



FLORIDA DEPARTMENT of

management
SERVICES

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CONTRACT
for
POST PAYMENT CLAIMS REVIEW SERVICES
DMS 14/15-028
BETWEEN
STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
AND
[VENDOR NAME]

CONTRACT FOR POST PAYMENT CLAIMS REVIEW SERVICES
ATTACHMENT B
ITN NO. DMS 14/15-028

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CONTRACT

This Contract ("Contract") is entered between the State of Florida, Florida Department of Management Services, Division of State Group Insurance with its principal offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950 "Department") and [Vendor Name], a [State] corporation authorized to do business in Florida, with its principal corporate offices at [Vendor Address] ("Contractor"), and (each, a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, the Department issued DMS 14/15-028 soliciting firms interested in providing certain Post Payment Review Services (Audit); and

WHEREAS, Contractor responded to the ITN; and following negotiations, the Department determined to accept Contractor's offer and enter this Contract in accordance with the terms and conditions of the ITN and the negotiation.

WHEREAS, Contractor has represented that it can and will perform the Services described in this Contract and has represented that it has the ability and corporate assets to fully perform this Contract.

NOW THEREFORE, in consideration of the premises all of which are incorporated into this Contract, the Parties agree as follows:

SECTION 1: DEFINITIONS

1.1. Definitions

Capitalized terms used in this Contract (including any attachments thereto) without definition will have the meanings ascribed below:

1. "Acceptance" means, with respect to each Deliverable, that the resulting services provided by the Contractor have been formally acknowledged in writing by the Department as meeting the specified Deliverable requirements established in the Contract.
2. "Benefits Document" means the document approved by the Florida Legislature in accordance with subsection 110.123(5), Florida Statutes, describing the scope of coverage, benefits available, limitations, restrictions and exclusions of the Plan, and the conditions under which Contractor will pay claims. The Benefits Document is subject to modification by the Florida Legislature and the Department at any time. The covered and excluded services in the Benefits Document will be equivalent to those set forth in the Benefits Document, together with any additional services expressly approved by the Department. The Benefits Document in effect as of the date of the ITN resulting in this Contract is included in ATTACHMENT D. The Department shall provide revisions,

updates, and summaries of material modifications to the Benefits Document to the Contractor as soon as administratively possible following adoption.

3. "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.
4. "Calendar Day" means any day in a month, including weekends and holidays.
5. "Confidential Information" means information in the possession or under the control of the State or Contractor that is exempt from public disclosure pursuant to Article I, Section 24 of the Constitution of the State of Florida; the Public Records Law, Chapter 119 of the Florida Statutes; or to any other provision that serves to exempt information from public disclosure.
6. "Contract" means this agreement between the Department and Contractor consisting of, in order of precedence, the following documents: this agreement, including Attachment E (Administrative Requirements), Attachment F (Performance Guarantees), Attachment D (Plan Booklet and Benefit Document), Attachment G (Approved Subcontractors) and Attachment C (Pricing).
7. "Department" means the Florida Department of Management Services, including the Division of State Group Insurance, which is responsible for all aspects of the purchase and contract management of insurance products for State employees, retirees and other eligible Participants under the State Group Insurance Program, the package of insurance plans authorized in section 110.123(2)(3)(k), Florida Statutes.
8. "Deliverables" mean those items and/or materials provided, prepared and delivered to the Department in the course of performance under this Contract by the Contractor. During the term of the Contract, the Department will have the right to add or delete Deliverables. If the Department elects to add a Deliverable, the Contractor and the Department will negotiate a mutually agreed amendment to the Contract.
9. "Effective Date" means the date the Contract is executed.
10. "HMO" means one of the Program's Health Maintenance Organization self-insured plans.
11. "HIPAA" refers to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 together with the provisions of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act). The Contractor shall comply with HIPAA. Such compliance shall be

required as outlined in ATTACHMENT I – Combined HIPAA Business Associate Agreement, HIPAA Security Rule Addendum, Health Information Technology for Economic and Clinical Health (HITECH) Act Compliance Agreement and Confidentiality Agreement which is incorporated herein as if fully stated.

