent (92%)		Annually	\$2,500 when the overall satisfaction score is between ninety percent (90%) and ninety-one and nine tenths percent (91.9%). An additional \$5,000 per percentage point below ninety percent (90%).	Measurement of the difference between overall satisfaction (measured by survey as a percent of Subscribers satisfied) and ninety-two percent (92%).
10	Accuracy and Timeliness / Initial	a.) Ninety-five percent (95%) of	Internal audit performed on	Quarterly	\$2,000 for each full percentage point	Number of calls, received from Plan Participants, who received

	Call Resolution / Written Inquiry Response Time AR-6.16	callers who receive accurate information. Phone calls requiring additional research are excluded from the calculation of this metric.	accuracy of information, initial call resolution, and written inquiry response from Plan Participants. The internal audit shall be conducted by Contractor or Contractor's Subcontractor on a statistically valid sample. The Contractor shall submit reports to the Department quarterly.		below ninety-five percent (95%)	accurate information divided by the total number of calls received from Plan Participants (excluding phone calls requiring additional research).
		b.) Ninety percent (90%) of caller inquiries resolved during the initial call (excluding appeals, billing, errors and escalations).		Quarterly	\$2,000 for each full percentage point below ninety percent (90%)	Number of caller inquiries, received from Plan Participants, resolved during initial call divided by the total number of calls received from Plan Participants (excluding appeals, billing, errors and escalations).
		c.) Ninety-nine percent (99%) of written inquiries related to the State's Plan will be acknowledged and resolved in twenty-one (21) Calendar Days. Written inquires includes communication via mail, email and fax from Participants.		Quarterly	\$2,000 per percentage point, or fraction thereof, below ninety-nine percent (99%).	Number of written inquiries, received from Plan Participants, resolved within twenty-one (21) Calendar Days divided by the total number of written inquires received from Plan Participants.
11	Plan Specific Participant Directory AR-6.17	Provider networks will be updated on the Contractor's website within twenty-four (24)	Each change to the provider network shall be reflected on the participant directory within	Quarterly	\$500 for each noncompliance.	Measured as the total number of provider network changes not reflected on the website within twenty-four (24) hours of the network change.

		hours of any change to the network.	twenty-four (24) hours of the occurrence of the change.			
V. Network						
12	Access Rate to Optometrists AR-6.19	The Contractor shall establish and maintain a network of participating providers to provide Services under the Plan.	For all areas, eighty percent (80%) of Subscribers shall have at least one (1) provider within fifteen (15) miles of their home zip code.	Quarterly	\$10,000 per percentage point, or fraction thereof, below eighty percent (80%).	Measured as the difference between the actual access rate and eighty percent (80%).
13	Access Rate to Ophthalmologists AR-6.19	The Contractor shall establish and maintain a network of participating providers to provide Services under the Plan.	For all areas, eighty percent (80%) of Subscribers shall have at least one (1) provider within twenty-five (25) miles of their home zip code.	Quarterly	\$10,000 per percentage point, or fraction thereof, below eighty percent (80%).	Measured as the difference between the actual access rate and eighty percent (80%).
14	Enrollment Updates AR-6.24	a.) Routine Updates: Enrollment files as described in AR-6.24, shall be accurately and timely loaded within the time frame specified.	One-hundred percent (100%) within two (2) Business Days of receipt.	Quarterly	\$2,000 for each Business Day past the deadline, per incident.	Measured from the date/time of receipt of a processable enrollment file until the file is loaded.

		b.) Non-routine Updates: Ad hoc or non-routine manual enrollment updates at the request of the Department or its designee shall be completed in the time frame specified.	One-hundred percent (100%) within the same Business Day if requested within normal business hours; otherwise, during the next Business Day.	Quarterly	\$2,000 for each Business Day past the deadline, per incident.	Measured from the date/time of receipt of a processable enrollment file until the non-routine update is loaded.
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VII. Reporting and Deliverables

15	Timeliness of the Delivery of Reports and Deliverables AR-6.29, AR-6.30, and AR-6.31	Reports and Deliverables shall be delivered to the Department and/or the Department's designee within the time period specified.	a.) Due monthly: Within ten (10) Calendar Days of the end of the reporting month	Monthly	\$250 per day for each Calendar Day past the due date that a report or Deliverable is not received.	Measured as the difference between the date a report is delivered to the Department and the due date.
			b.) Due quarterly: Within forty-five (45) Calendar Days of end of the end of the reporting quarter	Quarterly	\$250 per day for each Calendar Day past the due date that a report or Deliverable is not received.	
			c.) Due annually: December 31 st of each year or as otherwise specified in Attachment 6: Reporting and Deliverables.	Annually	\$250 per day for each Calendar Day past the due date that a report or Deliverable is not received.	

