

Attachment D-1: Draft Contract

Department of  
Management Services

Division of State Group Insurance    Phone 850-921-4600  
4050 Esplanade Way                      Fax: 850-488-0252  
Tallahassee, FL 32399

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# HEALTH INSURANCE MANAGEMENT INFORMATION SERVICES

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**Contract By and Between**

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**and**

**The Florida Department of  
Management Services**

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## CONTRACT

This Contract ("Contract"), effective the last date signed below (the "Effective Date"), is entered into by and between [TBD] ("Service Provider") a \_\_\_\_\_ corporation authorized to do business in the State of Florida, with its principal corporate offices at [TBD], and the Florida Department of Management Services (the "Department"), with its principal offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950 (each, a "Party" and collectively, the "Parties").

## RECITALS

WHEREAS, the Department issued Invitation to Negotiate (ITN) No. 11/12-037 to solicit firms interested in providing certain Health Insurance Management Information Services ("Services"); and

WHEREAS, Service Provider responded to the solicitation, and following negotiations the Department has determined to accept Service Provider's Best and Final Offer and to enter into this Contract in accordance with the terms and conditions of the solicitation and the subsequent negotiation.

WHEREAS, Service Provider will perform the Services described in this Contract and remains fully responsible for contract performance.

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

Section

1

# Definitions

## 1.1 Definitions

**Capitalized terms used in this Contract (including the Attachments and any responses to the attachments) without definition shall have the meanings ascribed below:**

"Account Management Team" means those individuals identified in Attachment A-2: Respondent Information of the Service Provider's BAFO.

"BAFO" means Best and Final Offer submitted pursuant to this ITN.

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

"Business Hours" refers to the hours of 8am to 5pm EST on Business Days.

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

"Claim(s)" means services incurred by Participants under their respective medical, drug and supplemental plans offered by the Department.

“Confidential Information” means information in the possession or under the control of the State or Service Provider that is exempt from public disclosure pursuant to Section 1, Section 24 of the Constitution of the State of Florida; the Public Records Law, Chapter 119 of the Florida Statutes and Protected Health Information, as defined in the Business Associate Agreement; or to any other provision that serves to exempt information from public disclosure.

“Contract” means this legally enforceable agreement between the Department and Service Provider, consisting of and listed in the order of precedence in the event of conflicting provisions:

- 1.) This agreement,
- 2.) The [PUR Form 1000](#), General Contract Conditions, is incorporated herein by reference,
- 3.) The BAFO to ITN No. DMS-11/12-037 consisting of the Technical and Financial Proposal submitted by the Service Provider,
- 4.) Combined HIPAA Privacy Business Associate Agreement and Confidentiality Agreement,
- 5.) HIPAA Security Rule Addendum and HITECH Act Compliance Agreement,
- 6.) Invitation to Negotiate No. DMS-11/12-037, including the responses to questions throughout the ITN solicitation process,
- 7.) The first Response submitted by the Service Provider to the ITN.

“Contract Administrator” means those persons designated pursuant to Section 11 of this Contract.

“Contract Manager” means those persons designated pursuant to Section 11 of this 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 Service Provider including Administrative Requirements and Performance Guarantees contained in the Technical Proposal of the BAFO.

“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 administration of the Contract.

“Division” means the Division of State Group Insurance (DSGI), currently housed within the Department. DSGI is responsible for all aspects of the purchase and contract management of health insurance products for state employees, retirees and other eligible participants under the state group health insurance program pursuant to Section 110.123, Florida Statutes.

“Effective Date” means the date this contract is executed.

“Health Insurance Management Information System” or “Health Insurance Management Information Services” or “HIMIS” means a comprehensive and integrated data management and data aggregation program that provides the Department with a flexible, effective and efficient means of storing data, analyzing data, and generating business intelligence for Department and/or its benefit and/or actuarial consultant’s use. The program includes data management services and information system tools and services.

“ITN” means Invitation to Negotiate No. DMS 11-12/037 and all subsequent addenda.

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

“Participants” means all Subscribers and their enrolled Dependents as defined in Chapter 60-P, Florida Administrative Code.

“People First” means the enterprise-wide suite of services used by the State to manage human capital including the administration of human resources, benefits, payroll and staffing.

“PEPM” means per Subscriber per month.

“PEPY” means per Subscriber per year.

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

“Plan” or “Plans” means the plans offered to participants by the Division.

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

“PMPM” means per Participant per month.

“PMPY” means per Participant per year.

“Respondent” means the legal entity that submitted a response to ITN No.: DMS 11/12-037 and was selected as the Service Provider herein and a party to the Contract.

“Response” means the documents submitted as part of the Technical and Financial Proposal of the BAFO including written clarifications and/or modifications submitted by Service Provider in response to the ITN. The Response constitutes a material representation relied upon by the Department in entering into this Contract.

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

“Services” means HIMIS services to be performed by Service Provider as specified in this Contract. The term “Services” includes all Deliverables and any unspecified service that is inherent in proper delivery of a specified service or Deliverable.

“State Group Insurance Program” means the employee benefit program established by s. 110.123, Florida Statutes.

“Subcontractor” refers only to Service Provider’s Subcontractors that deliver services required by this Contract and approved by the Department pursuant to Section 3.3.3, Subcontractors.

“Subscriber” means the enrolled employee, retiree or COBRA participant that is the primary insured.

“State” means the State of Florida.

“User” means any Department employee(s) and/or its actuarial/consultant designee(s) with access to the HIMIS.

“Written Clarifications and Modifications” mean all written correspondence, which is hereby incorporated by reference into the Contract.

## 1.2 Rules of Interpretation

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

- (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 upon mutual agreement by the Parties in the method prescribed herein;
- (b) all references to a "Section" or "Attachment" are to a Section or Attachment of this Contract;
- (c) 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;
- (d) defined terms in the singular shall include the plural and vice versa, and the masculine, feminine, or neuter gender shall include all genders;
- (d) the words "hereof", "herein" and "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," "include but not limited to," and "including" are deemed to be 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, 2013 unless otherwise stated.

## 1.3 Hierarchy of Documents

Contract Interpretation: In the event of conflict among contract documents, the order of precedence for the Contract shall be as listed in the definition of the term "Contract."

Independent Contract: The Contract is an independent contract and has no effect upon any other contracts between the Parties.



Section  
**2**  
**Term, Scope of  
Services and  
Compensation**

### 2.1. Term

2.1.1 Initial Term. The Initial Term of the Contract shall commence on the Effective Date and end five (5) years from the date signed, unless extended, terminated, or renewed as provided herein. While pre-implementation services will be required, payment shall be made only in accordance with the fees listed in Contract No.: DMS 11/12-037 Health Insurance Management Information System (HIMIS)

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## Section 11.10, Invoicing and Payment, of the Contract.

2.1.2 Department's Right to Renew. Upon mutual agreement and upon notice to Service Provider at least six (6) months prior to expiration, the Department reserves the right to renew the Contract for up to five (5) additional years at the prices specified in this Contract. If Service Provider agrees to pricing concessions, the renewal shall specify the adjusted price. The Department will not be charged any costs for the renewal. Pursuant to Section 287.057(13), Florida Statutes, the renewal must be in writing and signed by both Parties, and is contingent upon satisfactory performance and subject to availability of funds.

2.1.3 Department's Right to Terminate for Convenience. Notwithstanding the above, the Department, by sixty (60) days advance written notice to Service Provider, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the Department's interest to do so. Service Provider shall not furnish any Services after the date of termination, except as necessary to complete the continued portion of the Contract, if any. Service Provider shall not be entitled to recover any cancellation charges or lost profits. If this Contract is terminated for convenience prior to the Effective Date, the Department shall reimburse Service Provider for costs actually incurred for authorized Services satisfactorily performed prior to the notice of termination.

2.1.4 Department's Rights after Termination. In the event this Contract is terminated early by either Party for any reason, the Department reserves the right to negotiate with the next highest ranking respondent identified in the ITN, and continue sequentially through eligible respondents until a provider is found willing to perform at acceptable pricing, and acceptable execution of the evaluation criteria contained in the ITN. However, the Department in its sole discretion may decide to reprocure the Contract.

2.1.5 Department's Right to Extend Contract. The Department reserves the right to extend the Contract up to an additional six (6) months, pursuant to Section 287.057(12), Florida Statutes.

## 2.2. Scope of Work

Service Provider will provide any and all labor, materials and supplies necessary to provide the Services and Deliverables as described herein. The Department may unilaterally require, by written order, changes altering, increasing or decreasing the Services, provided that such changes are within the general scope of the Contract. The Department may make an equitable adjustment in the Contract price or schedule of Services if the change affects the cost or time of performance. Such equitable adjustments require the written consent of Service Provider which shall not be unreasonably withheld. If the Parties fail to agree to an equitable adjustment, the dispute shall be resolved pursuant to Section 9, Dispute Resolution. The Parties agree to periodically refine and supplement the Services for the purpose of improving how Service Provider meets the needs of the State. Changes in the required services and/or changes in how the required services are met will not serve to reopen the terms of the Contract to renegotiation.

## 2.3. Department's Right to Suspend Work

The Department may in its sole discretion suspend any or all activities under the Contract, at any time, when in the best interests of the Department to do so. The Department shall provide Service Provider 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 such circumstances. After receiving a suspension notice, Service Provider shall comply with the notice. During the suspension of work, an appropriate equitable adjustment in the Contract price shall be made, as described in Section 2.2.

## 2.4. Department's Obligation to Supply Data to Service Provider

The Department and/or its designee(s) shall supply all enrollment and health claims and encounter data and information necessary for Service Provider to provide the Services.



## 2.5. Compensation

All compensation and financial arrangements between the Department and Service Provider for Services under this Contract are set forth in Attachment B-1, Financial Proposal and paid pursuant to Section 11.10 Invoicing and Payment.