12. “Identified Overpayment” means a medical claim that was processed and paid by the TPA or HMO Service Provider and later determined to be overpaid by the contractor, based on the plan design, eligibility data and supporting documentation provided by the TPA or HMO Service Provider.
13. “ITN” means Invitation to Negotiate No. DMS 14/15-028, Post Payment Claims Review Services.
14. “Minor Deviations” means one which does not affect the price of the bid; or does not give the bidder an advantage or benefit not enjoyed by other bidders; or does not adversely impact the interests of the Department.
15. “Participants” means all Subscribers and their enrolled Eligible Dependents.
16. “Performance Standards” means specific measurement indicators assigned to Contract tasks representing timeliness and quality of task output.
17. “Plans” means any of the insurance coverages offered through the Department, as authorized in 110.123, Florida Statutes.
18. “Plan Year” is based on the calendar year from January 1 to December 31.
19. “PPO” means one of the Program’s Preferred Provider Organization health self-insurance plans.
20. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
21. “Protected Health Information” is defined in HIPAA at 45 CFR 160.103, and as used in this Agreement also refers to the term “Protected Health Information,” as defined in the HITECH Act.
22. “Program” means the Department’s Insurance Program defined in section 110.123(3), Florida Statutes.
23. “Recovered Overpayment” means a medical claim identified as overpaid and refunded to the State by the TPA or HMO Service Provider.
24. “Reply” means the formal response to an ITN.

25. "Respondent" means a vendor who submits a Reply to this ITN.
26. "Secretary" means the Secretary of the Department of Management Services or his/her designee.
27. "State" means the State of Florida.
28. "Standard Reporting" means periodic reports as described in Administrative Requirement 30.
29. "Subcontractor" refers only to Contractor's subcontractors that deliver Services specified in this Contract, including the requirements of the Attachments to this Contract.
30. "Subscriber" means the enrolled employee, retiree or COBRA participant that is the primary insured, as defined in Florida Administrative Code.

1.2. Rules of Interpretation

Unless otherwise indicated or otherwise required by the context, the following rules of interpretation apply:

1. Reference to, and the definition of, any document (including any attachments) will 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;
2. All references to a "Section," "Exhibit," "Appendix" or "Attachment" are to a Section, Exhibit or Attachment of this Contract;
3. The table of contents and Section headings and other captions are for reference purposes only and do not limit or affect the content, meaning or interpretation of the text;
4. All singular terms will include the plural and vice versa. The masculine, feminine or neutral gender will include all genders;
5. The words "include", "includes" and "including" are deemed to be followed by the phrase "without limitation";
6. Any reference to a governmental entity or person will include the governmental entity's or person's authorized successors and assigns; and
7. The words "quarterly," "on a quarterly basis," "quarterly meeting" or other

similar terms mean, unless otherwise stated herein, once every three months, beginning January 1, 2015, 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 will be as listed in the definition of the term "Contract." If the Contract terms are inconsistent with the benefit and coverage provisions of the Benefits Document or statute, then the provisions of the Benefits Document or statute will prevail.

SECTION 2: TERM, SCOPE AND COMPENSATION

2.1. Term

2.1.1. Initial Term.

The initial Contract term is three years and will commence upon full execution hereof and end after 11:59:59 P.M. three years after the Effective Date, unless extended, terminated or renewed as provided herein.

2.1.2. Department's Right to Renew.

Upon notice to Contractor at least six months prior to expiration, the Department may renew the Contract for up to three additional years at the same, or lower than, the prices specified in this Contract at its sole option and discretion. Such renewal will be binding on the Contractor and may be in one or multiple year increments at the Department's sole option. If Contractor agrees to pricing concessions or is obligated to provide alternate pricing terms pursuant to Section 9.7, the renewal will specify the adjusted price.

The Department will not be charged any costs for the renewal. The renewal is contingent upon the availability of funds.

2.1.3. Department's Right to Terminate for Convenience

Notwithstanding to the contrary, the Department, by 60 days advance written notice to Contractor, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the Department's best interest to do so. Contractor will not furnish any Services after termination of the Contract, except as necessary to complete any continued portion of the Contract. Contractor will not be entitled to recover any consequential damages including but not limited to cancellation charges and lost profits.

2.2. Scope of Work

Contractor will provide all labor, materials and supplies necessary to provide the Services as described in this Contract. The Contractor agrees to periodic reviews by the Department of Contractor's performance to improve delivery of the scope of work.

Corrective work to comply with the requirements of this Contract will be performed by the Contractor at its expense, and the Contractor will not be entitled to any compensation for such corrective work.

The Department may unilaterally require, by written order, changes altering, adding to or deducting from 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 performance schedule if the change affects the cost or time of performance. Such equitable adjustments require the written consent of Contractor, which will not be unreasonably withheld. If the Parties fail to agree to an equitable adjustment, the dispute must be resolved pursuant to Section 8.

2.3. Department’s Right to Suspend Work

The Department may in its sole discretion suspend any or all Services under the Contract, at any time, when in the best interests of the Department to do so. The Department will provide Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency or other like circumstances. After receiving a suspension notice, Contractor will comply with the notice. During the suspension of work, an appropriate equitable adjustment in the Contract price will be made, as described in Section 2.2.