VIII. Claims Processing and Adjudication

16	Claims Timeliness AR-6.33 and AR-6.34	Measured from the date the claim is received in the office (day 1) to the date the processed claim reaches final action determination (includes weekends and holidays).	Average turn-around time for claims processing will not exceed twenty (20) Business Days for ninety-seven percent (97%) of all claims submitted by Participants.	Quarterly	\$2,000 per percentage point, or fraction thereof, below ninety-seven percent (97%).	(Total number of original claims processed within twenty (20) Business Days / total number of original claims processed during the quarter) For electronically submitted claims, Day 1 is the date the claim was received, irrespective of the time of day and including weekends and holidays. For paper claims, Day 1 is the date that the claim was stamped upon receipt. Pended claims will be measured as the total amount of time prior to being pended and the time from removal of pending status to completed processing. Turn-around time for pended claims will be applied to the quarter the claim was either paid or denied.
17	Claims processing accuracy	Measured as the percent of claims processed without non-financial error.	Average processing accuracy of ninety-seven percent (97%) or greater.	Quarterly	\$2,000 per percentage point, or fraction thereof, below ninety-seven percent (97%).	(Number of claims in strata sample without an administrative error / number of claims in sample) x (number of claims in strata population / number of claims in total population).
18	Claims payment accuracy	Measured as the percent of claims processed without financial payment error.	Average payment accuracy of ninety-seven percent (97%) or more	Quarterly	\$2,000 per percentage point, or fraction thereof, below ninety-seven percent (97%).	(Number of claims in sample paid accurately / number of claims in sample) x (number of claims in strata population / number of claims in total population).

19	Financial accuracy	Measured as the absolute value of financial errors divided by the total paid value of audited dollars paid based on the quarterly internal audit of a statistically valid sample.	Average financial accuracy of ninety-nine percent (99%) or more	Quarterly	\$2,500 per percentage point, or fraction thereof, below ninety-nine percent (99%).	(Amount of claims dollars in sample paid correctly / amount of claims dollars paid in sample) x (strata population dollars / total population dollars).
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ATTACHMENT 4: PLAN BENEFITS SCHEDULE

See section 10, Plan Design Proposal, of the RFP.

[Enter awarded Respondent's Proposal to section 10, Plan Design Proposal, of the RFP.]

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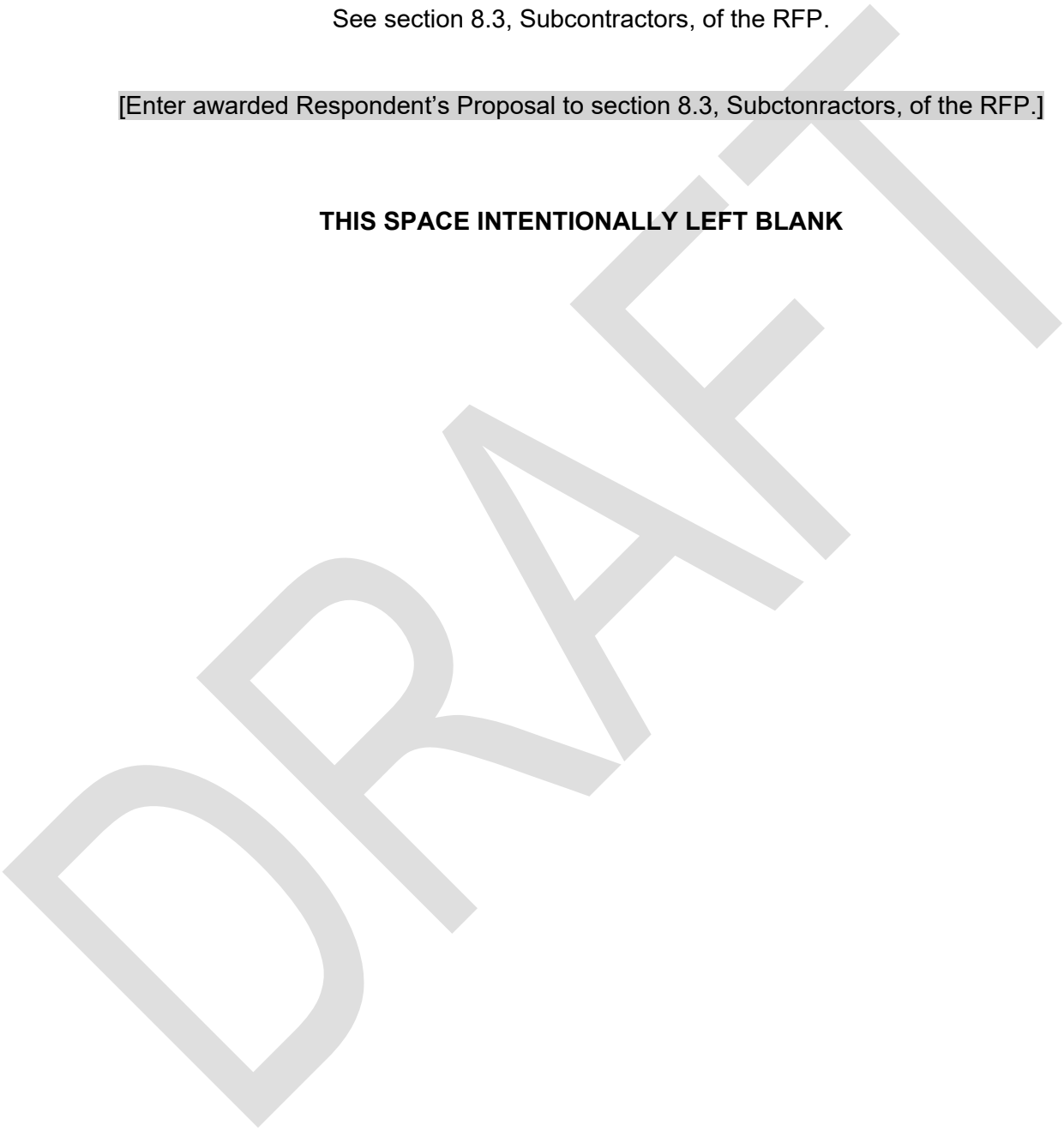
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ATTACHMENT 5: APPROVED SUBCONTRACTORS