Section

3

# Contract Administration

## 3.1. Contract Management

### 3.1.1 Ownership of Deliverables and Retention of Records

All Deliverables, and any papers, documents, materials and other items prepared by Service Provider for purposes of the 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 compensation to Service Provider other than that specifically provided by the Contract.

Service Provider shall retain: (i). sufficient documentation to substantiate all activities necessary for performance under the Contract, and (ii). all other records, electronic files, papers and documents which were made for purposes of the Contract. Such records shall include magnetic tapes, CD-ROM diskettes, or other electronic media of files maintained by Service Provider directly relating to the Services, including file labels, complete file layouts, data element descriptions and detailed processing logic to assist the Department auditor in processing or utilizing files. Service Provider shall retain all such records in accordance with all applicable law. Prior to the destruction of any such records, papers or documentation, Service Provider shall consult with and obtain the prior written approval of the Department.

### 3.1.2 Notice and Approval of Major Organizational Changes.

The Parties recognize and agree that award of the Contract is predicated upon features of Service Provider's business organization as set forth in the organizational matrix. Service Provider shall not allow a transfer or sale of more than 49.9% of its equity shareholder interests or allow a sale of substantially all of its assets, as determined by the Department, without the prior written consent of the Department, which shall not be withheld without reasonable basis. Such a transfer or sale that is not approved by the Department shall constitute a default of this Contract.

Additionally, the Service Provider shall request the prior written consent of any substantial change of the organization matrix resulting from a merger. The Department shall not withhold consent without a reasonable basis.

### **3.1.3 Alliance**

The Parties agree that to accomplish the Contract effectively and most beneficially for both Parties, the Department proposes to form a cohesive alliance with Service Provider. This relationship will strive to draw on the strengths of each Party in an effort to achieve quality services done right the first time, within budget and on schedule. The alliance will help prevent disagreements. Therefore, the Parties agree to the following principles:

- Promoting the timely transition of services as demonstrated by Service Provider's Transition and Implementation Plan by meeting the milestones embedded within the Transition Plan as approved by the Department;
- Ensuring the Services comply with all applicable laws and regulations;
- Making timely review and decisions;
- Effectively communicating and providing information promptly;
- Maintaining quality control and ensuring quality services; and,
- Cooperating and being courteous, respectful, and honest with each other.

### **3.1.4 Meetings**

Meetings, Documentation: Within ten (10) calendar days following execution of the Contract, Service Provider shall propose for Department approval an appropriate set of periodic meetings to be held between the Department and Service Provider to ensure successful and timely execution of the Implementation Plan contained in the BAFO Attachment A-5, Performance Guarantees.

Other meetings will include quarterly management meetings as described in the BAFO, Attachment A-5, Performance Guarantees and any progress, issue or other meeting requested by a party. For the quarterly management meetings, Service Provider shall publish an agenda five (5) business days in advance of the meeting to allow meeting participants a reasonable opportunity to prepare for the meeting. The Department must approve the agenda before Service Provider publishes it. All meetings shall be held at 4050 Esplanade Way, Tallahassee, Florida, unless otherwise determined by the Department to be more feasible at an alternate location, or via phone or another medium as agreed to by the Parties. Service Provider shall not be entitled to additional compensation for meeting preparation or attendance. No direct charges for travel will be paid to Service Provider. Service Provider shall provide meeting minutes for each meeting, unless waived by the Department's Contract Manager.

### **3.1.5 Meeting Minutes**

Within five (5) business days after any meeting, Service Provider shall deliver to the Department detailed and well-documented meeting minutes, unless this requirement is waived by the Department's Contract Manager for a specific meeting. Prior to a final version, draft meeting minutes will be distributed by Service Provider to the Department within three (3) business days, so that any errors can be corrected prior to final submission.

### **3.1.6 Documentation of Key Contract Provisions and Decisions**

Sufficient documentation shall be maintained by the Department regarding development of key contract decisions and provisions including matters regarding the default and termination provision, and other decisions.

### **3.1.7 Review of Standard Operating Procedures**

At each quarterly meeting, in accordance with the Administrative Requirements and Performance Guarantees in the BAFO Attachments A-4 and A-5, Service Provider shall audit, review and assess its performance. At the time of the audit, Service Provider shall advise the Department on how the following areas are monitored to ensure data integrity and quality as well as performance and operational measures, including but not limited to file transfer security protocols, data cleansing prior to loading into data warehouse, and medical and

pharmacy claims transmission standards.

## 3.2. Warranty

Generally: Service Provider shall deliver the Services in a professional, workmanlike manner in accordance with the standards set forth in the BAFO Administrative Requirements and Performance Guarantee as well as standards in the industry.

Remedies: In the event that the Department discovers that a Service is not delivered in accordance with the foregoing and/or this Contract, Service Provider shall correct, cure, replace or otherwise remedy such performance at no cost to the Department within the time period designated in the Department's notice. However, this provision does not affect any other remedy or the Department's right to terminate services for breach or default of the Contract.

Exceptions: Service Provider makes no warranty with respect to any portions of the Services that have been produced by anyone other than Service Provider or its Subcontractors. Furthermore, the warranty does not apply to any modifications to a Deliverable made by anyone other than Service Provider or its Subcontractors or without Service Provider's specific prior written consent, nor does it apply to any use of the Deliverable in a manner or for any purpose other than those contemplated in the Contract.

This Section 3.2 shall survive termination of this Contract.

## 3.3. Employees and Subcontractors

### 3.3.1 Hiring of Other Party's Personnel

Except as expressly authorized in writing in advance, no Party shall employ or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other Parties' personnel during the Contract Term. "Personnel" shall include any individual, agent, or company a Party employs as a partner, employee or independent contractor and with which a Party comes into direct contact in the course of the provision of the Services.

### 3.3.2 No Joint Employees

Neither Party shall be deemed a joint employer of the other's employees, each Party being responsible for any and all by its employees. Neither Party's employees shall be deemed "leased" employees of the other Party for any purpose.

### 3.3.3 Subcontractors

The Respondent shall be fully responsible for all Services performed under the Contract. Any and all Subcontractors shall be approved by the Department prior to the award of the Contract.

During the Contract Term, the Service Provider shall not subcontract any of the Services or enter into any subcontracts or change approved Subcontractors (including their key personnel and/or location of processes for the Services) without the express written consent of the Department before any of the services are performed. Failure to obtain the consent of the Department can constitute a breach of this Contract as referenced in Section 8, Default and Remedies. The Service Provider shall obtain the consent of the Department by submitting a written request to the Contract Manager, referenced in Section 11.5, which shall include:

- a. The name, address and other information identifying the subcontracted provider;
- b. Component / type of services to be performed by the subcontracted provider;
- c. Time of performance of the identified service;

- d. How the Respondent plans to monitor the Subcontractor's performance of the identified services;
- e. Certification that the subcontracted provider has all licenses and/or has satisfied all legal requirements to provide the services to the Department. Also, Respondent shall certify that the subcontracted provider is approved by the Florida Department of State to transact business in the State of Florida. If the subcontracted provider is an out-of-state company, it must have a Florida Certificate of Authority from the Department of State, Division of Corporations, to transact business in the State of Florida. Website: [www.sunbiz.org](http://www.sunbiz.org)
- f. A copy of the written subcontract agreement;

The Department requires a written acknowledgement from the Subcontractor providing services to fulfill Respondent's contractual obligation stating that Subcontractor agrees to comply with all the terms and conditions of this Contract, including General Conditions of PUR Form 1000, Insurance Requirements referenced in Section 7.1 herein, and background checks referenced in Section 3.3.5 herein.

The Department shall have no liability of any kind for Subcontractor demands, loss, damage, negligence or any expense relating, directly or indirectly, to Subcontractors.

### **3.3.4 Employment of State Workers**

During the Term of the Contract, Service Provider shall not knowingly employ, subcontract with, or subgrant to any person (including any non-governmental entity in which such person has any employment or other material interest as defined by Section 112.312(15), Florida Statutes), who is employed by the Department or who has participated in the performance or procurement of the Contract, except as provided in Section 112.3185, Florida Statutes.

Service Provider shall take all actions necessary to ensure that Service Provider's employees, Subcontractors and other agents are not employees of the State. Such actions include, but are not limited to, ensuring that Service Provider's employees, Subcontractors and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

### **3.3.5 Employee and Subcontractor Security Requirements**

Service Provider agrees that the Department shall perform a Level II background check, as defined in Section 435.04, Florida Statutes, on all current and prospective personnel of Service Provider or Subcontractor prior to granting any access, including indirect access, to State of Florida data. Service Provider agrees to pay all costs related to the completion of the background checks and shall work with the Department in creating the business process for any new employee, subcontractor, agent or temporary employee with access to State of Florida data. Service Provider agrees to allow and pay for background checks regardless of whether employee is full or part-time, seasonal, or temporary or whether they actually perform any core services of the Contract.

All Service Provider employees, Subcontractors and agents performing work under the Contract must comply with all security and administrative requirements of the Department within ten (10) days of Contract execution for existing employees and Subcontractors.

The Department reserves the right to reject any proposed personnel based on background check information. The Department may refuse access to, or require replacement of, any Service Provider or Subcontractor personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Department's security or other requirements. Such approval or disapproval shall not relieve Service Provider 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 Service Provider's employees, Subcontractors or agents.

### **3.3.6. E-Verify**

Pursuant to State of Florida Executive Order No.: 11-116, Service Provider is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by Contractor during the Contract Term. Also, Contractor shall include in related subcontracts a requirement that Subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify employment of all new employees hired by the Subcontractor during the Contract Term.