2.4. Department’s Obligation to Supply Data to Contractor

The Department and/or its designee will supply all enrollment and personnel data and information necessary for Contractor to provide the Services.

2.5. Compensation

The Contractor agrees to perform all Services for the compensation and financial arrangements set forth in this Contract. No additional compensation will be allowed unless specifically set forth in ATTACHMENT C – Price Sheet. Any bills for fees or other compensation for Services or expenses shall be in detail sufficient for a proper pre-audit and post-audit. The Department reserves the right to request additional documentation.

This Contract is subject to the MyFloridaMarketPlace 1 percent transaction fee contained in section 287.057(22)(c), Florida Statutes, and the Contractor will comply with the timely reporting and payment of such fee.

2.5.1. Specific Appropriation.

The State of Florida’s performance and obligation to pay under this contract is contingent upon annual appropriation by the Florida Legislature. The funds from which the state will make payment for administrative services under the Contract are identified in Specific Appropriation [Specific Appropriation Number] of the [Most recent Budget Year] General Appropriations Act.

2.5.2. Bills for Travel.

For Services under this Contract, any expense incurred by the Contractor for travel must be authorized by the Department in advance. Bills for travel expenses, if permitted, must be submitted in accordance with section 112.061, Florida Statutes.

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 Contractor for purposes of the Contract will be the property of the Department and will be available to the Department at any time. The Department will have the right to use the same without restriction and without any additional compensation to Contractor.

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

3.1.2. Major Organizational Changes.

The Contractor recognizes and agrees that award of the Contract was predicated upon features of Contractor's business organization as represented by the Contractor during the ITN. If the Contractor transfers or sells more than 49.9% of its equity shareholder interests or allows a sale of substantially all of its assets, the Contractor shall notify the Department in writing no less than 30 days of such transfer or sale.

3.2. Warranty

Generally: Contractor will provide the Services in a professional, workmanlike manner in accordance with the standards and quality prevailing among first-rate nationally recognized firms in the industry and in accordance with this Contract.

Remedies: In the event that the Department discovers that any Services are not provided in accordance with this Contract, Contractor will promptly correct, cure, replace or otherwise remedy such performance at no cost to the Department. However,

this provision does not affect any other remedy or the Department's right to terminate services for breach or default of the Contract.

This Section will 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 will employ or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other Parties' personnel during their participation in the contracted services. "Personnel" will include any individual 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 will be deemed a joint employer of the other Party's employees and each Party being responsible for any and all of its employees. Neither Party's employees will be deemed leased employees of the other Party for any purpose.

3.3.3. Subcontractors.

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

Contractor will not subcontract any of the Services or enter into any subcontracts or change approved Subcontractors (including their key personnel and/or location of processes for the Services) without the express written consent of the Department. In seeking such consent, Contractor will give the Department prior notice of at least 60 calendar days or, in case of an emergency, as soon as practical. Each approved subcontract will be subject to the same terms and conditions as the Contract.

3.3.4. Employment of State Workers.

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

Contractor will take all actions necessary to ensure that Contractor's employees, Subcontractors, and other agents are not employees of the Department.

3.3.5. Warranty of Security.

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

1. Background Screening

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees or other person, hereinafter referred to as "Person" or "Persons," operating under their direction with access to State of Florida Data.

"Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system or computer network.

"Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, whether said information is confidential information or personal health information. Data may be in any form, including but not limited to, in storage media, stored in the memory of the computer, in transit or presented on a display device, or a hard copy.

The Contractor will ensure that the background screening is conducted on all Persons directly performing services under the Contract with access to State of Florida Data, as well as those persons who are not performing services under the Contract but have access to State of Florida Data.

The minimum background check process will include a check of the following databases through a law enforcement agency or a Professional Background Screener accredited by the National Association of Professional Background Screeners or a comparable standard:

- Social Security Number Trace; and
- Criminal Records (Federal, State and County criminal felony and misdemeanor, national criminal database for all states which make such data available).

The Contractor agrees that each Person will be screened as a prior condition for performing services or having access to State of Florida

Data. The Contractor is responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Contractor will maintain documentation of the screening in the Person's employment file. The Contractor will abide by all applicable laws, rules and regulations including, but not limited to, the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations or ordinances.

