

**REVISED ATTACHMENT B - DRAFT CONTRACT**

**FOR**

**SOCIAL SECURITY DISABILITY INSURANCE**

**ELIGIBILITY ENROLLMENT SERVICES**

**RFP NO.: DMS-21/22-185**

**BETWEEN**

**STATE OF FLORIDA**

**DEPARTMENT OF MANAGEMENT SERVICES**

**AND**

**<< INSERT CONTRACTOR NAME >>**

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**ATTACHMENTS:**

- ATTACHMENT A: STATEMENT OF WORK
- ATTACHMENT C: PRICE SHEET
- ATTACHMENT D: PRIVACY, SECURITY, AND CONFIDENTIALITY BUSINESS ASSOCIATE AGREEMENT
- ATTACHMENT G: APPROVED SUBCONTRACTORS (IF APPLICABLE)

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## Contract

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

**WHEREAS**, the Contractor responded to the Department's Request for Proposal (RFP) No.: DMS-21/22-185 for Social Security Disability Insurance Eligibility Enrollment Services; and

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

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

### Section 1 DEFINITIONS

#### 1.1 Definitions

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

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

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

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

1. This agreement, in the following order of precedence:
  - a. Attachment A: Statement of Work (SOW)
  - b. Attachment D: Privacy, Security, and Confidentiality Business Associate Agreement;
  - c. Attachment G: Approved Subcontractors
  - d. Attachment C: Price Sheet
  - e. RFP No.: DMS-21/22-185, including any addenda.

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

2. The General Contract Conditions - PUR 1000 form, which is incorporated by reference, and available at the weblink listed below. The Parties agree that the following provisions of the PUR 1000 are either not applicable to this Contract or are replaced below: 2-13, 17, 20-23, 26-29, 31, 34-35, 38, 45).

[https://www.dms.myflorida.com/content/download/2933/11777/PUR\\_1000\\_General\\_Contract\\_Conditions.pdf](https://www.dms.myflorida.com/content/download/2933/11777/PUR_1000_General_Contract_Conditions.pdf)

"Data" or "State of Florida Data" means a representation of information, knowledge, facts, concepts, computer software, or computer programs or instructions (including any that it is exempt; confidential; or Protected Health Information protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. §§ 160 and 164, the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), and

the regulations promulgated thereunder, or section 110.123(9), Florida Statutes), that is received by the Contractor, or created by the Contractor, in the performance of the Services under the Contract. State of Florida Data may be in any form, including but not limited to, storage media, computer memory, in transit, presented on a display device, or in physical media such as paper, film, microfilm, or microfiche. State of Florida Data includes the original form of the State of Florida Data and all metadata associated with the State of Florida Data.

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

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

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

“Enrollment”, in regards to the Per Enrollment Fee, means a Member who has been awarded Social Security Disability Insurance and/or Medicare.

“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.

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

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

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

“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.

“RFP” means the Request for Proposal No.: DMS DMS-21/22-185 Social Security Disability Insurance Eligibility Enrollment Services.

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

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

“State” means the State of Florida.

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

## **Section 2 CONTRACT DOCUMENTS**

## 2.1 Rules of Interpretation

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

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

## Section 3 TERM, SCOPE, AND PAYMENTS

### 3.1 Term

#### 3.1.1 Initial Term

The initial Term of the Contract is five (5) years and Services will commence on the Effective Date and end after 11:59:59 P.M. (EST) five (5) years after the Effective Date, unless extended, terminated, or renewed as provided herein.

#### 3.1.2 Renewals

The Department, at its sole option and discretion, may renew the Contract for up to ~~three (3)~~ five (5) additional years at the same prices as those specified in this Contract or lower negotiated prices. Such renewal will be binding on the Contractor and may be in one (1) year or multiple year increments at the Department's sole option. Renewal in whole or in part shall be at the sole discretion of the Department and shall be contingent upon the Department's determination that Contractor has satisfactorily performed its obligations under the Contract. The Department shall also consider whether Contractor has been subject to any performance violations and/or liquidated damages in complying with any of the Contract requirements. Any renewal shall be in writing and signed by both Parties.