### **3.3.7 Work Locations; No Off-shoring of Data**

Unless otherwise agreed in writing, (i) Service Provider and its Subcontractors and agents will not perform any of the Services outside of the United States, and (ii) Service Provider will not allow any of the State of Florida data or information of the State or the Participants to be transmitted or accessed outside of the United States.

A violation of the items above will result in immediate and irreparable harm to the Department and will 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 as well as the diminished value of Services provided under the Contract, and will not preclude the Department from recovering other damages it may suffer as a result of such violation. For purposes of determining the damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) shall be treated as a single event.

## **3.4. Acceptance of Deliverables**

### **3.4.1 Time for Acceptance**

The Department will accept each Deliverable when it meets the requirements of this Contract. The Department shall have a maximum period of twenty (20) business days after actual receipt of a Deliverable to determine whether the Deliverable is acceptable.

### **3.4.2 Process**

The Department will conduct its acceptance review in a manner so as to identify how the Deliverable materially fails to conform to the Contract (each such respect, "Nonconformity"). After the Department notifies Service Provider in writing of any Nonconformity, specifying for each Nonconformity how the Deliverable materially fails to meet the Contract, Service Provider shall correct such Nonconformity within five (5) business days, or proceed on another mutually acceptable basis as set forth in writing. The Department shall then have an additional five (5) business days commencing upon Service Provider's redelivery of the Deliverable to verify that the previously reported Nonconformity has been corrected and report any Nonconformity caused by the correction of the previous Nonconformity.

Section

4

**Audits**

The Department may conduct or have conducted performance and/or compliance audits of any and all areas of Service Provider and/or Subcontractors as determined by the Department including but not limited to audits of data integrity and data cleansing before loading into the database/HIMIS, file transfer protocols, security measures, medical claims transmission standards, operational and performance measures and

other activities related to the Contract.

The Department may at any time enter and inspect the Service Provider's physical facilities where operations required under this Contract are performed. Except in emergency situations, reasonable notice shall be provided for audits conducted at Service Provider's premises. Audits may include but shall not be limited to audits of procedures, data records, computer systems, claims files, accounting records, internal audits, quality control assessments, and service programs related to this Contract. Service Provider shall work with any representative selected by the Department to conduct said audits and inspections, including but not limited to other state agencies or a consultant working on behalf of the Department. The audits shall not include attorney-client privilege material or work product of the Service Provider's attorneys and shall comply with all laws regarding confidential information.

The right of the Department to perform audits and inspections shall continue for as long as Service Provider is required to maintain records pursuant to applicable laws. 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 will minimize the disruption to Service Provider's business operations.

The State's Chief Financial Officer, or its successor, and the Office of the Auditor General also have authority to perform audits and inspections. Information disclosed during an audit or inspection is subject to the Public Records section of this Contract unless otherwise prohibited by law.

Section

# 5 Diversity

It is the policy of the State that Minority Business Enterprises, Woman-Owned Business Enterprises and Service-Disabled Veteran Business Enterprises (as those terms are defined by Florida Statutes), have the maximum practicable opportunity to participate in performing contracts let by any state agency. Service Provider hereby agrees to 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. Service Provider 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 of Florida to determine the extent of Service Provider's compliance with this Section.

Section

# 6 Liquidated Damages

## 6.1. Generally

Time is of the essence in performing the Contract; this is true generally and particularly with respect to achieving a timely Effective Date, implementation, and meeting certain other performance guarantees. Service Provider 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 and reprocurement costs. The Parties acknowledge that liquidated damages are contemplated by section 110.123(3)(d)(3) of the Florida Statutes.

## 6.2. Implementation Delays

(a) Untimely Plan Implementation: If Service Provider fails to achieve full implementation of Services by January 1, 2013 it shall pay liquidated damages in the amount of \$50,000 per month. Service Provider shall pay this amount of liquidated damages for every full or partial calendar month thereafter until the Service is fully implemented. For example, if the Service is implemented any day between January 2 and February 1, total damages shall be \$50,000; if the Service is implemented any day between February 2 and March 1, total damages shall be \$100,000.

In addition to the above, Service Provider shall pay the indicated amount of liquidated damages for each calendar day beyond January 1, 2013, for any Implementation Plan (attached as BAFO Attachment A-3: Project Implementation Plan) milestone that is not timely implemented, including but not limited to the following:

Milestone	Completion Date	Liquidated Damages
<u>Data Transfer Process</u>		
Establish secure transfer methods	TBD*	\$5,000/day
Load historical eligibility and claims files	TBD*	\$5,000/day
Create and test reporting database	TBD*	\$5,000/day
<u>User Training</u>		
Perform user training	TBD*	\$5,000/day
Assign user access (login credentials)	TBD*	\$10,000/day
<u>Other</u>		
Level II Background Checks	TBD*	\$5,000/day

\*All Completion Dates will be determined during Negotiations.

(b) Failure to Achieve Progress Towards Other Implementation Milestones: If Service Provider fails to achieve the scheduled progress toward any other Implementation Plan milestone, the Department at its sole discretion may assess an underperformance fee of \$5,000 per calendar day until the day Service Provider attains substantial progress in adherence with the Implementation Plan schedule.

## 6.3. Failure to Meet Other Performance Guarantees

- (a) Service Provider agrees to payment of additional liquidated damages if it fails to meet the Performance Guarantees set forth within BAFO Attachment A-5, Performance Guarantees.
- (b) The 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 liquidated damages, the Department does not waive its right to pursue other remedies provided for under this Contract, including a claim for any damages not covered by the liquidated damages.

- (c) Upon mutual agreement of the Parties, Performance Guarantees may be suspended from time to time for special circumstances. Suspension of a Performance Guarantees shall not excuse Service Provider from accumulating data relevant to that Performance Guarantees and reporting such data to the Department as part of the management reports delivered pursuant to this Contract.
- (d) Service Provider shall provide the Department with a report of all Performance Guarantees prescribed by BAFO Attachment A-5 Performance Guarantees, in a format to be determined by the State.
- (e) The Department may require Service Provider to propose and implement a reasonable Corrective Action Plan to address the root causes of any missed Performance Guarantees. The Department shall require a Corrective Action Plan when any Performance Guarantees is missed in two (2) consecutive reporting periods.
- (f) The inclusion of Performance Guarantees and the related liquidated damages in this Agreement is intended to address unsatisfactory performance in the context of ongoing operations without resort to the default provisions set forth in Section 8 of the Contract. However, if Service Provider's performance falls below the minimum level of performance for the same Performance Guarantees for three (3) consecutive quarters and such failure is not otherwise excused, then the Department may declare an Event of Default and pursue alternative remedies.
- (g) Service Provider shall 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.
- (h) Service Provider shall advise the Department in writing as soon as possible of any circumstance or occurrence which would excuse or affect Service Provider's ability to achieve any of the Performance Guarantees. In all such cases, Service Provider will continue to make all reasonable efforts to achieve the Performance Guarantees.
- (i) The Department, in its sole discretion, may deduct the amount due from Service Provider from any money payable to the Respondent or may bill Respondent as a separate item.

## Section

# 7

# Insurance

## 7.1. Insurance Coverage

During the Contract Term, Service Provider and each Subcontractor shall, at their sole expense, provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of Service Provider and its Subcontractors. The limits of coverage under each policy shall not be interpreted as limiting Service Provider's or Subcontractor's liability and obligations under the Contract. Unless otherwise agreed in writing by the Department, all insurance policies shall be through insurers authorized or eligible to write policies in Florida and have an A.M. Best rating of at least an "A-".

- a) Workers' compensation insurance as required by Florida law and, for work performed outside of Florida, the laws of those states.
- b) Employer's Liability insurance: \$1,000,000.00
- c) Commercial General Liability insurance with State of Florida designated as an additional insured and endorsed to provide the State a 30-days prior written notice of cancellation or



material change to the policy. Policy must have an endorsed blanket waiver of subrogation and be primary over any other insurance coverage. Minimum limits:

\$ 2,000,000 General Aggregate  
\$ 2,000,000 Products/Completed Operations Aggregate  
\$ 1,000,000 Per Occurrence List  
\$ 1,000,000 Personal and Advertising Injury Limit  
\$ 100,000 Fire Legal Liability  
\$ 10,000 Medical Payments

- d) Commercial Automobile Liability insurance with a combined single limit of \$500,000.
- e) Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident/\$3,000,000 aggregate. Service Provider must provide the State proof of continuous coverage upon policy renewal or maintain other coverage through the applicable statute of limitations.

Upon request, Service Provider and Subcontractors shall provide the Department with certificates of insurance with the following provisions:

- 1. Notice from Insurer of Attempt to Cancel: The insurer shall not cancel the insured's coverage or allow it to expire without thirty (30) days prior written notice to the Department.
- 2. Notice from Insurer of Failure to Pay Premium: The Department shall be notified of any failure by Service Provider, to pay premiums or of any other change in the status or scope of the required coverage. The insurer shall send written notice to the Department at least thirty (30) days in advance of any changes.

## 7.2. Performance Bond

In accordance with Section 110.123(3)(d)(2), Florida Statutes, at the time of executing the Contract, Service Provider shall furnish without additional cost to the Department a performance bond for work performance under the Contract in an amount equal to the full amount estimated to be paid annually to the Service Provider under the Contract. The bond shall be maintained throughout the Term of the Contract, issued by a reliable surety company which is licensed to do business in the State of Florida, as determined by the Department, and must include the following conditions:

- 1) Beneficiary: The Department shall be named as the beneficiary of the bond. Service Provider's bond shall provide that the insurer or bonding company shall pay losses suffered by the Department directly to the Department.
- 2) Notice of Attempted Change: The Department shall receive thirty (30) 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 Service Provider'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 against any loss sustained through failure of Service Provider or any of its employees, officers, directors, agents and representatives to accurately perform the services required by the Contract. No payments shall be made to Service Provider until the performance bond is in place and approved by the Department in writing.