A. Disqualifying Offenses

If at any time it is determined that a Person has a criminal misdemeanor or felony record regardless of adjudication (e.g., adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) within the last six (6) years from the date of the court's determination for any one of the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that Person from any position with access to State of Florida Data or directly performing services under the Contract. The disqualifying offenses are:

- Computer related or information technology crimes
- Fraudulent practices, false pretenses and frauds, and credit card crimes
- Forgery and counterfeiting
- Violations involving checks and drafts
- Misuse of medical or personnel records
- Felony theft

B. Self-Disclosure

The Contractor will ensure that all Persons have a responsibility to self-report within three calendar days to the Contractor any updated court disposition of any criminal misdemeanor or felony record regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere or a guilty verdict). The Contractor will immediately assess whether to disallow that Person access to any State of Florida Data or from directly performing services under the contract. Additionally, the Contractor will require that the Person complete an annual certification that they have not received any additional criminal misdemeanor or felony record regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere or a guilty verdict) for the Disqualifying Offenses and will maintain that certification in the employment file.

C. Refresh Screening

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

D. Annual Certification

The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security (Attachment L) to the Department by December 31 of each contract year.

2. Duty to Provide Secure Data

The Contractor will maintain the security of State of Florida Data including, but not limited to, a secure area around any display of such Data or Data that is otherwise visible. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

3. Department's Ability to Audit Screening Compliance and Inspect Locations

The Department reserves the right to audit the Contractor's background screening process upon two days prior written notice to the Contractor during the Term of the Contract. Department will have the right to inspect the Contractor's working area and/or location upon two business days prior written notice to the Contractor to ensure that access to the State of Florida Data is secure and in compliance with the Contract and all applicable state and federal rules and regulations.

4. Indemnification

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

3.3.6. Work Locations; No Off-shoring of Data.

Unless otherwise agreed in writing, (i) Contractor and its subcontractors and agents will not perform any of the Services from outside of the United States, and (ii) Contractor will not allow any State of Florida Data to be sent by any medium, transmitted or accessed outside of the United States.

Contractor agrees that a violation of item (ii) above will result in immediate and irreparable harm to the Department and will entitle the Department to a credit of \$4,000 per incident, with a total cap of \$20,000 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) will be treated as a single event. A violation of this provision will also entitle the Department to recover damages, if any, arising from a breach of this section and constitutes an event of default.

3.3.7. Contractor's Responsibility to Notify Department.

Notwithstanding any provision of this Contract to the contrary, the Contractor shall notify the Department as soon as possible and in all events within one business day in the event it discovers any Data is breached, any unauthorized access of State of Florida Data occurs (even by persons or companies with authorized access for other purposes), any unauthorized transmission of Data, or any credible allegation or suspicion of a material violation of the above. This notification is required whether the event affects one employee/retiree or the entire population. The notification shall be clear and conspicuous and include a description of the following:

1. The incident in general terms.
2. The type of personal information that was subject to the unauthorized access and acquisition.
3. The number of individuals who were, or potentially have been, affected by the breach.
4. The actions taken by the Contractor to protect the Data from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

Upon becoming aware of an alleged security breach or security incident, the Contractor shall set up a conference call (via a phone call and email) with the Department's Contract Manager and any necessary HMO, PPO or the third party administrator (Florida Blue, Inc., or its Department designated successor). The conference call invitation shall contain a brief description of the nature of the event. When possible, a 30 minute notice shall be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call shall be scheduled. All available

information shall be shared on the call. The Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Contractor shall provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor shall notify Department employees identified in the Security Plan as soon as possible, and in all events, within one business day.

3.3.8. E-Verify.

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

3.3.9. Scrutinized Company List.

In executing this Contract, Contractor 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), Florida Statutes, Contractor agrees the Department may immediately terminate this contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Contract.

3.4. Acceptance of Deliverables

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"). The Department shall notify the Service Provider in writing of any Nonconformity, specifying how the Deliverable materially fails to meet the requirements of the Contract. Service Provider will correct such Nonconformity within five business days or proceed on another mutually acceptable corrective action as set forth in writing.

SECTION 4: DIVERSITY

It is the policy of the State that Minority Business Enterprises, Woman-Owned Business Enterprises and Service-Disabled Veteran Business Enterprises (as those terms are defined by Florida Statutes), have the maximum practicable opportunity to participate in performing

contracts let by any state agency. Contractor will carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient Contract performance by reasonably considering such Business Enterprises as Subcontractors for the Services. Contractor further agrees to comply with all controlling laws and regulations respecting the participation of such Business Enterprises in the provision of the Services and to reasonably cooperate in any studies or surveys as may be conducted by the State of Florida to determine the extent of Contractor's compliance with this Section.