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

### 3.2 This Contract may be extended in accordance with section 287.057(13), Florida Statutes, as modified by section 110.123, Florida Statutes. Department's Right to Terminate for Convenience

The Department, by sixty (60) Calendar Days advanced written notice to Contractor, may terminate the Contract for any reason or no reason at all when the Department determines in its sole discretion that it is in the Department's best interest to do so. The Contractor shall not perform any Services after the effective date of the termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor will not be entitled to recover any lost profits, consequential or indirect damages, or any other damages other than the payment amounts due for performance until the effective date of termination. If this Contract is terminated for convenience prior to January 1, 2023, the Department shall reimburse Contractor for direct costs actually incurred for Services authorized by the Department and satisfactorily performed prior to receipt of the notice of termination.

### **3.3 Scope of Work**

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

### **3.4 Department's Right to Suspend Work**

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

### **3.5 Department's Obligation to Supply Data to Contractor**

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

### **3.6 Bills for Travel**

Bills for travel expenses are not permitted under this Contract.

### **3.7 Payments**

The Contractor agrees to perform all the Services for compensation and financial arrangements set forth in Attachment C: Price Sheet. Contractor shall submit bills for fees or other compensation for allowable, authorized services or expenses in detail sufficient enough for a proper pre-audit and post-audit. The Department reserves the right to request additional documentation.

### **3.8 Specific Appropriation**

The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. The following is the specific state funds from which the state will make payment under the Contract:

**2021-2022 General Appropriations Act (GAA) Line Item #2794 –**

### **3.9 Non-Exclusive Contract**

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

## **Section 4 CONTRACT ADMINISTRATION**

### **4.1 Ownership of Deliverables and Retention of Records**

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

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

~~Additionally, in accordance with section 216.1366, Florida Statutes, the Department is authorized to inspect the: (a) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of state funds; and (b) programmatic records, papers, and documents of the Contractor which the Department determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Department within ten (10) Business Days after the request is made.~~

### **4.2 Contractor Obligations**

#### **4.2.1 General**

Contractor will provide any and all labor, materials, and supplies necessary to perform the Services in the manner prescribed by this Contract. Contractor will meet or exceed Section 3. Minimum Service Requirements and Section 4. Performance Guarantees as set forth in Attachment A:- SOW..

#### **4.2.2 Major Organizational Changes**

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

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



### **4.2.3 Subcontractors**

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

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

### **4.2.4 Work Locations, No Offshoring of Data**

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

- (a) result in immediate and irreparable harm to the Department, entitling the Department to immediate injunctive relief, provided, however, this shall not constitute an admission by the Contractor to any liability for damages under subsection (c) below or any claims, liability, or damages to a third party, and is without prejudice to the Contractor in defending such claims.
- (b) entitle the Department to a credit of \$50,000 per violation, with a cumulative total cap of \$500,000 per event. This credit is intended only to cover the Department's internal staffing and administrative costs of investigations and audits of the transmittal of State of Florida Data outside the U.S.
- (c) entitle the Department to recover damages, if any, arising from a breach of this section and beyond those covered under subsection (b).
- (d) constitute an Event of Default not subject to the dispute resolution provisions in section 11.7 ("Dispute Resolution, Governing Law and Venue") of this Contract. The credits in subsection (b) are a reasonable approximation of the internal costs for investigations and audits from a violation.

The credits in subsection (b) are a reasonable approximation of the internal costs for investigations and audits from a violation. The credits are in the nature of liquidated damages and not intended to be a penalty on the Contractor. By executing this Contract, Contractor acknowledges and agrees the costs intended to be covered by subsection (b) are not readily ascertainable and will be difficult to prove. Contractor agrees that it will not argue, and is estopped from arguing, that such costs are a penalty or otherwise unenforceable. For purposes of determining the amount of credits due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same offshore entity) shall be treated as a single violation. The credits will be paid to the Department as prescribed by the Department, and are exclusive of any other right to damages.