The performance bond shall be issued for the Term of the Contract.

Section

# 8 Default and Remedies

## 8.1. Service Provider Events of Default

Any one or more of the following events shall constitute an "Event of Default" on the part of Service Provider hereunder:

- a) Service Provider fails to pay any sum of money due hereunder; or
- b) Service Provider fails to provide the Services as required under the Contract; or
- c) Service Provider employs an unauthorized alien in the performance of any work required under the Contract; or
- d) Service Provider fails to correct work that the Department has rejected as unacceptable or unsuitable; or
- e) Service Provider discontinues the performance of the work required under the Contract; or
- f) As specified by the Department, Service Provider fails to resume work that has been discontinued; or
- g) Service Provider abandons the project; or
- h) Service Provider becomes insolvent or is declared bankrupt; or
- i) Service Provider files for reorganization under the bankruptcy code; or
- j) Service Provider commits any act of bankruptcy or insolvency, either voluntarily or involuntarily; or
- k) Service Provider fails to promptly pay any and all taxes or assessments imposed by and legally due the Department or federal government; or
- l) Service Provider makes an assignment for the benefit of creditors without the approval of the Department; or
- m) Service Provider made or has made a material misrepresentation or omission in any materials provided to the Department; or
- n) Service Provider commits any material breach of the Contract; or
- o) Service Provider fails to maintain the performance bond; or
- p) Service Provider fails to maintain the required insurance herein; or
- q) The Department determines that the Surety executing a bond, if applicable, used to secure Service Provider's performance of its obligations hereunder becomes unsatisfactory; or
- r) Service Provider transfers ownership in violation of the Contract; or
- s) Service Provider utilizes a vendor in the performance of the work required by the Contract which has been placed on the Department's Convicted Vendors List; or
- t) Service Provider is suspended or is removed as an authorized vendor by any state or federal agency or Service Provider is convicted of a felony; or

- u) Service Provider 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 Service Provider in conjunction with the Contract and not otherwise deemed confidential, proprietary or a trade secret; or
- v) Service Provider refuses to allow auditor access as required by the Contract;
- w) Service Provider's change of location, Subcontractors, processes or operations in violation of the BAFO Technical Proposal, and/or Section 3.3.3, Subcontractors, of these general terms and conditions; or
- x) Service Provider's failure to provide Services in accordance with Performance Guarantees as stated in Section 6, Liquidated Damages, herein.
- y) For any other cause whatsoever that Service Provider fails to perform in an acceptable manner as determined by the Department, including but not limited to failure to meet Performance Guarantees and/or pay associated liquidated damages.

## 8.2. Department Remedies in the Event of Default

Subject to the notice and cure provisions in Rule 60A-1.006(3), Florida Administrative Code, and subject to the dispute resolution process in this Contract, upon the occurrence of an "Event of Default" on the part of Service Provider, the Department is entitled to one or all of the following remedies:

- (a) Equitable Relief.
- (b) Monetary Damages (including any re-procurement costs).
- (c) Termination of Contract.

## 8.3. Department Events of Default

Any material breach by the Department of the Contract shall (after the required notice, dispute resolution process and cure period) constitute an "Event of Default" on the part of the Department. The cure period for a material breach by the State or the Department shall be forty-five (45) calendar days from receipt of notice of material breach.

## 8.4. Service Provider Remedies in the Event of Default

Upon occurrence of an "Event of Default" on the part of the Department, Service Provider is entitled to any one or all of the following remedies.

- (a) Equitable Relief.
- (b) Monetary Damages. Service Provider is entitled to recover any Compensation due under Section 2.5 for Services actually provided in accordance with the Contract but not paid by the Department. Service Provider 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 Service Provider as the result of termination, Service Provider shall have satisfied all undisputed obligations to third Parties relating to the Contract.
- (c) Termination of Contract. If an Event of Default has occurred pursuant to section 8.3 above, and if Service Provider wishes to elect to terminate this Contract, then Service Provider shall provide the Department with a second written notice ("Termination Notice") evidencing its intent to terminate the Contract pursuant to this subsection and reciting that Service Provider intends to pursue termination of the Contract if the Event of Default is not cured. The Termination Notice will not be effective unless it references this subsection 8.4 and provides that Service

Provider intends to pursue termination of the Contract if the Event of Default is not cured. If the Department fails to cure the default within ninety (90) calendar days from receipt of the Termination Notice, then Service Provider may terminate the Contract and exercise all of its remedies hereunder.

## 8.5. Rights Cumulative, No Waiver

The rights and remedies provided and available to the Department and Service Provider in this Section 8 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 remedy shall not be construed as a waiver of any other remedy.

## 8.6. State May Cure Service Provider Defaults

If Service Provider commits an "Event of Default" in the performance of any term, provision, covenant or condition on its part to be performed hereunder, the Department may, upon notice to Service Provider after the expiration of any curative periods for which provision is made in this Contract, perform the same for the account and at the reasonable expense of Service Provider. If, at any time and by reason of such default, the Department is compelled to pay, or elects to pay, any sum of money or do any act which will require the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights hereunder or otherwise, such sum or sums, with a rate of interest if not established herein then as statutorily set by the State Comptroller (or successor), which together shall be repaid to the Department by Service Provider promptly when billed therefor.

Section

# 9 Dispute Resolution

Any dispute concerning performance of the Contract shall be decided by the Department's Contract Manager, who shall reduce the decision to writing and serve a copy on Service Provider. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, Service Provider files with the Department a petition for administrative hearing. The Department's decision on the petition shall be final, subject to Service Provider's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to Service Provider's ability to pursue any other form of dispute resolution; provided, however, that the Parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the Parties waive any right to jury trial.

Section

# 10

# Transition

Upon the earlier of six (6) months before the expiration of the Contract or upon any notice of termination of the Contract, Service Provider shall provide transition services to the Department without regard to the reason for termination. Transition services shall be provided for up to twelve (12) months unless otherwise waived by the Department. Transition services shall include those Services contained in the BAFO.

Service Provider recognizes that the Services are vital to the Department and must be continued without interruption and that, upon Contract expiration or termination, a successor may continue them. Service Provider's failure to cooperate in providing transition services is an Event of Default which shall entitle the Department to damages. Service Provider shall continue to be subject to the Performance Guarantees and liquidated damages during transition of services and shall provide experienced personnel throughout the transition period to ensure that the Services and the required service levels are maintained.

Section

# 11

# General Provisions

## 11.1. Advertising

Subject to Chapter 119, Florida Statutes, the Service Provider shall not publicly disseminate any information concerning the Contract without prior written approval from the Service Provider, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Service Provider or the State as a reference, or otherwise linking the Service Provider's name and either a description of the Contract or the name of the State or the Service Provider in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

## 11.2. State of Florida Annual Appropriations

The Department's performance and obligation to pay under the Contract are contingent upon an annual appropriation by the Legislature, pursuant to Section 287, Florida Statutes.

## 11.3. Compliance with Laws

(a) Generally: Service Provider shall comply with all existing laws and those that become effective during the Term of the Contract, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, Service Provider shall comply with section 247A(e) of 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.

(b) Anti-Kickback Statute: Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Contract.

(c) Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA): Service Provider shall comply with 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. Service Provider shall assist the State in implementing its compliance with this legislation as it relates to employee health benefits including but not limited to the Combined HIPAA Privacy Business Associate Agreement and Confidentiality Agreement and HIPAA Security Rule Addendum and HI-TECH Act Compliance Agreement, attached to this contract. Regarding services delivered under this contract, Service Provider's subcontracts shall incorporate language that requires those Subcontractors to satisfy HIPAA requirements.

(d) Public Entity Crimes: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime, as defined in section 287.133(1)(g), Florida Statutes, may not submit a bid or proposal on a contract to provide any goods or services to a public entity, may not submit a bid or proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids or proposals on leases of real property to a public entity, may not be awarded or perform work as a Service Provider, supplier, Subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

(e) Equal Employment Opportunity: Service Provider shall 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.

(f) American's with Disabilities Act: Service Provider shall ensure that the HIMIS is accessible and usable by persons with disabilities in accordance with the ADA.

## 11.4. Contract Administrator

The Department shall name a Contract Administrator in Departmental Purchasing during the Term of this Contract whose responsibility shall be to maintain this Contract. As of the Effective Date, the Contract Administrator is [TBD], 4050 Esplanade Way, Suite 380, Tallahassee, FL 32399. The Department shall provide written notice to Service Provider of any changes to the Contract Administrator; provided, such changes shall not be deemed Contract amendments.

## 11.5. Contract Managers

Each Party will designate a Contract Manager in DSGI during the Term of this Contract whose responsibility shall be to 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 [TBD], 4050 Esplanade Way, Suite 215, Tallahassee, FL 32399-0950. Service Provider's Contract Manager is [TBD], [based in TBD, Florida] at [e-mail address TBD]. Each Party shall provide prompt written notice but not later than five (5) business days to the other Party of any changes to the Party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments.

## 11.6. 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 and the same instrument.

## 11.7. Force Majeure, Notice of Delay, and No Damages for Delay

Service Provider shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Service Provider 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 Service Provider's control, or for any of the foregoing that affect Subcontractors or suppliers if no alternate source of supply is available to Service Provider. In case of any delay Service Provider believes is excusable, Service Provider shall promptly notify the Department in writing within ten (10) calendar days or five (5) calendar days if unforeseeable of the delay or potential delay and describe the cause of the delay. The Department shall then provide a reasonable extension in time for Service Provider to perform. **THE FOREGOING SHALL CONSTITUTE SERVICE PROVIDER'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. Service Provider shall not be entitled to an increase in the Contract price or 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. Notwithstanding anything to the contrary herein, if 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 (1) accept allocated performance from Service Provider, provided that Service Provider grants preferential treatment to the Department with respect to Services subjected to allocation, and/or (2) purchase from other sources (without recourse to and by Service Provider 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 (3) terminate the Contract in whole or in part.