SECTION 5: LIQUIDATED DAMAGES

5.1. Failure to Meet Performance Guarantees

1. Contractor agrees to payment of liquidated damages ("Performance Guarantees") if it fails to meet the Performance Standards set forth within ATTACHMENT F, Performance Guarantee, to this Contract.
2. Performance Guarantees 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.
3. Notwithstanding anything in the Contract to the contrary, the total of any and all Performance Guarantees paid or to be paid by Contractor pursuant to this Contract for any calendar quarter will not exceed 100% of the Compensation due under Section 2.5 above.
4. Upon mutual agreement of the Parties, Performance Guarantees may be suspended from time to time for special circumstances. Suspension of a Performance Guarantee will not excuse Contractor from accumulating data relevant to that Performance Guarantee and reporting such data to the Department as part of the management reports delivered pursuant to this Contract.
5. The Department may require the Contractor to propose and implement a reasonable Corrective Action Plan to address and correct the root causes of any missed Performance Standard.
6. The inclusion of Performance Guarantees 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 9 of the Contract. However, if Contractor's performance falls below the minimum level of performance for the same Performance Guarantee for three (3) quarters and such failure is not otherwise excused, then the Department may declare an Event of Default.

7. Contractor will be excused for failing to meet any Performance Standard to the extent such failure is caused by the Department not performing any of its obligations under the Contract.
8. Contractor will advise the Department in writing as soon as possible of any circumstance or occurrence which would excuse or affect Contractor's ability to achieve any of the Performance Standards. In all such cases, Contractor will continue to make all reasonable efforts to achieve the Performance Standards.

SECTION 6: INSURANCE

6.1. Insurance Coverage

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

1. **Workers' Compensation Insurance.** The Contractor and its Subcontractors must continuously maintain workers' compensation insurance coverage as required under all relevant workers' compensation statutes.
2. **Professional Indemnity Insurance.** The Contractor must continuously maintain professional indemnity insurance that must cover Professional Liability and Error and Omissions in the face amount of \$100,000. Contractor will indemnify, defend and hold harmless the Department and its employees and agents, from and against any third party claims, demands, loss, damage or expense caused by Contractor in connection with the performance of the Services relation to Professional Liability and Error and Omissions. Each insurance certificate for such policy must include an agreement that the insurer will provide 30 calendar days prior written notice to the Department of cancellation for any coverage.

The Contractor will provide all certifications of insurance as proof of insurance including renewed or replacement evidence of coverage at least 30 days prior to the expiration or termination of any insurance policy.

6.2. Performance Bond

In accordance with section 110.123(3)(d)2, Florida Statutes, within 30 days executing the Contract, Contractor will furnish at no additional cost to the Department a performance bond or, if approved by the Department, a negotiable irrevocable letter of

credit or other form of security (collectively the bond) for the performance of work under the Contract in an amount of **\$60,000**. The bond will be maintained throughout the term of the Contract and for five years thereafter, issued by a reliable surety company which is licensed to do business in the State of Florida, and must include the following conditions:

1. Obligee/Beneficiary: The Department will be named as the obligee/beneficiary of the bond. Contractor's bond will provide that the insurer or bonding company will provide performance and/or payment remuneration directly to the Department.
2. Notice of Attempted Change: The Department will receive 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 Contractor's failure to pay bond premiums.
3. Premiums: The Department will 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 Contractor or any of its employees, officers, directors, agents and representatives to accurately perform the Services required by the Contract for the entire term of the Contract. No compensation will be due to Contractor until the performance bond is in place and approved by the Department in writing.

SECTION 7: DEFAULT AND REMEDIES

7.1. Contractor Events of Default

Any one or more of the following events will constitute an "Event of Default" on the part of Contractor hereunder:

1. Contractor fails to pay any sum of money due hereunder; or
2. Contractor fails to provide the Services as required under the Contract; or
3. Contractor employs an unauthorized alien in the performance of any work required under the Contract; or
4. Contractor fails to correct work that the Department has rejected as unacceptable or unsuitable; or
5. Contractor discontinues the performance of the work required under the Contract; or