#### **4.2.4.1 Contractor's Responsibility to Notify Department**

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

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

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

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

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

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

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

#### **4.2.4.2 Contractor's Responsibility to Notify Participants**

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

#### **4.2.4.3 Credit Monitoring and Notification**

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

The Contractor shall provide the Department of Legal Affairs written notice of a Breach that affects five hundred (500) or more Participants as soon as practicable, or within thirty (30) Calendar Days of the Breach. The Contractor shall provide the Department a copy of the written notice to the Department of Legal Affairs. If a Breach impacts more than one thousand (1,000) Participants at a single time, the Contractor shall notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in the Fair Credit Reporting Act, 15 U.S. Code Section 1681a (p), of the timing, distribution, and content of the notices required pursuant to sections 4.2.5.1 ("Contractor's Responsibility to Notify Department") and 4.2.5.2 ("Contractor's Responsibility to Notify Participants") of this Contract.

#### **4.2.5 E-Verify**

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

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

#### **4.2.6 Scrutinized Companies – Termination by the Department**

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

#### **4.2.7 Employment of State Workers**

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

#### **4.2.8 Background Screening, Record Retention, and Warranty of Security**

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

##### **4.2.8.1 Background Screening**

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

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

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

- Social Security Number Trace; and

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

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

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

#### **4.2.8.2 Disqualifying Offenses**

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

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

If the Contractor finds a Disqualifying Offense for a Person within the last six (6) years from the date of the court's disposition, it may obtain information regarding the incident and determine whether that Person should continue providing Services under the Contract or have Access to State of Florida Data. The Contractor will consider the following factors only in making the determination: i.) nature and gravity of the offense, ii.) the amount of time that lapsed since the offense, iii.) the

rehabilitation efforts of the person and iv.) relevancy of the offense to the job duties of the Person. If the Contractor determines that the Person should be allowed Access to State of Florida Data, then Contractor shall maintain all criminal background screening information and the rationale for such Access in the Person's employment file.

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

#### **4.2.8.3 Refresh Screening**

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

#### **4.2.8.4 Duty to Provide Secure Data**

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

#### **4.2.8.5 Department's Ability to Audit Screening Compliance and Inspect Locations**

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

#### **4.2.8.6 Record Retention**

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

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

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

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

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

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

### **4.3 Acceptance of Deliverables**

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

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

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

### **4.4 Warranty**

Generally: Contractor warrants that the Services shall be delivered in a professional workman-like manner in accordance with the standards and quality prevailing among first-rate nationally

recognized firms in the industry and in accordance with this Contract and this warranty will remain in effect for a period of three hundred, sixty-five (365) Calendar Days following delivery of the Services (“Warranty Period”).

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

This section shall survive termination or expiration of this Contract.

## **Section 5      AUDIT RIGHTS**

The Department has the right to conduct performance and/or compliance audits of any and all areas of the Contractor and/or Subcontractors activities related to this Contract. The Department may at any time enter and inspect the Contractor’s physical facilities where operations required under this Contract are performed, within reasonable notice. Except in emergency situations, reasonable notice will be provided for audits conducted at Contractor’s premises, which notice will not be less than 10 (ten) Business Days. Audits may include, but not be limited to, audits of procedures, computer systems, claims files, provider contracts, service records, accounting records, internal audits, quality control assessments, and any and all applicable provider contracts, including contracts with pharmaceutical manufacturers, and service programs related to this Contract. Contractor will cooperate and work with any representatives selected by the Department to conduct said audits and inspections, including but not limited to, other state agencies. The Contractor will make available all data and information requested by the Department in furtherance of any audit. Prior to the commencement of this audit, the Contractor may request to enter into a mutually agreeable confidentiality agreement with any third-party auditor. However, no such agreement shall limit the Department’s access to this audit report or any other document, and must be consistent with section 11.4 of this Contract, Article 1, section 24 of the Florida Constitution, and Chapter 119, Florida Statutes.