## 11.8. Further Assurances

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

## 11.9. Installation

Where installation is required, Service Provider shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Service Provider shall protect the site from damage and shall repair damages or injury caused during installation by Service Provider or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Service Provider shall promptly restore the structure or site to its original condition. Service Provider shall perform installation work so as to cause the least inconvenience and interference with Service Providers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

## 11.10. Invoicing and Payment

Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Service Provider that the State deems necessary to verify any purchase order placed under the Contract, including detail sufficient for proper pre- and post-audits.

Payment is made after a pre-determined appropriate deliverable is submitted or a milestone is met subject to the satisfaction of the Department.

At the State's option, Service Providers may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Service Provider supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Service Provider through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with Sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Service Provider due to preparation errors will result in a delay in payment. Service Providers may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Service Provider is responsible for all payments under the Contract. A Service Provider's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Service Provider of its obligations to the Department or to other Service Providers.

## 11.11. Notices

(a) All notices under this Contract shall be served upon the Department by certified mail, return receipt requested, by reputable courier service, or delivered personally to each of the following:

**Department of Management Services**

*Contract Administrator, Departmental Purchasing*  
4050 Esplanade Way, Suite 280  
Tallahassee, FL 32399-0950

**Department of Management Services**

*Office of the Secretary*  
4050 Esplanade Way, Suite 280  
Tallahassee, FL 32399

**Department of Management Services**

*Office of the General Counsel*  
4050 Esplanade Way, Suite 260  
Tallahassee, FL 32399-0950

(b) All notices under this Contract to be served upon Service Provider shall be served by certified mail, return receipt requested, by reputable courier service, or delivered personally to:

With a copy to:

[TBD]

(c) The Parties agree that any change in the above-referenced address or name of the contact person shall be submitted in a timely manner to the other Party. All notices and other communications under this Contract shall be in writing and shall be deemed duly given either: (i) when delivered in person to the recipient named above, (ii) upon confirmation of courier delivery to the intended recipient; or (iii) 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.



## 11.12. Public Records

Any and all records produced or used regarding this Contract are subject to Chapter 119 of the Florida Statutes. Absent a valid exemption, Service Provider shall allow public access to all documents, papers, letters, or other material subject to Chapter 119 that are made or received by Service Provider in conjunction with this Contract. Violation of this section shall constitute grounds for termination of the Contract.

If Service Provider considers any portion of a public record to be confidential, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, Service Provider shall upon request provide the Department with a separate redacted version of the record 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 be clearly titled "Redacted Copy."

The Redacted Copy must only exclude or obliterate those exact portions which are claimed confidential, proprietary, or trade secret. Service Provider shall be responsible for defending its determination that the redacted portions are confidential, trade secret or otherwise not subject to disclosure. Further, Service Provider shall protect, defend, and indemnify the Department for any and all claims arising from or relating to the determination that the redacted portions are confidential, proprietary, trade secret or otherwise not subject to disclosure. If Service Provider fails to submit a Redacted Copy to the Department, the Department is authorized to produce the entire documents, data or records in answer to a public records request for these records.

## 11.13. Security and Confidentiality

Service Provider shall comply fully with all security procedures of the Department in performance of the Contract. Service Provider shall not divulge to third Parties any Confidential Information obtained by Service Provider or its agents, Subcontractors, officers or employees in the course of performing Services, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the Department. Service Provider shall not be required to keep confidential information or material that is publicly available through no fault of Service Provider, material that Service Provider developed independently without relying on the Department's confidential information or material that is otherwise obtainable under State law as a public record. To ensure confidentiality, Service Provider shall take appropriate steps as to its personnel, agents, and Subcontractors. The warranties of this paragraph shall survive the Contract.

In the event of loss of any State data or record or breach of security by Service Provider or any of its Subcontractors or agents, Service Provider shall immediately notify the Department by phone or e-mail. Service Provider shall be responsible for recreating or retrieving such lost data in the manner and on the schedule set by the Department.

## 11.14. Rights to Intellectual Property.

Unless otherwise agreed in writing, (i) intellectual property rights to property existing prior to this Contract will remain with Service Provider, (ii), intellectual property rights to all property created or otherwise developed by Service Provider specifically for the Department will be owned by the Department and the State of Florida.

The Department owns all the data sent to, contained in, and generated from the health management information system (HIMIS). The Department shall own the software licenses and subsequent new releases and/or versions issued throughout the Term of the Contract as issued by the Service Provider.

## 11.15. Survival Clause

All provisions in the Contract that expressly or customarily survive the termination or expiration of the Contract shall continue in effect after the Contract is terminated or expires.

## 11.16. Taxes

The Department does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The Department will not pay for any personal property taxes levied on Service Provider or for any taxes levied on employees' wages.

## 11.17. Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract may be waived except by the written Contract of the Parties; and a forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply.

## 11.18. Organizational Conflicts of Interest

Service Provider has disclosed the names and specific services in which it has participated in preparing any business cases, drafting of solicitations, or development of any programs for future implementation by the Department. Service Provider therefore warrants that no such organizational conflicts of interest exist.

## 11.19. Scrutinized Companies Lists

In executing the contract, Service Provider certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to section 287.135(5), F.S., Service Provider agrees the Department may immediately terminate the contract for cause if Service Provider is found to have submitted a false certification or if Service Provider is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the contract.

## 11.20. Entire Agreement; Modification of Terms

(a) The Contract contains all the terms and conditions agreed upon by the Parties, which terms and conditions shall govern all transactions under the Contract. Modification of the Contract terms, including increases or changes to contracted rates, fees, rebates, discounts, the total amount of the contract, or other change to terms and conditions shall require a mutual written amendment to the contract, signed by both Parties.

(b) No oral contracts or representations shall be valid or binding upon the Department or Service Provider. Service Provider may not unilaterally modify the terms of the Contract by incorporating terms onto Service Provider's order or fiscal forms or other documents forwarded by Service Provider for payment. The Department's acceptance of service or processing of documentation on forms furnished by Service Provider for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

SO AGREED:

**STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES**

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

\_\_\_\_\_  
Date

Approved as to form and legality  
Department of Management Services  
General Counsel's Office:

\_\_\_\_\_

\_\_\_\_\_  
Date

**SERVICE PROVIDER**

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

\_\_\_\_\_  
Date

TITLE: \_\_\_\_\_

## Attachment D-2: Combined HIPAA-HITECH /BAA Agreement

**COMBINED HIPAA PRIVACY BUSINESS ASSOCIATE AGREEMENT  
AND CONFIDENTIALITY AGREEMENT  
AND HIPAA SECURITY RULE ADDENDUM  
AND HITECH ACT COMPLIANCE AGREEMENT  
AND  
CONFIDENTIALITY AGREEMENTS**

The Parties have entered into this Agreement for the purpose of satisfying the Business Associate contract requirements of the regulations at 45 CFR 164.502(e) and 164.504(e), issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Security Rule, codified at 45 C.F.R Part 164, Subparts A and C. (the “Security Rule”), the Health Information Technology For Economic and Clinical Health Act, enacted in Pub. L. No. 111-05 H.R., 111<sup>th</sup> Cong. (2009), Title XIII (the “HITECH Act”), as well as the confidentiality requirements contained in section 110.123 (9), Florida Statutes, and for the purpose of protecting proprietary and trade secret information that maybe exchanged between the parties and the “Affiliates” of the Covered Entity, identified below.

The Parties:       The Florida Department of Management Services, Division of State Group Insurance (the “Covered Entity”), an executive agency of the State of Florida.

\_\_\_\_\_, a corporation, with its principal place of business at \_\_\_\_\_ (the “Business Associate”).

### 1.0 Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501, and in the HITECH Act, Subtitle D.

“Contract” has the same meaning as the term “Contract” in the Health Management Information Services (HIMIS) contract between the Covered Entity and the Business Associate.

“Individual” has the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

“Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

“Protected Health Information” (PHI) is defined at 45 CFR 160.103 and in the HITECH Act. For purposes of this Agreement, the term refers only to that Protected Health Information received directly or indirectly from, or received or created on behalf of, the Covered Entity.

“Secretary” means the Secretary of the U.S. Department of Health and Human Services or designee.

“Security Incident” means any event resulting in computer systems, networks, or data being viewed, manipulated, damaged, destroyed or made inaccessible by an unauthorized activity. See National Institute of Standards and Technology (NIST) Special Publication 800-61, "Computer Security Incident Handling Guide," for more information.

Other Definitions

“Affiliate” means any entity or company or subsidiary with which the Covered Entity has contracted for the purpose of administering the “state group insurance program” (Program), as defined in section 110.123(2)(k), Florida Statutes, including but not limited to, health maintenance organizations (HMO), third party administrators of the “ self-insured health insurance plan” or “plans” of the State of Florida(the Plans) that are authorized in section 110.123 (2) (i), Florida Statutes, and third party administrators of the prescription drug program that is authorized in section 110.12315, Florida Statutes . The term also includes any subsidiary, agent, representative or subcontractor of an Affiliate with which the Business Associate communicates or receives information on behalf of an Affiliate.

“Confidential Information” has the same meaning as in the HIMIS contract and also includes documents, statistical information and other information ( collectively the Information) that the Affiliates have provided and have determined, identified and clearly marked as commercially valuable, confidential, proprietary, or trade secret (“Proprietary Information”). The term also includes materials which may contain confidential health information as defined under 45 C.F.R. Part 160 (“Confidential Health Information”). The foregoing terms are collectively referred to herein as “Confidential Information.” The term “Confidential Information” shall not include information: (i) generally available to the public prior to or during the time of the Services through authorized disclosure; or (ii) obtained from a third party.