6. As specified by the Department, Contractor fails to resume work that has been discontinued; or
7. Contractor abandons the project; or
8. Contractor becomes insolvent or is declared bankrupt; or
9. Contractor files for reorganization under the bankruptcy code; or
10. Contractor commits any act of bankruptcy or insolvency, either voluntarily or involuntarily; or
11. Contractor fails to promptly pay any and all taxes or assessments imposed by and legally due the Department or federal government; or
12. Contractor makes an assignment for the benefit of creditors without the approval of the Department; or
13. Contractor made or has made a material misrepresentation or omission in any materials provided to the Department; or
14. Contractor commits any material breach of the Contract; or
15. Contractor fails to maintain the performance bond; or
16. Contractor fails to maintain the required insurance herein; or
17. The Department determines that the surety executing a bond, if applicable, used to secure Contractor's performance of its obligations hereunder becomes unsatisfactory; or
18. Contractor transfers ownership in violation of the Contract; or
19. Contractor 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
20. Contractor is suspended or is removed as an authorized vendor by any state or federal agency or Contractor is convicted of a felony; or
21. Contractor refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by Contractor in conjunction with the Contract and not otherwise deemed confidential, proprietary or a trade secret; or
22. Violation of Section 3.3.6 (Work Locations; No Off-shoring of Data), or Contractor's permitting State Data to be transmitted, viewed or accessed outside of the United States; or

23. Contractor's change of Subcontractors in violation of Section 3.3.3 of the Contract; or
24. For any other cause whatsoever that Contractor fails to perform in an acceptable manner as determined by the Department, including but not limited to failure to meet Performance Standards and/or pay associated guarantees; or
25. Failure to timely notify the Department upon discovery of problems or issues impacting claims processing related to the Plan; or
26. Failure to provide complete paid claims data to the Department's Health Insurance Management Information System vendor; or
27. Failure to timely report and pay the transaction fee contained in section 287.057(22)(c), Florida Statutes, as detailed in Section 2.5 (Compensation); or
28. Failure to meet the same monthly Performance Guarantee for at least three (3) months.

7.2. Department Remedies in the Event of Default

Subject to the dispute resolution process in this Contract, upon the occurrence of an "Event of Default" on the part of Contractor, the Department is entitled to one or all of the following remedies:

1. Equitable Relief.
2. Monetary Damages (including any re-procurement costs).
3. Termination of Contract.

7.3. Department Events of Default

Any material breach by the Department of the Contract will (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 will be 45 calendar days from receipt of notice of material breach.

7.4. Contractor Remedies in the Event of Default

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

1. Equitable Relief.
2. Monetary Damages.

Contractor 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. Contractor is not entitled to, and will not seek, any other

reimbursement or payment, or damages, including but not limited to lost profits. Prior to the Department's payment to Contractor as the result of termination, Contractor will have satisfied all undisputed obligations to third parties relating to the Contract.

7.5. State May Cure Contractor Defaults

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

7.6. Rights Cumulative, No Waiver

The rights and remedies provided and available to the Department and Contractor in this Section 7 are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a Party, will be deemed to be in exclusion of any other. The election of one remedy will not be construed as a waiver of any other remedy.

SECTION 8: DISPUTE RESOLUTION

8.1. Overview

Dispute Resolution and Mediation Procedure: Any conflict or dispute between the Department and the Contractor relating to the Contract will be resolved in accordance with the procedures specified in this Contract, which will be the sole and exclusive procedures for the resolution of any such disputes prior to litigation. Negotiations and Mediation as herein prescribed is a precondition to litigation; however, this Section 8 will not apply in the case of Termination for Convenience as provided in Section 2.1.3 of this Contract.

8.2. Informal Negotiations/Informal Resolution

Whenever the Department and Contractor have a dispute relative to the Contract, the managers will immediately attempt to resolve the dispute, subject to the approval of the authorized signatory of the Parties or their designees.

8.3. Dispute Resolution

The Parties acknowledge that efforts should always be made to avoid disputes through good communication and prompt requests for clarification and information. If a dispute

arises under this Contract, the Parties agree that the following procedures shall be the sole and exclusive procedures for resolution.

- a. **Negotiations.** The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Contract (a "Dispute"). Managers of the Department and Contractor who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of the Services at issue will promptly enter into negotiations to settle the Dispute. To the extent permitted by law, all negotiations shall be treated as confidential settlement negotiations for purposes of discovery and admissibility in any later legal action.
- b. **Legal Action.** The Parties will allow for at least thirty (30) Calendar Days of executive level negotiations, commencing on the date the aggrieved Party provides formal notice of the Dispute to the other Party. If a Dispute is not resolved within this timeframe, the disputing Party may bring an action to seek redress in any court of law having jurisdiction thereof.

This subsection shall survive termination of this Contract.

8.4. Mediation

If the Department and Contractor are not able to resolve a dispute by negotiation, the Department, in its sole discretion, may initiate a mediation proceeding by a request in writing to the Contractor within five business days after delivery of the notice declaring the negotiation process terminated as required by the Dispute Resolution section. The mediation, if initiated by the Department, is a condition precedent to filing any civil action against any Party.

8.4.1 Mediation Procedure.

All mediation proceedings will be conducted in accordance with the Contract and Florida Statutes.