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

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

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

Any disputes regarding the audit findings of the Department or its designated auditor shall be resolved in accordance with section 10.7 (Dispute Resolution, Governing Law and Venue) of this Contract.

## **Section 6      DIVERSITY**

It is the policy of the State that Minority Business Enterprises, Woman-Owned Business Enterprises,



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

## **Section 7 LIQUIDATED DAMAGES**

### **7.1 Generally**

Time is of the essence in performing the Contract; this is true generally and particularly with respect to meeting the Performance Guarantees set forth in Attachment E – Performance Guarantees. Contractor acknowledges that untimely performance or other material noncompliance will damage the Department, but by their nature such damages are impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining the amount of damages will be multiple and complex, and will be dependent on many and variant factors, proof of which would be burdensome and require lengthy and expensive litigation, which the Parties desire to avoid. Accordingly, the Parties agree that it is in the Parties' best interests to agree upon a reasonable amount of liquidated damages, which are not intended to be a penalty and are solely intended to compensate for unknown and unascertainable damages. The Parties acknowledge that liquidated damages are contemplated by section 110.123(3)(d)3, Florida Statutes.

### **7.2 Failure to Meet Performance Guarantees**

- a. Contractor agrees to payment of additional liquidated damages in the form of Performance Guarantees if it fails to meet the performance standards set forth within Attachment E - Performance Guarantees.
- b. Liquidated damages are intended only to cover the Department's internal staffing and administrative costs and the diminished value of the Services provided under the Contract. In accepting any form of liquidated damages, the Department does not waive its right to pursue other remedies provided for under this Contract for other breaches.
- c. Notwithstanding anything in the Contract to the contrary, the total of any and all liquidated damages paid or to be paid by Contractor pursuant to this Contract for any calendar quarter will not exceed one hundred percent (100%) of the payment due under section 3.8 above.
- d. Upon mutual agreement of the Parties, Performance Guarantees may be suspended from time to time for special circumstances. Suspension of a Performance Guarantee will not excuse Contractor from accumulating data relevant to that Performance Guarantee and reporting such data to the Department as part of the management reports delivered pursuant to this Contract.
- e. Contractor will provide the Department with a Performance Standards Guarantee Report for all Performance Guarantees prescribed by Attachment E - Performance Guarantees, on a quarterly basis. The Department may, at its option, provide Contractor with a Performance Guarantee report template, which must be used. For each Performance Guarantee that the Contractor fails to meet, based on the Performance Standards Guarantee Report, the Contractor will provide appropriate payment to the

Department within forty-five (45) Calendar Days of the end of the reporting quarter. The Department is not required to notice or invoice the Contractor for payment.

- f. The Department may require the Contractor to propose and implement a reasonable Corrective Action Plan to address and correct the root causes of any missed Performance Guarantee.
- g. The inclusion of the Performance Guarantees in this Agreement is intended to address unsatisfactory performance in the context of ongoing operations without resorting to the default provisions set forth in section 9 of the Contract. However, if Contractor's performance falls below the minimum level of performance (as contained in Attachment E - Performance Guarantees) for the same Performance Guarantee for three (3) measurement periods and such failure is not otherwise excused, then the Department may declare an Event of Default and pursue alternative remedies in lieu of accepting Performance Guarantees.
- h. Contractor will be excused for failing to meet any Performance Guarantee to the extent such failure is caused by the Department not performing any of its obligations under the Contract.
- i. Contractor will advise the Department in writing as soon as possible of any circumstance or occurrence, which could excuse or affect Contractor's ability to achieve any of the Performance Guarantees. In all such cases, Contractor will cause to make all reasonable efforts to achieve the Performance Guarantees.