## **2.0 Obligations and Activities of Business Associate Regarding Protected Health Information and Confidential Information**

- (a) Business Associate agrees to not use or further disclose either Protected Health Information or Confidential Information other than as permitted or required by this Agreement, or as required by applicable federal or laws of the State of Florida.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information and Confidential Information other than as provided for by this Agreement. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (c) Business Associate agrees to report to Covered Entity within three days after its discovery, any use or disclosure of the Protected Health Information or Confidential Information not otherwise provided for by this Agreement.
- (d) Business Associate agrees to ensure that its agents, including subcontractors agree to the same restrictions and conditions that apply to Business Associate with respect to Protected Health Information or Confidential Information in conformance with the Privacy Rule.
- (e) Business Associate agrees to provide access, at the request of Covered Entity or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations, to Protected Health Information in a designated record set, to the Covered Entity or directly to an Individual in order to meet the requirements under 45 CFR 164.524.
- (f) Business Associate agrees to make any Amendment(s) to Protected Health Information in a designated record set that the Covered Entity or an Individual directs or agrees to pursuant to 45 CFR 164.526, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (g) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity, to the Secretary in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (h) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an

accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

- (i) Business Associate agrees to provide to Covered Entity or an Individual an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (j) Business Associate certifies 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, at 45 CFR Part 162; and the Annual Guidance as issued by the Secretary pursuant to the HITECH Act, sec. 13401. Business Associate further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions on its behalf, will comply with the EDI Standards and the Annual Guidance.
- (k) Business Associate agrees to determine the Minimum Necessary type and amount of Protected Health Information required to perform its services and will comply with 45 CFR 164.502(b) and 5 14(d).

### **3.0 Permitted or Required Uses and Disclosures by Business Associate**

- (a) Except as expressly permitted in writing by the Covered Entity, Business Associate shall not divulge, disclose, or communicate Protected Health Information or Confidential Information to any third party for any purpose not in conformity with the Privacy Rule or this Contract without prior written approval from the Covered Entity.
- (b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information and Confidential Information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (c) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j) (1).
- (d) Business Associate may use Protected Health Information and Confidential Information as necessary to provide the services required under the HIMIS contract , or other such arrangement between Covered Entity and Business Associate , including the de-identification of PHI that shall be in compliance with the Privacy Rule, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity and the de-identification is done only after the prior written authorization of the . Business Associate may also use or disclose PHI in any other manner consistent with a legally sufficient authorization executed by the Eligible Person or Individual of the subject information.

### **4.0. Obligations of Covered Entity to Inform Business Associate of Covered Entity's Privacy Practices, and any Authorization or Restrictions.**

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, Authorization by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information

### **5.0 Confidentiality Agreement Under State Law**

- (a) Generally. In addition to the HIPAA privacy requirements, 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 claims 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, known as the public records law of the State of Florida. 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 the Covered Entity's computer system, commits an offense in violation of section 815.04, Florida Statutes.

Confidentiality requirements protect more than unlawful disclosure of documents. The confidentiality requirements protect the disclosure of all records and information of the Covered Entity, in whatever form, including the copying or verbally relaying of confidential information.

- (b) Receipt of a Subpoena. If Business Associate is served with subpoena requiring the production of the Covered Entity's records or information concerning Covered Entity, Business Associate shall immediately contact the Department of Management Services, Office of the General Counsel, (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 may also 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 may also require that certain records be brought to be examined as evidence.
- iii. Furnish certain records for examination, by mail or by hand-delivery.

- (c) Employees and Agents. Business Associate acknowledges that the confidentiality requirements herein apply to all its employees, agents and representatives. Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions, against the Covered Entity, including costs and attorneys' fees, resulting from the breach by Business Associate of the confidentiality requirements of this Agreement.

#### **6.0 Permissible Requests by Covered Entity.**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA, the Privacy Rule, the HITECH Act, of the laws of the State of Florida, if done by Covered Entity.

#### **7.0 Term and Termination**

- (a) Term. The Term of this Agreement shall begin on the last date set forth on the signature blocks below and shall terminate on the date the Business Associate no longer provides services to the Covered Entity.
- (b) Termination for Cause. Without limiting any other termination rights the parties may have, upon Covered Entity's knowledge of a material breach by Business Associate of a provision under this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If the Agreement of Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, the 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. Within sixty (60) days after termination of the Agreement for any reason, or within such other time period as mutually agreed upon in writing by the parties, Business Associate shall return to Covered Entity or destroy all Protected Health Information maintained by Business Associate in any form and shall retain no copies thereof. Business Associate also shall recover, and shall return or destroy with such time period, any Protected Health Information in the possession of its subcontractors or

agents. Within fifteen (15) days after termination of the Agreement for any reason, Business Associate shall notify Covered Entity in writing as to whether Business Associate intends to return or destroy such Protected Health Information. If Business Associate elects to destroy such Protected Health Information, it shall certify to Covered Entity in writing when and that such Protected Health Information has been destroyed. If any subcontractors or agents of the Business Associate elect to destroy the Protected Health Information, Business Associate will require such subcontractors or agents to certify to Business Associate and to Covered Entity in writing when such Protected Health Information has been destroyed. If it is not feasible for Business Associate to return or destroy any of said Protected Health Information, Business Associate shall notify Covered Entity in writing that Business Associate has determined that it is not feasible to return or destroy the Protected Health Information and the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations, and restrictions set forth in this Agreement to Business Associate's use or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible. If its not feasible for Business Associate to obtain, from a subcontractor or agent, any Protected Health Information in the possession of the subcontractor or agent, Business Associate shall provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions set forth in this Agreement to the subcontractors' or agents' uses or disclosures of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible.

Prior to destroying any records hereunder, the Business Associate shall obtain written confirmation from the Covered Entity that such actions will not violate the State of Florida's record retention policies.

#### **8.0 HIPAA Security Rule Addendum**

- (a) Security of Electronic Protected Health Information. Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information (as defined in 45 C.F.R. § 160.103) that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity consistent with the Security Rule.
- (b) Reporting Security Incidents. Business Associate will report to the Covered Entity any Security Incident of which Business Associate becomes aware that is (1) a successful unauthorized access, use or disclosure of any Electronic Protected Health Information; or (2) a successful major (a) modification or destruction of any Electronic Protected Health Information or (b) interference with system operations in an information system containing any Electronic Protected Health Information. Upon the Covered Entity's request, Business Associate will report any incident of which Business Associate becomes aware that is a successful minor (a) modification or destruction of any Electronic Protected Health Information or (b) interference with system operations in an information system containing any Electronic Protected Health Information.
- (c) Compliance Date. The parties to this Amendment will comply with Sections (a) through (c) of this Section 8 by the later of the (1) the last date set forth in the signature blocks below or (2) the compliance deadline of the Security Rule as defined in 45 C.F.R. § 160.103.

#### **9.0 HITECH Act Compliance Agreement**

In the event of any inconsistency or conflict between Part II and Part III, the more stringent provision shall apply.

- (a) Reporting. The Business Associate shall make a good faith effort to identify and report any use or disclosure of Protected Health Information not provided for in this Contract.
- (b) To Covered Entity. The Business Associate will report to the Covered Entity, within ten (10) business days of discovery, any use or disclosure of Protected Health Information not provided for in this Contract of which the



Business Associate is aware. The Business Associate will report to the Covered Entity, within twenty-four (24) hours of discovery, any Security Incident of which the Business Associate is aware. A violation of this paragraph shall be a material violation of this Contract. Such notice shall include the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.

- (c) To Individuals. In the case of a breach of Protected Health Information discovered by the Business Associate, the Business Associate shall first notify the Covered Entity of the pertinent details of the breach and upon prior approval of the Covered Entity shall notify each individual whose unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed as a result of such breach. Such notification shall be in writing by first-class mail to the individual (or the next of kin if the individual is deceased) at the last known address of the individual or next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. Where there is insufficient, or out-of-date contract information (including a phone number, email address, or any other form of appropriate communication) that precludes written (or, if specifically requested, electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are 10 or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting on the Web site of the covered entity involved or notice in major print of broadcast media, including major media in the geographic areas where the individuals affected by the breach likely reside. In any case deemed by the Business Associate to require urgency because of possible imminent misuse of unsecured Protected Health Information, the Business Associate may also provide information to individuals by telephone or other means, as appropriate.
- (d) To Media. In the case of a breach of Protected Health Information discovered by the Business Associate where the unsecured Protected Health Information of more than 500 persons is reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the Covered Entity, the Business Associate shall provide notice to prominent media outlets serving the State or relevant portion of the State involved.
- (e) To Secretary of Health and Human Services. The Business Associate shall cooperate with the Covered Entity to provide notice to the Secretary of Health and Human Services of unsecured Protected Health Information that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals, such notice must be provided immediately. If the breach was with respect to less than 500 individuals, the Business Associate may maintain a log of such breach occurring and annually submit such log to the Covered Entity so that it may satisfy its obligation to notify the Secretary of Health and Human Services documenting such breaches occurring in the year involved.
- (f) Content of Notices. All notices required under this Attachment shall include the content set forth Section 13402(f), Title XIII of the American Recovery and Reinvestment Act of 2009.
- (g) Financial Responsibility. The Business Associate shall be responsible for all costs related to the notices required under this Attachment.
- (h) Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information in violation of this Attachment.