8.4.2 Selection of a Neutral Mediator.

If the Department and Contractor have not agreed within 10 business days of the request for mediation on the selection of a neutral mediator willing to serve, then the Department will unilaterally select the mediator, who must be a Florida lawyer resident in Tallahassee, Florida. The mediator cannot be anyone directly employed by the State of Florida.

8.4.3 Location of Mediation.

Unless otherwise agreed to in writing by the Department and Contractor, mediation sessions will occur in Tallahassee, Florida.

8.4.4 Mediation Period.

Mediation pursuant to this Mediation section will be conducted over a period of 45 calendar days following the appointment of a mediator. If the dispute cannot be resolved by the mediation deadline, or by the end of any mutually agreed continuation thereof, either (i) the Department, (ii) the Contractor or (iii) the mediator may give written notice declaring the mediation process terminated.

8.5. Obligation to Mediate

Parties regard the obligation to mediate as an essential provision of the Contract and one that is legally binding on each of them. In case of a violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof. Further, the Party at fault for failure to mediate will forfeit its right to any private cause of action.

8.6. Performance to Continue

Each Party will continue to perform its obligations under this Contract pending final resolution of any dispute arising out of this Contract.

8.7. Confidentiality

All negotiations and mediations will be treated as compromise and settlement negotiations and therefore confidential.

8.8. Exhaustion of Dispute Resolution Remedies

Exhaustion of dispute resolution remedies is an absolute condition precedent to Contractors's ability to pursue any other action.

8.9. Venue

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

8.10. Payment of Fees and Costs

Except as provided by the indemnity clauses contained herein, the Department and Contractor will each bear its own costs and legal expenses incurred in connection with any negotiations, mediation or litigation pursuant to this Contract. The Parties will equally share the cost of the mediator.

SECTION 9: GENERAL PROVISIONS

9.1. Advertising

Contractor will not publicly disseminate any information concerning the Contract without prior written approval from the Department, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Department or the State as a reference or otherwise linking Contractor's name and either a description of the Contract or the name of the State or the Department in any material published, either in print or electronically, to anyone except potential or authorized Subcontractors.

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

Contractor will not publish or release the results of its engagement and participation in the Plan without prior written approval from the Department. However, Contractor may refer to the contract as an experience citation with other customers without prior approval.

9.2. Assignment

Contractor will not sell, assign or transfer any of its rights, duties or obligations under the Contract without the prior written consent of the Department. The Department may assign the Contract with prior written notice to Contractor of its intent to do so. No change in Contractor organization, if any, will operate to release the Contractor from its liability for the prompt and effective performance of its obligations under this Contract.

9.3. Changes of Statute or Regulation or Governmental Restrictions

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

9.4. Compliance with Laws

9.4.1. Generally:

Contractor will comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State and local agencies having jurisdiction and authority. Violation of any such laws will be grounds for Contract termination.

9.4.2. Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA):

Contractor will 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. Contractor will 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 hereto as Attachment H. Regarding services delivered under this Contract, Contractor's subcontracts will incorporate language that requires those Subcontractors to satisfy the requirements of this section.

9.4.3. 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 Contractor, supplier, Subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

9.4.4. Equal Employment Opportunity:

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

9.5. Contract Administrator

The Department will name a Contract Administrator during the Term of this Contract whose responsibility will be to maintain this Contract. As of the Effective Date, the Contract Administrator is Lori Anderson, 4050 Esplanade Way, Suite 335.2Y, Tallahassee, FL 32399. The Department will provide written notice to Contractor of any changes to the Contract Administrator; provided, such changes will not be deemed Contract amendments.

9.6. Execution in Counterparts

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

9.7. Best Price

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

Contractor's fee under this Contract will not exceed the Contractor's total fees then in effect for substantially the same services to any organization with similar services to those in this Contract. During the term of the Contract, if Contractor implements or provides any other client, whether a public or private entity, such pricing with more favorable than the pricing in this Contract, then Contractor agrees to offer equivalent pricing terms to the Department and the Department and Contractor will execute an amendment of this Contract.

9.8. Force Majeure, Notice of Delay and No Damages for Delay

Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Contractor's control, or for any of the foregoing that affect Subcontractors or suppliers if no alternate source of supply is available to Contractor. In case of any delay Contractor believes is excusable, Contractor will promptly notify the Department in writing of the delay or potential delay and describe the cause of the delay. The Department will then provide a reasonable extension in time for Contractor to perform. **THE FOREGOING WILL CONSTITUTE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, will be asserted against the Department. Contractor will 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 (i) accept allocated performance from Contractor, provided that Contractor grants preferential treatment to the Department with respect to Services subjected to allocation, and/or (ii) purchase from other sources (without recourse to and by Contractor for the related costs and expenses) to replace all or part of the Services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (iii) terminate the Contract in whole or in part.