## **Section 8    INSURANCE**

### **8.1    Insurance Coverage**

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

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

- d.) Professional Indemnity Insurance. The Contractor must secure and continuously maintain professional indemnity insurance that must cover professional liability and error and omissions in the face amount of **\$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 related to professional liability and error and omissions. Each insurance certificate for such policy must include an agreement that the insurer will provide thirty (30) Calendar Days prior written notice to the Department of cancellation for any coverage.

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

## **Section 9 EVENTS OF DEFAULT AND REMEDIES**

### **9.1 Contractor Events of Default**

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

- (a) Contractor fails to pay any sum of money due hereunder;
- (b) Contractor fails to provide the Services required under this Contract;
- (c) Contractor employs an unauthorized alien in the performance of any work required under this Contract;
- (d) Contractor fails to correct work that the Department has rejected as unacceptable or unsuitable;
- (e) Contractor discontinues the performance of the work required under this Contract;
- (f) Contractor fails to resume work that has been discontinued within the time prescribed by the Department in its notice;
- (g) Contractor abandons the project;
- (h) Contractor becomes insolvent or is declared bankrupt;
- (i) Contractor files for reorganization under the bankruptcy code;
- (j) Contractor commits any other action towards the initiation of bankruptcy or insolvency proceedings, either voluntarily or involuntarily;
- (k) Contractor fails to promptly pay any and all taxes or assessments imposed by and legally due the Department, State or federal government;
- (l) Contractor makes an assignment for the benefit of creditors without the approval of the Department;
- (m) Contractor makes or has made a material misrepresentation or omission in any materials provided to the Department;
- (n) Contractor commits any material breach of this Contract;
- (o) Contractor transfers ownership in violation of the Contract;
- (p) Contractor fails to furnish and maintain the performance bond;
- (q) Contractor fails to procure and maintain the required insurance policies and coverages required by this Contract;
- (r) The Department determines that the surety company issuing a bond securing Contractor's performance of its obligations hereunder becomes insolvent or unsatisfactory;
- (s) Contractor utilizes a Subcontractor in the performance of the work required by this Contract, which has been placed on the State's Convicted Vendor List, Discriminatory Vendor List, or Antitrust Vendor List;
- (t) Contractor is suspended or is removed as an authorized Contractor by any State or federal agency; or Contractor is convicted of a felony; is placed on the State's Convicted Vendor

- List, Discriminatory Vendor List, or Antitrust Vendor List; or has its license is suspended or revoked;
- (u) Contractor refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by Contractor in conjunction with this Contract and not otherwise deemed confidential, proprietary or a trade secret;
  - (v) Contractor refuses to allow any access required to comply with the audit provisions of by the Contract;
  - (w) Violation of section 4.2.5 (Work Locations, No Offshoring of Data), or Contractor's permitting State of Florida Data to be transmitted, viewed, or accessed outside of the United States;
  - (x) Contractor's change of Subcontractors in violation of section 4.2.3, Subcontractors, of the Contract;
  - (y) The Contractor, upon discovery or notice thereof, fails to notify the Department within seven (7) Calendar Days of problems or issues impacting provision of Services or compliance with the terms of the Contract not already subject to a shorter notification timeframe set forth herein;
  - (z) For any other cause whatsoever that Contractor fails to perform in accordance with the Contract, including, but not limited to, failure to meet performance standards and/or pay associated guarantees;
  - (aa) Failure to meet the same Performance Guarantee for at least three (3) performance periods.

## **9.2 Department Remedies in the Event of Default**

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

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

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

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

### **9.3 Department Events of Default**

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

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

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

### **9.4 Contractor Remedies in the Event of Default**

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

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

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

### **9.5 Rights Cumulative, No Waiver**

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

## **Section 10 GENERAL PROVISIONS**

### **10.1 Advertising**

- (a) Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department, including, but not limited to, mentioning the

Contract in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking Contractor's name and either a description of the Contract or the name of the State or the Department in any material published, either in print or electronically, to anyone except Participants, network health care providers, or potential or actual Subcontractors. Within a reasonable time after the Effective Date, the Parties may issue a mutually agreeable joint press release regarding the Contract and the Services to be provided hereunder.