See section 8.3, Subcontractors, of the RFP.

[Enter awarded Respondent's Proposal to section 8.3, Subcontractors, of the RFP.]

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ATTACHMENT 6: REPORTING AND DELIVERABLES

FREQUENCY	REPORT NUMBER	REPORT NAME	DUE DATE	Description
Monthly				
	1	Eligibility Discrepancy Reports	10 th of following month	Contractor shall deliver eligibility discrepancy reports based on the monthly enrollment file, indicating (where applicable) (i) duplicate records, (ii) reject records and (iii) address errors.
Quarterly				
	2	Performance Guarantee Summary Report	Within forty-five (45) days of quarter end	Contractor shall deliver the Performance Guarantee Report as developed and provided by the department (or as developed by the Contractor if one cannot be provided by the Department) at least three business days prior to each quarterly meeting.
	3	Network Access	Within forty-five (45) days of quarter end	Contractor shall deliver a Network Accessibility Summary that includes the number and percent of Subscribers meeting the network access criteria specified in PG-12 and PG-13 of Attachment 3: Performance Guarantees.
	4	Network Access by Location	Within forty-five (45) days of quarter end	Contractor shall deliver a Network Access report by location (using the top and bottom fifteen (15) cities by volume of enrollment) showing the number of optometrist and ophthalmologist provider locations, number of Participants with and without access and the average distance to a network provider.
	5	Network Provider adds/deletes	Within forty-five (45) days of quarter end	Contractor shall deliver a Network Provider Summary that includes the number of provider adds/deletes including geographic information and net impact to the network.

	6	Claims Experience Report	Within forty-five (45) days of quarter end	Contractor shall provide a summary by month of enrollment, premium collected, claims paid in the month, claims incurred in the month and incurred loss ratio. The report shall provide subtotals for the reporting period(s) and the Plan Year.
	7	Utilization Report	Within forty-five (45) days of quarter end	Contractor shall provide a paid claims report by service and provider type.
Annually				
	8	Renewal Report	December 31 st	<p>Contractor shall submit to the Department a rate renewal report, subject to the Department's approval, to establish premiums for the renewal term. The report shall include at least the following information:</p> <ul style="list-style-type: none"> a.) Projection of incurred claim costs for renewal year, a description of the methodology used to project incurred claims costs and justification of the use of any data not specific to the State of Florida; b.) Detailed description of the methodology used to estimate claims trend; c.) Disclosure of the targeted loss ratio used in the renewal calculation; d.) Disclosure of supporting data used in calculations, including enrollment, large claim analysis, trend analysis, demographic analysis, etc. <p>Upon the Department's approval of the renewal report, an appropriate premium rate adjustment may be made via Contract amendment. Without the Department's approval, the premium rates shall not exceed those specified in the Vendor's financial proposal.</p>

	9	Subscriber Satisfaction Survey	December 31 st	Contractor shall survey a sample of Participants using Plan services annually to verify satisfaction levels relating to the Vendor's customer service unit and other related services and to gauge satisfaction with the Plan. The Vendor will provide a copy of the survey instrument and results to the Department. The survey instrument and results reporting format shall be prescribed or otherwise approved in advance by the Department.
	10	Performance Bond and Insurance	December 31 st	Contractor shall provide the Department with verification that a sufficient bond is valid and will remain in force for the calendar year as prescribed in section 8.2, of the Contract.
	11	Best Pricing Report	December 31 st	Contractor shall provide the Department with an affidavit from an authorized representative attesting that the Contractor is not providing substantially the same Services at a lower cost to other substantially similar clients as prescribed in section 11.30, of the Contract.

ATTACHMENT 7: PRICING

See Attachment B: Financial Proposal, of the RFP.

[Enter awarded Respondent's Proposal to Attachment B: Financial Proposal, of the RFP.]

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ATTACHMENT 8: PRIVACY, SECURITY, AND CONFIDENTIALITY

BUSINESS ASSOCIATE AGREEMENT

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

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

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

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

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

1. Definitions

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

- (a) “Agency” means the Florida Department of Management Services (“DMS”), an executive agency of the State of Florida, and the Division of State Group Insurance (“DSGI”) with its principle place of business at 4050 Esplanade Way, Suite 215, Tallahassee, FL 32399-0950.
- (b) “Agreement” means this Privacy, Security, and Confidentiality Business Associate Agreement.
- (c) “Breach” when referring to a breach of Protected Health Information or PHI means the acquisition, access, use, or disclosure of PHI that is not permitted by 45 C.F.R. § 164, subpart E, which compromises the security or privacy of PHI. See definition of “Protected Health Information” or “PHI,” herein.
- (d) “Business Associate” refers to {Insert Contractor Name}, who hereby agrees to provide services to the Division of State Group Insurance as a business associate, as that term is defined in 45 CFR §160.103.
- (e) “Covered Entity” means the State of Florida’s Division of State Group Insurance (“DSGI”).
- (f) “Contract” means the contract awarded to the Business Associate pursuant to DMS-20/21-052.

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

2. Obligations and activities of Business Associate

Business Associate Agrees to:

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

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

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

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

Associate's use of PHI as described in this paragraph is subject to and limited as described in 45 C.F.R. § 164.504(e)(2) and (4).

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

4. Obligations of Covered Entity

Covered Entity Agrees to:

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

5. PHI Security Requirements

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

safeguards to prevent security violations and the unpermitted acquisition, access, use, or disclosure of PHI in accordance with 45 C.F.R. § 164, subpart C.

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

6. Notification and reporting requirements

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

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

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

7. Security and confidentiality under Florida law

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

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

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

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

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

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

8. Term and Termination of Agreement

- (a) Term. This Agreement shall commence as of the Effective Date of this Agreement and will naturally terminate on the later of (i) the last of the Parties' related agreements for Business Associate's Services terminate, or (ii) when all of the PHI in Business Associate's possession, custody, or control is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provision in this section.
- (b) Termination for cause. Without limiting any other termination rights, the Parties may have, Covered Entity may terminate this Agreement upon discovery of a material

breach. Covered Entity shall provide Business Associate an opportunity to cure the breach or end the violation. If the Business Associate does not cure the breach or end the violation within a reasonable time as specified by Covered Entity, Covered Entity shall have the right to immediately terminate the Agreement. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

- (c) Return or destruction of PHI upon termination. Upon notice of termination of this Agreement, Business Associate shall destroy or return to Covered Entity any and all PHI created or received by Business Associate.

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

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

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

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

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

9. Miscellaneous

- (a) **Material breach.** A violation of any provision of this Agreement shall be deemed a material breach of this Agreement and the Contract.
- (b) **Warranties and representations.** Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, or HITECH Act will be adequate or satisfactory for Business Associate's own purposes.
- (c) **Assignment.** Business Associate shall not assign either its obligations or benefits

under this Agreement without the express written consent of Covered Entity, which shall be at the sole discretion of Covered Entity. Given the nature of this Agreement, neither subcontracting nor assignment by Business Associate is anticipated and the use of those terms herein does not indicate permission to assign or subcontract has been granted.

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

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

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

FLORIDA DEPARTMENT OF
MANAGEMENT SERVICES

{INSERT CONTRACTOR NAME}

TBD, DSGI Director

Signature

Date

Print Name and Title

Date

Approved as to legality and form:

DMS Legal

Date