9.9. 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.

9.10. Indemnification

As required by section 110.123(5)(f), Florida Statutes, Contractor will indemnify, defend and save harmless the State and Subscribers, for any financial loss caused by the failure of the Contractor, its officers, directors or agents to comply with the terms of this Contract. Contractor will indemnify, defend and hold harmless the Department from and against any third party claims, demands, loss, damage or expense relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by Contractor and/or its employees, in connection with the performance of the Services hereunder.

9.11. Independent Contractor Status of Contractor

Contractor, together with its agents, Subcontractor, officers and employees, will have and always retain under the Contract the legal status of an independent contractor, and in no manner will they be deemed employees of the Department or deemed to be entitled to any benefits associated with such employment. During the term of the Contract, Contractor will maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability and unemployment insurance, and provide the Department with certification of such insurance upon request. Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions. Each party to the contract is considered an independent contractor and as such will not have any authority to bind or commit the other. Nothing herein will be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose.

9.12. Entire Agreement; Modification of Terms

1. The Contract contains all the terms and conditions agreed upon by the Parties, which terms and conditions will 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 will require a mutual written amendment to the contract, signed by both Parties.
2. No oral contracts or representations will be valid or binding upon the Department or Contractor. Contractor may not unilaterally modify the terms of the Contract by incorporating terms onto Contractor's order or fiscal forms or other documents forwarded by Contractor for payment. The Department's acceptance of service or processing of documentation on forms furnished by Contractor for approval or payment will not constitute acceptance of the proposed modification to terms and conditions.

9.13. Notices

1. All notices under this Contract will 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 335
Tallahassee, FL 32399-0950

Department of Management Services
Contract Manager, Division of State Group Insurance
4050 Esplanade Way, Suite 280
Tallahassee, FL 32399-0950

2. All notices under this Contract to be served upon Contractor will be served by certified mail, return receipt requested, by reputable courier service or delivered personally to:

[Vendor Contact and address]

With a copy to:

[Vendor Contact and address]

3. The Parties agree that any change in the above-referenced address or name of the contact person will be submitted in a timely manner to the other Party. All notices and other communications under this Contract will be in writing and will 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 business days after mailed by certified U.S. mail, return receipt requested, postage prepaid, addressed by name and address to the Party intended.

9.14. Contract Managers

Each Party will designate a Contract Manager during the Term of this Contract whose responsibility will 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 Jena Price, Professional Accountant Specialist, 4050 Esplanade Way, Suite 215, Tallahassee, FL 32399-0950. Contractor's Contract Manager is [Name], at [Vendor Address]. Each Party will provide prompt written notice no later than five

business days to the other Party of any changes to the Party's Contract Manager or their contact information. Such changes will not be deemed Contract amendments.

9.15. 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, Contractor will allow public access to all documents, papers, letters, or other material subject to Chapter 119 that are made or received by Contractor in conjunction with this Contract. Pursuant to section 119.0701, the Contractor will:

1. Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the Services;
2. Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;
4. Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the public agency.

Violation of this section will constitute grounds for termination of the Contract at the discretion of the Department.

If Contractor 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, Contractor will 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 will be clearly titled "Redacted Copy."

The Redacted Copy must only exclude or obliterate those exact portions which are claimed confidential, proprietary or trade secret. Contractor will be responsible for defending its determination that the redacted portions are confidential, trade secret or otherwise not subject to disclosure. Further, Contractor will 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 Contractor 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.

9.16. Security and Confidentiality

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

9.17. 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 will 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.

The delay or failure by a Party to exercise or enforce any of its rights under this Contract will not constitute or be deemed a waiver of the Party's right thereafter to enforce those rights, nor will any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

9.18. Rights to Intellectual Property

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

No Proprietary Interest: Contractor will not have and will obtain no proprietary interest in any patient records, Plan-related data, data files, documents, papers, records and other Plan information, in any form created, that it acquires in the course of its performance under the Contract; provided, however, that the Contractor's names, logos, trademarks, trade names, service marks and trade secret information are not subject to this provision.

9.19. Survival Clause

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

9.20. Contractor's Brands and Disclosure

The names, logos, symbols, trademarks, tradenames, and service marks of Contractor, whether presently existing or hereafter established, are the sole property of Contractor.

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

**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES**

C. Darren Brooks, Deputy Secretary

Date

[VENDOR NAME]

Signature

Print Name and Title

Date