- (b) Contractor may use its logos, symbols, trademarks, trade names, or service marks on Plan identification cards and other Department-approved forms, and to publicize Contractor's relationship with the State to Participants and potential or existing network providers. Contractor will not use the State seal, name or logo of the Department or State, or Contractor's relationship to the Plan, for any purpose without the prior written consent of the Department.
- (c) Contractor will not publish or release the results of its engagement without prior written approval from the Department. However, Contractor may refer to the Contract as an experience citation with other customers without prior approval.

## **10.2 Assignment, Acquisition by Third Party**

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

## **10.3 Change of Statute or Regulation or Governmental Restrictions**

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

## **10.4 Compliance with Laws, Including HIPAA**

- (a) Generally: Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, section 110.123 of the Florida Statutes and Chapter 60P of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, Contractor shall comply with the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination. The Contractor shall notify the Department immediately if the Contractor loses any licenses.
- (b) Anti-Kickback Statute: Each Party certifies that it will not violate the following laws with respect to the performance of its obligations under this Contract: the federal anti-kickback statute, set forth in 42 U.S.C. 1320a-7b(b); Florida's Anti-Kickback Law, set forth in section 409.920, Florida Statutes; the federal Stark law, set forth in 42 U.S.C. 1395nn; the Patient Self-Referral Act of 1992, set forth in section 456.053, Florida Statutes; the Patient

Brokering Act, set forth in section 817.505, Florida Statutes; and the Florida False Claims Act, set forth in sections 68.081 – 68.092, Florida Statutes.

- (c) Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA): Contractor shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its rules and regulations, including but not limited to the provisions governing the privacy and security of records as well as administrative simplification. Contractor shall commit to implementation and compliance by the statutory deadlines set forth in the statute and associated regulations. Contractor shall assist the State in implementing its compliance with this legislation as it relates to employee health benefits including but not limited to, executing Attachment F: Privacy, Security, and Confidentiality Business Associate Agreement.
- (d) Internal Revenue Service Reporting: Contractor will make all necessary reports to the Internal Revenue Service regarding benefit payments made to health care Contractors as required by law.
- (e) 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.

### 10.5 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:

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

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

### 10.6 Contract Managers

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

[Insert Name]  
State Group Insurance  
Department of Management Services  
4050 Esplanade Way  
Tallahassee, FL 32399-0950  
Telephone:  
Email:

Contractor's Account Manager is:

[Insert Name]  
[Insert Title]  
[Address]  
[City and Zip]

Telephone: [ ]

Email: [ ]

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

## **10.7 Dispute Resolution, Governing Law and Venue**

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

This section shall survive termination or expiration of this Contract.

## **10.8 Entire Contract**

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

## **10.9 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 this Contract.

## **10.10 Defense of Third-Party Claims**

### **10.10.1 Notice of Claims**

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

### **10.10.2 Department as Real Party in Interest**

If a Participant files suit against Contractor regarding eligibility, enrollment or coverage that is the legal administrative responsibility of the Department without previously requesting an administrative hearing pursuant to Chapter 120, Florida Statutes, Contractor shall file a motion to dismiss or any other appropriate motions and shall notify the



Department of its action. Contractor shall, when possible, notify the Department prior to the filing of such motion and shall notify the Department no later than seven (7) Business Days after the filing of any such motion. Prior to filing any such motions, Contractor shall, when possible, advise the party filing the suit, as appropriate, that issues regarding eligibility, enrollment, or coverage that is the legal administrative responsibility of the Department require the exhaustion of administrative remedies and/or in such instances the real party in interest is the Department. In reference to legal proceedings regarding eligibility, enrollment, or coverage that is the legal administrative responsibility of the Department, the Department may support Contractor's motions, as specified in this section, to drop Contractor and/or to substitute the Department, if the Department is not already a party to the lawsuit, as the real party in interest when requested by Contractor. If the Department is a codefendant in any such lawsuit, the Department may support any appropriate motion(s) to drop Contractor from the lawsuit.