## 10.0 PROPRIETARY INFORMATION/TRADE SECRETS

- (a) Proprietary Information exchanged between the Business Associate and the Affiliates in connection with the services rendered under the HIMIS Contract (the Services), shall be used by the Parties only as permitted by this Agreement. In this section, the terms Party and Parties include the Affiliates.
- (b) **Electronic Transmission.** If Confidential Information is exchanged electronically between the Parties, the receiving Party shall use reasonable physical and software-based security measures, commonly used in the electronic data interchange field, to protect Confidential Information sent to, or received. The Parties shall implement and comply with, and shall not attempt to circumvent or bypass another Party's security procedures for the use of the electronic method of Confidential Information transmission. Within three business days of becoming aware of any breach of its security procedures or system, a Party shall notify any other Party; this includes unauthorized use, or

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suspected breach involving the Confidential Information of that other Party. Each Party reserves the right to terminate electronic transmission immediately on the date it reasonably determines that another Party has breached, or experienced a breach of this provision of the Agreement. The Parties also reserve the right to change or upgrade their method of Confidential Information transmission after reasonable notice to the other Parties.

(c) **Permitted Uses.** The Parties: (a) shall not use (deemed to include, but not be limited to, using, exploiting, duplicating, recreating, modifying, decompiling, disassembling, reverse engineering, translating, creating derivative works, adding to a Party's database, or disclosing Confidential Information to another person or permitting any other person to do so) Confidential Information except for purposes of the Services rendered pursuant to this Agreement; (b) shall limit use of Confidential Information only to its authorized employees (deemed to include employees as well as individuals who are agents or independent contractors of the Parties) who have a need to know for purposes of the Services and who have been advised of the existence and terms of this entire Agreement and the obligations of confidentiality herein; (c) shall comply with all applicable laws and regulations governing the use and disclosure of information (d) shall use and require its employees to use, at least the same degree of care to protect the Confidential Information as is used with the Party's own proprietary and confidential information; and (e) may release Confidential Information of a Party in response to a subpoena or other legal process to disclose Confidential Information, after giving the other Party or Parties reasonable prior notice of such disclosure.

(d) **Breach.** If during the course of the Services it is discovered that the confidentiality requirements of this Agreement have been breached by a Party or Parties, all Confidential Information shall be relinquished to its owner upon demand.

## 11.0 Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule, the Security Rule or the HITECH Act means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, Standard Transactions, the security of Health Information, or other aspects of HIPAA-AS or the HITECH Act applicable or 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 so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an Amendment within thirty (30) days thereafter, then either of the parties may terminate the Agreement on thirty (30) days written notice to the other party.

(c) Survival. All provisions in this Agreement that expressly or customarily survive the termination or expiration of the Agreement shall continue in effect after the Agreement is terminated or expires.

(d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the confidentiality requirements of the State of Florida, including section 110.123 (9), Florida Statutes.

(e) 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.

(f) 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 the Privacy Rules or other applicable federal law. In the event of a dispute, venue of any proceedings shall be the appropriate federal or state court in Leon County, Florida.

(g) Indemnification and Performance Guarantees. Business Associate shall indemnify, defend, and save harmless the State

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of Florida and Individuals for any financial loss as a result of 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.

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

[SIGNATURE PAGE FOLLOWS]

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Attachment D, Draft Contract and Business Associate Agreement

IN WITNESS WHEREOF, the Parties have executed this Combined HIPAA Privacy Business Associate Agreement, Confidentiality Agreement, HIPAA Security Rule Addendum and HITECH Act Compliance Agreement, on the date(s) set forth below.

For: **Florida Department of Management Services**

For: **[Insert Name of Company]**

By: \_\_\_\_\_  
**Barbara Crosier, Director**  
Division of State Group Insurance

By: \_\_\_\_\_  
**Signature**

Date: \_\_\_\_\_

\_\_\_\_\_  
**(Print Name and Title)**

Date: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_

Date: \_\_\_\_\_

### Attachment D-3: Confidentiality Agreement

#### CONFIDENTIALITY AND INDEMNITY AGREEMENT

This Confidentiality and Indemnity Agreement (the "Agreement"), dated as of \_\_\_\_\_ is entered into by and between \_\_\_\_\_ (Service Provider), referred to herein as "HIMIS SERVICE PROVIDER," a \_\_\_\_\_ corporation with its principal place of business at ADDRESS, and the State of Florida Department of Management Services/Division of State Group Insurance ("DMS/DSGI"), and \_\_\_\_\_ (Service Provider) referred to herein as the SERVICE PROVIDER," a \_\_\_\_\_ corporation with its principal place of business at ADDRESS .

**WHEREAS**, DMS/DSGI is responsible for administration of the "State Group Health Insurance Plan (hereinafter "Plan"), as defined by and in accordance with the provisions of §§ 110.123(2) (i) and (5), *Florida Statutes*; and

**WHEREAS**, Service Provider has entered into an Administrative Services Contract ("Contract") with the DMS/DSGI, an agency of the State of Florida, to provide [medical services if an HMO or PPO, or prescription services if a Drug Plan], and

**WHEREAS**, that said Contract prohibits DMS/DSGI from using or disclosing Service Provider's proprietary and competitively sensitive trade secret information to any third party, including any governmental agencies other than the Florida Auditor General upon request, except as permitted by the written authorization of the Service Provider; and

**WHEREAS**, pursuant to a separate contract with DMS/DSGI, HIMIS PROVIDER performs certain claims and benefits data aggregation services and analytical report services and related consulting services (collectively, the "Services"), which DMS/DSGI has determined are necessary to facilitate administration of the Plan; and

**WHEREAS**, DMS/DSGI has requested that SERVICE PROVIDER: (i) deliver to HIMIS PROVIDER, as directed; or (ii) authorize DMS/DSGI to deliver to HIMIS PROVIDER, certain Confidential Information (as such term is hereinafter defined) which includes SERVICE PROVIDER's proprietary and competitively sensitive trade secret information, which DMS/DSGI and HIMIS PROVIDER have determined is necessary for HIMIS PROVIDER to perform the Services; and

**WHEREAS**, DMS/DSGI and HIMIS PROVIDER recognize the legitimate interests of Service Provider and the individuals whose health benefits are administered by SERVICE PROVIDER and the proprietary, confidential, and private nature of such Confidential Information; and

**WHEREAS**, SERVICE PROVIDER is willing to deliver, as directed, or permit DMS/DSGI to deliver, the Confidential Information to HIMIS PROVIDER, provided that HIMIS PROVIDER use thereof is restricted to the purpose(s) for which it is released and its confidentiality is maintained.

NOW THEREFORE, the parties, intending to be legally bound, agree as follows:

1. For the purposes of this Agreement, "Confidential Information" means all SERVICE PROVIDER information delivered by SERVICE PROVIDER to DMS/DSGI or HIMIS PROVIDER pursuant to this Agreement and any and all summaries, distillations, excerpts, work product or other documents to the extent utilizing or incorporating same, whether in whole or in part, in each case, subject to Section Three (3) below.
2. HIMIS PROVIDER shall only request, use and disclose the minimum amount of Confidential Information necessary for HIMIS PROVIDER to perform the Services for DMS/DSGI.
3. Confidential Information shall not include information that: (i) is already known to DMS/DSGI and/or HIMIS PROVIDER on the date of its disclosure hereunder; (ii) is or becomes known to the general public other than as a direct or indirect result of any act or omission of DMS/DSGI or HIMIS PROVIDER, or the affiliates, officers, directors, partners and employees (collectively, the "Related Parties") of DMS/DSGI or HIMIS PROVIDER; (iii) is lawfully received by DMS/DSGI or HIMIS PROVIDER from a third party that, to the knowledge of DMS/DSGI or HIMIS PROVIDER (after reasonable inquiry), is free to disclose the information without restriction on disclosure; or (iv) is independently developed by DMS/DSGI or HIMIS PROVIDER without use of Confidential Information.
4. HIMIS PROVIDER acknowledges that SERVICE PROVIDER and/or DMS/DSGI will make available or provide Confidential Information to HIMIS PROVIDER in confidence and solely for use of HIMIS PROVIDER in performing the Services for DMS/DSGI. Accordingly, HIMIS PROVIDER agrees: (i) to protect any and all Confidential Information HIMIS PROVIDER receive from unauthorized access, use and disclosure; (ii) not to use the Confidential Information for any purpose other than performing the Services for DMS/DSGI; (iii) not to record, copy, or reproduce any Confidential Information in any *form*, except to the extent necessary to perform the Services for DMS/DSGI; (iv) not to disclose the Confidential Information to, or otherwise permit access to the Confidential Information by any third party, including without limitation the Related Parties of HIMIS PROVIDER, except as expressly provided herein or with SERVICE PROVIDER's prior written consent; (v) to limit access to and use of the Confidential Information to those of Related Parties of the HIMIS PROVIDER who have a need to know such information for the purpose of performing the Services and have been advised of the obligations hereunder by HIMIS PROVIDER pursuant to this Agreement and have agreed to abide thereby; and (vi) to take any and all other steps reasonable and necessary to safeguard Confidential Information against unauthorized access, use, and disclosure to at least the extent HIMIS PROVIDER

maintains the confidentiality of each of their proprietary and confidential information.