### **10.10.3 Contractor as Real Party in Interest**

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

### **10.10.4 Cooperation in the Defense of Administrative and/or Legal Actions**

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

### **10.10.5 Administrative Proceedings**

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

### **10.10.6 Support and Communication with Contractor's Legal Affairs Department**

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

Section 11.13 shall survive termination or expiration of this Contract.

### **10.11 Right of Setoff**

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

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

### **10.12 Independent Contractor Status**

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

### **10.13 Inspection at Contractor Site**

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

### **10.14 Intellectual Property**

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

### **10.15 Loss of Data**

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

### **10.16 Notices**

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

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

[Insert Name]  
Department of Management Services  
Division of State Group Insurance  
4050 Esplanade Way, Suite 217.1Z  
Tallahassee, FL 32399  
Telephone:  
Email:

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

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

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

### **10.17 Cooperation with the Inspector General**

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

### **10.18 Public Records**

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

#### **10.18.1 Access to Public Records**

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

#### **10.18.2 Redacted Copies of Confidential Information**

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

#### **10.18.3 Request for Redacted Information**

In the event of a public records or other disclosure request pursuant to Chapter 119, Florida Statutes, the Florida Constitution, or other authority, to which documents that are marked as "Confidential" are responsive, the Department will provide the Contractor-redacted copies to the requestor. If a requestor asserts a right to materials, which Contractor has identified as confidential, pursuant to section 11.22.2 of this Contract, the

Department will notify the Contractor such an assertion has been made. It is the Contractor's responsibility to assert that the information in question is exempt from disclosure under Chapter 119 or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Contractor under legal process, the Contractor shall be responsible for defending its determination that the redacted portions of its records are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

#### **10.18.4 Contractor as Agent**

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

- a) Keep and maintain public records required by the public agency to perform the service.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.
- d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

- e) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED FOR THE CONTRACT MANAGER.**

#### **10.19 Rights to Records**

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

#### **10.20 Organizational Conflicts of Interest**

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

### **10.21 Best Pricing Clause**

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

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

In accordance with section 216.0113, Florida Statutes, the Contractor agrees to submit to Department at least annually an affidavit from an authorized representative attesting that the Contractor is in compliance with this preferred pricing provision.

### **10.22 Convicted Vendor and Discriminatory Vendor Lists**

Pursuant to sections 287.133, 287.134, and 287.137 Florida Statutes, the following restrictions are placed on the ability of persons placed on the State's Convicted Vendor List, the Discriminatory Vendor List, or the Antitrust Vendor List:

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

- 3) A person or an affiliate who has been placed on the Antitrust Violator Vendor List following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.

### **10.23 Section 508 Compliance**

The Contractor will comply with section 508 of the Rehabilitation Act of 1973, as amended and 29 U.S.C. s. 794(d), including the regulations set forth under 36 C.F.R. part 1194. Section 282.601(1), Florida Statutes, states that “state government shall, when developing, competitively procuring, maintaining, or using electronic information or information technology acquired on or after July 1, 2006, ensure that State employees with disabilities have access to and are provided with information and data comparable to the access and use by State employees who are not individuals with disabilities.”

**SIGNATURE PAGE IMMEDIATELY FOLLOWS**

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

**FLORIDA DEPARTMENT OF MANAGEMENT SERVICES**

\_\_\_\_\_  
**DMS Secretary (or designee)**

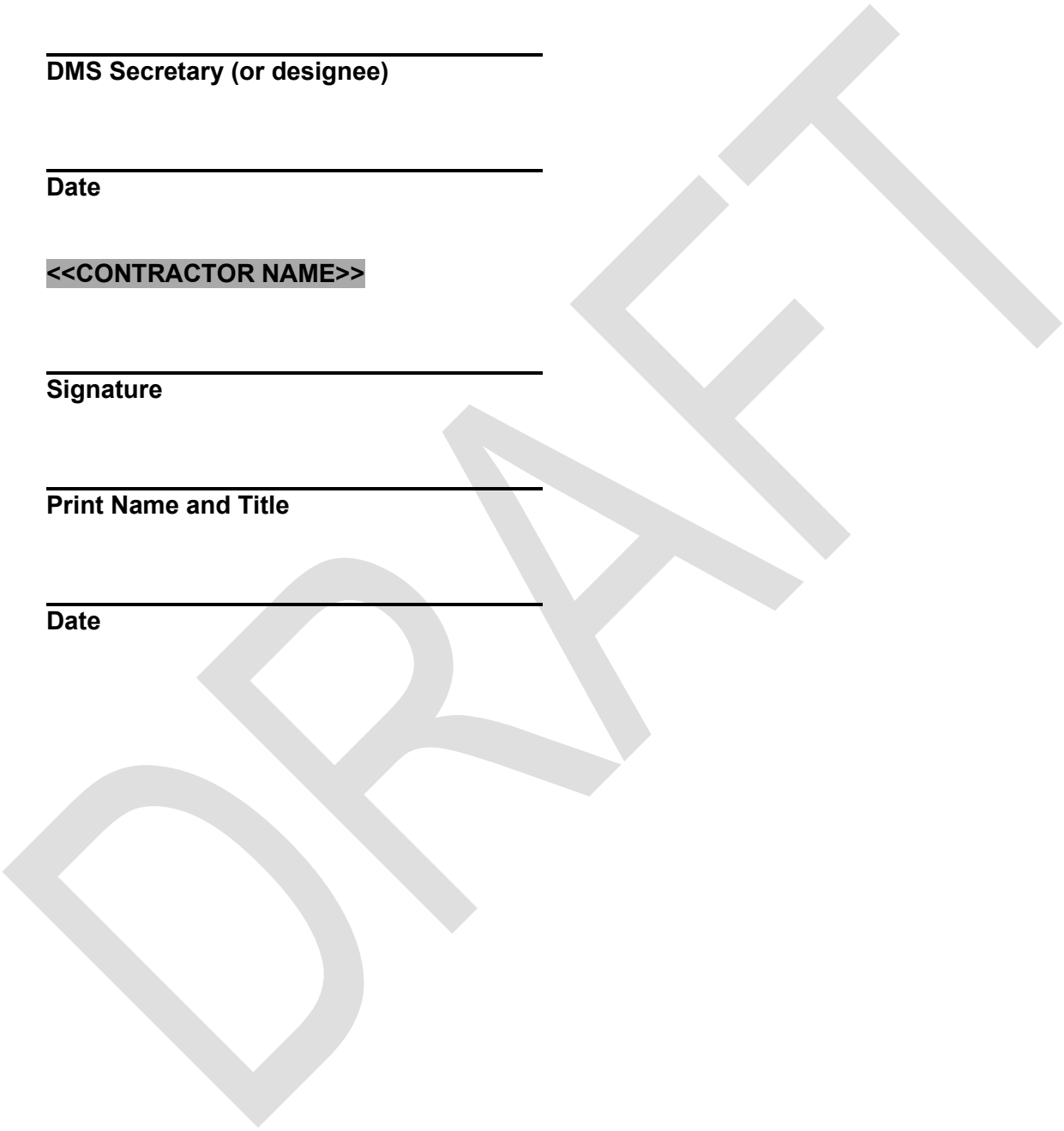
\_\_\_\_\_  
**Date**

**<<CONTRACTOR NAME>>**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Print Name and Title**

\_\_\_\_\_  
**Date**





<<INSERT>>

ATTACHMENT A: STATEMENT OF WORK

ATTACHMENT C: PRICE SHEET

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

ATTACHMENT G: APPROVED SUBCONTRACTORS (IF APPLICABLE)