5. As HIMIS PROVIDER performs its responsibilities pursuant to the contract between HIMIS PROVIDER and DMS/DSGI, HIMIS PROVIDER shall ensure that its Related Parties to which it discloses Confidential Information agrees to abide by those provisions within this Agreement that govern the use, disclosure, and protection of all Confidential Information obtained from SERVICE PROVIDER and/or DMS/DSGI. This provision shall not be construed to permit any delegation or assignment of HIMIS PROVIDER's obligations otherwise prohibited by this Agreement.
6. HIMIS PROVIDER (as applicable) shall promptly report in writing to SERVICE PROVIDER and to DMS/DSGI any use or disclosure of Confidential Information not provided for under this Agreement, of which HIMIS PROVIDER becomes aware, but in no event later than within five business days of first learning of any such use or disclosure. HIMIS PROVIDER shall mitigate, to the extent practicable, any harmful effect that is known to HIMIS PROVIDER of a use or disclosure of Confidential Information by HIMIS PROVIDER in violation of this Agreement.
7. HIMIS PROVIDER acknowledge that certain laws, regulations or other legal mandates governing DMS/DSGI and SERVICE PROVIDER or the Plan may prohibit certain uses or redisclosures of Confidential Information. Accordingly, HIMIS PROVIDER agrees that in no event shall HIMIS PROVIDER use or redisclose Confidential Information in any manner or for any purpose prohibited by such laws, regulation, or other legal mandates.
8. HIMIS PROVIDER may disclose Confidential Information if required to do so under any federal, state, or local law, statute, rule or regulation or other legal process; provided, however, that: (i) HIMIS PROVIDER (as applicable) will provide SERVICE PROVIDER with prompt written notice of any request that HIMIS PROVIDER disclose Confidential Information, so that SERVICE PROVIDER may object to the request and/or seek an appropriate protective order or, if such notice is prohibited by law, HIMIS PROVIDER (as applicable) shall disclose the minimum amount of Confidential Information allowed to be disclosed under the applicable mandate; and (ii) in no event shall HIMIS PROVIDER disclose Confidential Information to a party other than a government agency except under a valid order from a court having jurisdiction requiring the specific disclosure.
9. By disclosing or making available Confidential Information to HIMIS PROVIDER, or by permitting the DMS/DSGI to disclose Confidential Information to HIMIS PROVIDER under this Agreement (including but not limited to information incorporated in computer software or held in electronic storage media), SERVICE PROVIDER grants HIMIS PROVIDER no ownership right or interest in the Confidential Information. When the Confidential Information is no longer required for the purpose for which it was disclosed but no later than the expiration or termination of this Agreement, HIMIS PROVIDER shall collect and return to SERVICE PROVIDER or destroy all Confidential Information received from SERVICE PROVIDER or DMS/DSGI that HIMIS PROVIDER has in its control or custody in any form and shall retain no such copies of information. HIMIS PROVIDER shall complete these obligations as promptly as possible. Upon request, an authorized officer of HIMIS PROVIDER shall certify on oath to SERVICE PROVIDER that all Confidential

Information has been returned or destroyed and deliver such certification to SERVICE PROVIDER within ten (10) business days of its request. If return or destruction of any Confidential Information is not feasible, HIMIS PROVIDER shall make no further use and disclosure of such Confidential Information and shall continue to apply the protections of this Agreement to such Confidential Information for so long as HIMIS PROVIDER retains such Confidential Information. Notwithstanding the foregoing, HIMIS PROVIDER may, subject to their continued adherence to their obligations of confidentiality as defined in this Agreement, retain one copy of documents containing Confidential Information to defend the work product and to comply with applicable recordkeeping laws and regulations.

10. In the event that HIMIS PROVIDER performs any of the services on SERVICE PROVIDER's premises, HIMIS PROVIDER agrees not to remove from SERVICE PROVIDER's premises any Confidential Information that is provided to or obtained by HIMIS PROVIDER on such premises, without the prior written consent of SERVICE PROVIDER.
11. In any report or transmittal to DMS/DSGI by HIMIS PROVIDER that contains or pertains to oral or written Confidential Information, no medical information or dates of service will be identifiably attributed to any particular employee, dependent, or provider. Furthermore, any such report or transmittal shall not contain any information designated by SERVICE PROVIDER as confidential, trade secret, or proprietary.
12. As the administrative simplification provision of the Health Insurance Portability and Accountability Act of 1996 (HIPAA-AS) and certain of its implementing regulations (HIPAA-AS regulations) are now effective, DMS/DSGI and HIMIS PROVIDER have instituted reasonable procedures and/or agreements required for their compliance with that law and those regulations.
13. Each of the parties hereto shall comply with all applicable federal, state or local laws, rules, or regulations or any other order of any authorized court, agency, or regulatory commission, and all applicable professional standards and practices, concerning the handling and/or safekeeping of information and/or other records of the nature disclosed or made available hereunder and shall use such information only for proper and lawful purposes.
14. Each of the parties hereto shall comply with all state and federal laws regulating the disclosure of patient records or private and medically sensitive information released pursuant to this Agreement, including without limitation, alcohol and drug abuse patient records, information relating to treatment of alcohol or drug dependency, HIV testing results, and psychological or psychiatric evaluation.
15. HIMIS PROVIDER agrees to indemnify, defend, and hold SERVICE PROVIDER and DMS/DSGI and each of their Related Parties harmless from any liability that SERVICE PROVIDER or DMS/DSGI or their Related Parties may incur as a result of HIMIS PROVIDER 's or its Related Parties' breach of its obligations under this Agreement. Vendor



agrees to indemnify, defend, and hold SERVICE PROVIDER and DMS/DSGI and each of their Related Parties harmless from any liability that SERVICE PROVIDER or DMS/DSGI or their Related Parties may incur as a result of HIMIS PROVIDER 's or its Related Parties' breach of its obligations under this Agreement.

16. SERVICE PROVIDER and DMS/DSGI shall each have the option to either provide its own legal counsel or arrange for outside counsel for the defense of such matters referenced above, in either event with counsel reasonably acceptable to the indemnifying party, and the costs of either shall be borne by the indemnifying party in the event of indemnification. Neither SERVICE PROVIDER nor DMS/DSGI shall settle or compromise any such matter without the indemnifying party's prior written consent, which shall not be unreasonably withheld or delayed.
17. SERVICE PROVIDER acknowledges and agrees that it is a Business Associate, as defined by the HIPAA-AS regulations, of the Plan and that it has enter into a Business Associate Agreement with the Plan which sets forth its obligations pursuant to 45 C.F.R. 164.504(e) of HIPAA, and the Health Information Technology For Economic and Clinical Health Act (the HITECH Act, as enacted in Pub. L. No. 111-05 H.R., 111<sup>th</sup> Cong. (2009), Title XIII.).
18. It is understood and agreed that no failure or delay by SERVICE PROVIDER or DMS/DSGI in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
19. DMS/DSGI and HIMIS PROVIDER acknowledge and agree that SERVICE PROVIDER operates in a highly regulated and competitive environment; and that the unauthorized use or disclosure of Confidential information may cause irreparable harm and significant injury to SERVICE PROVIDER, which may be difficult to measure with certainty or to compensate through money damages. Accordingly, SERVICE PROVIDER shall be entitled to seek injunctive or other equitable relief, without bond, and/or specific performance as a remedy for any breach of this Agreement. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.
20. This Agreement shall automatically expire without any action by any of the parties, upon expiration or termination of: (i) SERVICE PROVIDER's relationship with DMS/DSGI as third party administrator of the Plan, including any contractually agreed runoff period; or (ii) HIMIS PROVIDER's contract to perform the Services for DMS/DSGI.
21. HIMIS PROVIDER's obligation to protect the privacy of Confidential Information as specified in this Agreement shall be continuous and survive the expiration or termination of this Agreement. In addition, the rights and obligations of the parties set forth in Sections 8, 9, 11, 15, 16, 18, 19, and 21 of this Agreement shall survive its expiration or termination.
22. The relationship between the parties is that of independent contractors. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties and neither party shall have the right to bind the other to any contracts, agreements, or other

obligations without the express, written consent of an authorized representative of the other.

23. This Agreement may not be assigned, nor any obligations delegated, by any party hereto, without the prior written consent of the other parties, and any such non-permitted assignment or delegation shall be void.
24. This Agreement may be amended by mutual agreement of the parties, but no such amendment shall become effective until it is reduced to writing and signed by duly authorized representatives of each party.
25. Waiver of breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or a different provision.
26. In the event any provision of this Agreement is rendered invalid or unenforceable by any valid act of the U.S. Congress or the Florida Legislature or by any regulation duly promulgated by the officers of the United States or of the State of Florida acting in accordance with law, or is declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect.
27. This Agreement shall be governed and construed by the laws of the State of Florida (notwithstanding choice of law principles). It constitutes the entire Agreement between the parties in reference to all matters expressed in the Agreement. All previous discussions, promises, representations, and understandings between the parties pertaining thereto, if any, are merged herein.
28. This Agreement may be executed in any number of counterparts, each such counterpart shall be deemed to be an original, but all such counterparts put together shall constitute but one and the same Agreement.
29. Neither of the parties shall assign either its obligations or benefits under this Agreement without the expressed written consent of the other parties.
30. The obligations of the HIMIS PROVIDER to maintain confidentiality and comply with all HIPAA laws and regulations shall survive termination of this Agreement.
31. This Agreement shall be signed in triplicate and each triplicate shall be treated as an original, and facsimile signatures are acceptable as original signatures. IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

(Signature Page Follows)

The State of Florida, Department of  
Management Services

HIMIS PROVIDER

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Notice Address:

The State of Florida, Department of  
Management Services  
4050 Esplanade Way, Suite 215  
Tallahassee, FL 32399

Approved as to form and legality:

SERVICE PROVIDER

\_\_\_\_\_  
Office of the General Counsel  
Department of Management Services

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

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

NOTICE ADDRESS:

## ITN for Health Management Information System (HIMIS) Attachment D-4: Identification of Contract Terms to be Negotiated

**Instructions:** The Respondent shall complete this attachment to identify any items in the draft Contract that need to be negotiated. In addition, Respondent shall propose a payment schedule (i.e., frequency and method; not to be confused with Attachment B-1, Financial Proposal), which will be negotiated and included in the Contract

If no contract terms are identified, the draft Contract shall be deemed acceptable in its present form and not subject to negotiation unless changed by the Department. Any exceptions must be accepted in writing by the Department.

Prior to printing the final Response, the Respondent shall ensure that the print area of this document is set appropriately.

Section #	Passage to be discussed	Response
		[Insert here]: