



4050 Esplanade Way  
Tallahassee, FL 32399-0950  
850-488-2786

**Ron DeSantis, Governor**

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**HEALTH INSURANCE MANAGEMENT INFORMATION SYSTEM**

**CONTRACT NO: DMS-20/21-036**

**BETWEEN**

**THE STATE OF FLORIDA**

**DEPARTMENT OF MANAGEMENT SERVICES**

**AND**

**BENEFITFOCUS.COM, INC.**

## CONTRACT

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### Exhibits:

Exhibit A – Request for Best and Final Offer to ITN DMS-20/21-036;  
Exhibit B – Contractor’s Best and Final Offer to ITN DMS-20/21-036;  
Exhibit C – Privacy, Security, and Confidentiality Business Associate Agreement; and

### Attachments:

Attachment A – Statement of Work  
Attachment B – Price Sheet

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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 BENEFITFOCUS.COM, INC., (Contractor) with offices at 100 Benefitfocus Way, Charleston, South Carolina 29492, each a "Party" and collectively referred to herein as the "Parties".

The Parties enter into this Contract (hereinafter "the Contract") in accordance with Chapter 282 Part II, and Chapter 287, Florida Statutes (F.S.), and with the negotiated terms and conditions of Invitation to Negotiate, DMS-20/21-036, Health Insurance Management Information System.

### SECTION 1. CONTRACT TERM AND TERMINATION

#### 1.1 Initial Term

The Contract will be effective upon execution and will end on **December 31, 2027**.

#### 1.2 Renewal

Upon written agreement, the Department and the Contractor may renew the Contract for up to five (5) one (1) year renewals, in accordance with section 287.057(13), F.S., and Rule 60A-1.048, Florida Administrative Code (F.A.C.).

#### 1.3 Suspension of Work and Termination

##### 1.3.1 Suspension of Work

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Department may, at its sole discretion, suspend the Contract at any time, when in the best interest of the Department to do so. The Department will provide the Contractor written notice outlining the particulars of suspension and the effective date of the suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor must comply with the notice and will cease the activities associated with the Contract. Within ninety (90) days, or any longer period agreed to by the Contractor, the Department will either (1) issue a notice authorizing resumption of work, at which time activity will resume, or (2) terminate the Contract pursuant to this Section 1. During the suspension of work, an appropriate equitable adjustment in the Contract price may be made.

##### 1.3.2 Termination for Convenience

The Contract may be terminated by the Department in whole or in part at any time, when it is in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed, through the termination date. Except to the extent otherwise stated in this Contract, all work in progress will become the property of the Department and shall be turned over promptly by the Contractor.

##### 1.3.3 Termination for Cause

If the performance of the Contractor or Department is not in material compliance with the Contract requirements or the Contractor or Department has defaulted, the non-breaching party shall notify the breaching party of the deficiency with a

requirement that the deficiency be corrected within ten (10) days following notice, or another specified time as agreed to by the Parties, otherwise if the deficiency has not been corrected and the breaching party has not commenced reasonable steps to remedy, the Contract will terminate at the end of such time. For the purposes of this Section, material shall mean non-compliance which greatly and adversely effects operations and for which Contractor has not provided a workaround for.

#### **1.3.4 Termination Assistance**

In case of termination, regardless of cause, and provided the Department is not otherwise in default of the Contract, the Contractor will provide prompt and thorough transition assistance and cooperation, including as specified in **Attachment A**, Statement of Work.

#### **1.3.5. Termination by Insolvency**

To the extent applicable, either Party may terminate this Contract by providing written notice to the other Party if the other Party becomes insolvent, makes an assignment for the benefit of creditors, files a petition in bankruptcy, permits a petition in bankruptcy to be filed against it, or admits in writing its inability to pay its debts as they mature, or if a receiver is appointed for a substantial part of its assets. In the event that this Contract is terminated or rejected by a Party or its receiver or trustee under applicable bankruptcy laws due to such Party's bankruptcy, the Parties agree that this is a services agreement, and that there are no rights and licenses granted under or pursuant to this Agreement by such Party to the other Party which shall be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code and any similar laws in any other country, licenses of rights to "intellectual property" as defined under Section 101(35A) of the U.S. Bankruptcy Code.

## **SECTION 2. CONTRACT DOCUMENTS AND HIERARCHY**

The Contract sets forth the entire understanding of the Parties and consists of the documents listed below. In the event any of these documents conflict, the conflict will be resolved in the following order of priority (highest to lowest):

1. This Contract document, including any amendments thereto,
2. Exhibit A – Request for Best and Final Offer to ITN DMS-20/21-036, which includes the final negotiated Statement of Work, and
3. Exhibit B – Contractor's Best and Final Offer to ITN DMS-20/21-036.

In accordance with Rule 60A-1.002(7), F.A.C., Form PUR 1000, is included herein by reference, but is superseded in its entirety by the Contract.

## **SECTION 3. PAYMENT AND FEES**

### **3.1 Pricing**

The Contractor shall adhere to the prices as stated in **Attachment B**, Price Sheet, an attachment to the Department's Request for Best and Final Offer, which is incorporated by reference into the Contract.

**3.2 Price Adjustments**

During the term of the Contract (including renewal years), the Department encourages the Contractor to offer price decreases that are in line with increased efficiencies and added infrastructure enhancements. The Department reserves the right to further negotiate reduction in pricing for the renewal years. Pricing may be updated in accordance with the procedures identified in the final SOW negotiated between the parties.

**3.3 Reserved**

**3.4 Payments**

The Contractor will be paid in compliance with section 215.422, F.S., upon submittal of an invoice to the Department. The Contractor shall submit invoices for fees or other compensation for services or expenses in detail sufficient enough for a proper pre-audit and post-audit and which will contain the Contract Number and the Contractor's Federal Employer Identification Number. The Department reserves the right to request additional documentation as needed and Contractor will follow all invoice directives in the Statement of Work and this Contract.

**3.5 Travel**

Travel expenses are not reimbursable unless specifically authorized by the Department in writing, and may be reimbursed only in accordance with section 112.061, F.S.

**3.6 Annual Appropriation**

Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature, provided Department notifies Contractor of non-appropriation of funds and this Contract shall terminate on the last day of the fiscal period for which sufficient appropriation was made.

**3.7 Taxes**

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Department unless authorized by Florida law.

**3.8 Return of Funds**

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor by the Department. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department of the overpayment.

**SECTION 4. CONTRACT ADMINISTRATION**

**4.1 Department's Contract Administrator**

The Department's Contract Administrator, whose primary responsibility will be to maintain the Contract file, is as follows:

Departmental Purchasing  
Florida Department of Management Services  
4050 Esplanade Way, Suite 335  
Tallahassee, Florida 32399-0950

Email: [DMS.Purchasing@dms.fl.gov](mailto:DMS.Purchasing@dms.fl.gov)

In the event that the Department changes the Department's Contract Administrator, the Department will notify the Contractor's Contract Manager in writing via email, and document such in the Contract file. Such changes do not require a formal written amendment to the Contract.

#### **4.2 Department's Contract Manager**

The Department's Contract Manager, who is primarily responsible for enforcing the performance of the Contract terms and conditions and will serve as a liaison with the Contractor will be as follows:

Heather Pierson  
Florida Department of Management Services  
4030 Esplanade Way, Suite TBD  
Tallahassee, Florida 32399-0950  
Telephone: (850) 487-0163  
Email: [heather.pierson@dms.fl.gov](mailto:heather.pierson@dms.fl.gov)

In the event that the Department changes the Department's Contract Manager, the Department will notify the Contractor in writing via email. Such changes do not require a formal written amendment to the Contract.

#### **4.3 Contractor's Contract Manager**

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be as follows:

Wendie Carbone  
Benefitfocus.com, Inc.  
100 Benefitfocus Way  
Charleston, South Carolina 29492  
Telephone: (775) 230-8904  
Email: [wendie.carbone@benefitfocus.com](mailto:wendie.carbone@benefitfocus.com)

In the event that the Contractor changes its Contract Manager, the Contractor will notify the Department's Contract Manager in writing via email. Such a change does not require an amendment to the Contract.

### **SECTION 5. CONTRACT MANAGEMENT**

#### **5.1 Composition and Priority**

The Contractor agrees to provide commodities or contractual services within the manner and at the location specified in the Contract and any exhibits or attachments to the Contract. Additionally, the terms of the Contract supersede the terms of any and all prior or contemporaneous agreements between the Parties on the same subject matter.

#### **5.2 Notices**

All notices required under the Contract must be delivered to the designated Contract Manager by certified mail, return receipt requested, reputable air courier service, email, or personal delivery, or as otherwise identified by the Department.

### 5.3 Change Request

The Department's Contract Manager may authorize, through advance written approval, operational changes to services and infrastructure that do not have a pricing impact (non-billable changes) via a change request. Operational changes are modifications to any formalized plans, projects, guidelines, or procedures that have been approved by the Department that the Contractor adheres to in carrying out its duties and responsibilities required under the Contract. Such authorized operational changes do not require a contract amendment, but will be memorialized in writing and placed in the Contract Managers' files. For the avoidance of doubt, Contractor shall have the right to rely and act upon such instructions provided by Department. Any changes or modifications to the Statement or Work, Price Sheet, or any other document expressly incorporated into the Contract shall only be altered through a formal contract amendment executed by the Parties. The Department reserves the right to make the final determination if a change request or contract amendment is required. Any change that would allow the Contractor to offer less of any deliverable, including commodities, services, technology, or software, requires a contract amendment.

### 5.4 Diversity Reporting

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises, and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at [osdinfo@dms.myflorida.com](mailto:osdinfo@dms.myflorida.com).

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of the Department under the Contract.

### 5.5 RESPECT

Subject to the agency determination provided for in Section 413.036, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION [413.036](#)(1) AND (2), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about the designated nonprofit agency and the commodities or contractual services it offers is available at <http://www.respectofflorida.org>.

#### **5.6 PRIDE**

Subject to the agency determination provided for in Sections 946.515 and 287.042(1), F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <http://www.pride-enterprises.org>.

### **SECTION 6. COMPLIANCE WITH LAWS**

#### **6.1 Conduct of Business**

The Contractor must 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, including but not limited to, Chapters 282 and 287 of the Florida Statutes, Chapter 60GG of the Florida Administrative Code, the Communications Assistance for Law Enforcement Act, the Payment Card Industry DSS, IRS Publication 1045, Section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act (HIPAA) (including executing any Business Associate Agreements as requested by the Department's SDC customers), if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status Pursuant to subsection 287.058(1), F.S., the provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference, to the extent applicable.

#### **6.2 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 on the Contractor. If the parties are unable to resolve the dispute at the Contract Manager level, any dispute concerning the performance of the Contract, shall be decided by the Department's Secretary or designee, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Department's Secretary, or designee, shall be final and conclusive unless within twenty-one (21) calendar days of the receipt, the Contractor files with the Department a petition for administrative hearing. 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.



**6.3 Department of State, Registration**

Consistent with Chapters 605 through 623, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

**6.4 Suspended, Convicted, and Discriminatory Vendor Lists**

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List during the term of the Contract.

**6.5 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), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. Notwithstanding the foregoing, the Parties are aware of the Eleventh Circuit Court's decision in Odbrecht Constr. v. Sec'y, Fla. DOT, 715 F.3d 1268 (11<sup>th</sup> Cir. Fla. 2013), and agree that the provisions of sections 287.135(1)-(5), F.S., pertaining to a company engaged in business operations in Cuba or Syria shall not apply to this contract unless and until the Eleventh Circuit Court's decision in Odbrecht Constr. v. Sec'y, Fla.DOT, 715 F.3d 1268 (11<sup>th</sup> Cir. Fla. 2013) is overturned.

**6.6 Cooperation with Inspector General and Records Retention**

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Contractor will retain such records for five (5) years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer.

**6.7 Inspection**

Section 215.422, F.S., shall govern inspection and approval of goods and services.

**6.8 Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

Contractor will 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, as evidenced by signing **Exhibit C**, Privacy, Security, and Confidentiality Business Associate Agreement.

**6.9 Inspection of Records, Papers, and Documents**

In accordance with section 216.1366, F.S., 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.

## **SECTION 7. MISCELLANEOUS**

### **7.1 Warranty of Contractor's Ability to Perform**

The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the Suspended Vendor List, Convicted Vendor List, Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government.

The Contractor shall notify the Department of any regulatory or legal actions filed by any federal, state, or local government entity and any other litigation that could impact the Contractor's ability to perform under this contract within thirty (30) days of the action being filed. Failure to notify the Department of the above mentioned legal action within thirty (30) days of the action will be grounds for termination for cause of the Contract. The Contractor shall use reasonable effort to notify the Department of any legal actions filed against it for a breach of a contract of similar size and scope to this Contract within thirty (30) days of the action being filed. .

The Contractor shall notify, within thirty (30) days, the Department in writing if its ability to perform is materially compromised in any manner during the term of the Contract.

### **7.2 Subcontractors**

The Contractor will not subcontract any work under the Contract without prior written notice to the Department and, for subcontracting of work performed pursuant to **Attachment A**, Statement of Work, without prior written consent of the Department. Notice or consent shall be achieved by one of the following: (i) as stated in the applicable Statement of Work which must be signed by both parties; or (ii) in another writing between Department and Contractor, for example, an email between the parties, where Department has responded with their agreement of the use of such Subcontractor. The Contractor is fully responsible for satisfactory completion of all subcontracted work. The Department supports diversity in its procurements and contracts, and requests that Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The Contractor may contact the OSD at [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com) for information on certified small business enterprises available for subcontracting opportunities. To subcontract any services to a subcontractor not originally identified in the Reply, the Contractor shall submit a written request to the Department's Contract Manager identified in the Contract. The written request shall include, but is not limited to, the following:

- 7.2.1.** The name, address and other information identifying the subcontractor;
- 7.2.2.** Type of services to be performed by the subcontractor;
- 7.2.3.** Time of performance for the identified service;

- 7.2.4. How the Contractor plans to monitor the subcontractor's performance of the identified services;
- 7.2.5. Certification that the subcontractor has all licenses and county authority, as applicable, and/or has satisfied all legal requirements to provide the services to the Department. Also, the Contractor shall certify that the subcontractor is approved by the Florida Department of State to transact business in the State of Florida. If the subcontractor is an out-of-state company, it must have a Florida Certificate of Authority from the Department of State, Division of Corporations, to transact business in the State of Florida. For additional information, please visit the following website: [www.sunbiz.org](http://www.sunbiz.org); and
- 7.2.6. To the extent a Subcontractor is utilized under this Contract, acknowledgment from Contractor that the Subcontractor is aware of and shall comply with all applicable terms and conditions of the Contract. The Contractor acknowledges that it shall not be released of its contractual obligation to the Department because of any subcontract. The Contractor is solely responsible for ensuring the subcontractor maintains the insurance as required. The Department shall treat the Contractor's use of a subcontractor not contained herein and/or approved by the Department as a breach of Contract.

**7.3 Assignment**

The 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. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. Unless transferred by operation of law, the Department may not assign the Contract without prior written notice to the Contractor, which consent shall not be unreasonably withheld.

**7.4 Independent Contractor**

The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the Department and are not entitled to the benefits of State of Florida employees. The Department will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors, except to the extent acting on the instructions of, or on behalf of, the Department.

**7.5 Reserved.**

**7.6 Safety Standards**

To the extent applicable, performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

**7.7 Ombudsman**

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from the Department. The Vendor Ombudsman may be contacted at (850) 413-5516.

**7.8 Reserved.**

**7.9 Waiver**

The delay or failure by the Department to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

**7.10 Modification and Severability**

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

**SECTION 8. WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE, AND INDEMNIFICATION****8.1 Workers' Compensation Insurance**

The Contractor shall 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 resulting contract and any class of employees performing the work is not protected under Worker's 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.

**8.2 General Liability Insurance**

The Contractor shall maintain insurance it deems sufficient given its business needs, with such limits as may be reasonably associated with the Contract. All insurance shall be with insurers authorized to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

**8.2.1.** Workers' compensation insurance as required by Florida law and, for work performed outside of Florida, the laws of those states.

**8.2.2.** Employer's Liability Insurance: **\$1,000,000.00.**

**8.2.3.** Commercial General Liability insurance with State of Florida designated as an additional insured and endorsed to provide the State a thirty (30) days prior written notice of cancellation or material change to the policy. Policy must have an endorsed blanket waiver of subrogation and be primary over any other insurance coverage. Minimum limits:

**8.2.3.1.** General Aggregate: **\$2,000,000.00,**

**8.2.3.2.** Products/Completed Operations Aggregate: **\$2,000,000.00,**

**8.2.3.3.** Per Occurrence Limit: **\$1,000,000.00,**

**8.2.3.4.** Personal and Advertising Injury Limit: **\$1,000,000.00,**

**8.2.3.5.** Fire Legal Liability: **\$100,000.00,** and

**8.2.3.6.** Medical Payments: **\$10,000.00.**

The Contractor must submit via email, to the Department's Contract Manager, notice of any cancellation or nonrenewal at least ten (10) calendar days prior to cancellation or nonrenewal. In the event of cancellation or nonrenewal, the Contractor will be responsible for securing a replacement insurance policy in accordance with this section.

### **8.3 Indemnification**

The Contractor agrees to indemnify, defend, and hold the Department, the State of Florida, its officers, employees and agents harmless from all fines, claims, assessments, suits, judgments, or damages of any name (subject to Section 8.4 below) finally awarded or entered into in settlement, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right or out of any acts, actions, breaches, neglect or omissions of the Contractor, its employees, agents, subcontractors, assignees or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Department. The Contract does not constitute a waiver of sovereign immunity or consent by the Department or the State of Florida or its subdivisions to suit by third parties.

Without limiting this indemnification, the Department may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. Each party shall be responsible for its own acts and omissions.

### **8.4 Limitation of Liability**

Neither party will be liable for any indirect, incidental, special, consequential, punitive, reliance, or exemplary damages (including lost profits, revenues or other financial losses,) arising under or relating to in any way to the services or this agreement. The foregoing shall apply regardless of the negligence or other fault of the party and regardless of whether such liability arises from contract, negligence, tort, strict liability or any other theory of legal liability. Except as specially set forth herein, the foregoing limitations represent a bargained for allocation of risk, which allocation is a material element of this agreement, to the maximum extent possible under applicable law. For the avoidance of doubt, this Section shall not limit Contractor's obligations with respect to **Exhibit C**, Privacy, Security, and Confidentiality Business Associate Agreement.

## **SECTION 9. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT AND INTELLECTUAL PROPERTY**

### **9.1 Public Records**

Solely for the purpose of this section, the Contract Manager is the agency custodian of public records. If, under this Contract, to the extent the Contractor is providing services and is acting on behalf of the public agency, as provided in section 119.0701, F.S., the Contractor shall:

- 9.1.1.** Keep and maintain public records required by the public agency to perform the service.
- 9.1.2.** 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 a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- 9.1.3.** 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.

**9.1.4.** 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.

**9.1.5. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., 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.**

With respect to the destruction requirements within item **9.1.4.**, such destruction shall be completed within ninety (90) days subject to Contractor's fourteen (14) day backup retention.

**9.2 Protection of Trade Secrets or Confidential Information.**

If the Contractor considers any portion of materials made or received in the course of performing the Contract ("contract-related materials") to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated trade secret or otherwise confidential.

If the Department is served with a request for discovery of contract-related materials designated by the Contractor as trade secret or otherwise confidential, the Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated trade secret or otherwise confidential if the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of contract-related materials as trade secret or otherwise confidential.

**9.3 Document Management**

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to the Contract. Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State

available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

#### **9.4 Intellectual Property**

Except for, and subject to the limited rights expressly granted hereunder for the Department to utilize the Services, Contractor reserves all rights, title and interest in and to the services, including all related intellectual property rights. No other rights are granted to the Department hereunder other than as may be expressly set forth in this Contract or the applicable Order Form or Statement of Work.

### **SECTION 10. DATA SECURITY**

#### **10.1 Duty to Provide Secure Data**

The Contractor will maintain the security of State of Florida confidential data, exempt data, or personal health data (hereinafter "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 requirements and any other state and federal rules and regulations regarding security of information.

#### **10.2 Warranty of Security**

Unless otherwise agreed in writing, the Contractor and its subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida Data to be sent by any medium, transmitted, or accessed outside of the United States. For purposes of this subsection, "State of Florida Data" does not include media transmissions required to complete telephone or video calls for purposes of conducting business.

The Contractor agrees that a violation of items listed above will result in immediate and irreparable harm to the Department and will entitle the Department to a credit. 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.

The Contractor must notify the Department as soon as possible, in accordance with the requirements of section 501.171, F.S., if applicable, and in all events within one (1) business day in the event Contractor discovers any State of Florida 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 State of Florida Data occurs, or of any credible allegation or suspicion of a material violation of the above. This notification is required regardless of the number of persons or type of State of Florida Data affected. The notification must be clear and conspicuous and include a description of the following:

**10.2.1.** The incident in general terms.

**10.2.2.** The type of information that was subject to the unauthorized Access and acquisition.

- 10.2.3.** The type and number of entities who were, or potentially have been affected by the breach.
- 10.2.4.** The actions taken by the Contractor to protect the State of Florida 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 a confirmed security breach or security incident, the Contractor's Account Manager shall set up a conference call with the Department's Contract Manager. 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 security breach or security incident outside of normal business hours, the Contractor shall notify the Department's Contract Manager and in all events, within one (1) business day.

Access as referenced in this subsection shall mean 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.

### **10.3 Remedial Measures**

Upon becoming aware of a confirmed security breach, Contractor's Contract Manager must set up a conference call with the Department's Contract Manager. The conference call invitation must contain a brief description of the nature of the event. When possible, a thirty (30) minute notice will 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 will be scheduled. All available information must be shared on the call. The Contractor must answer all questions based on the information known at that time and answer additional questions as additional information becomes known. The Contractor must 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 must notify the Department's Contract Manager and in all events, within one (1) business day.

### **10.4 Indemnification (Breach of Warranty of Security)**

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 the Warranty of Security. 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 (2) year period of time following the breach.

### **10.5 Annual Certification**

The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Department by **December 31** of each Contract year.

## **SECTION 11. GRATUITIES AND LOBBYING**



### 11.1 Gratuities

The Contractor will not, in connection with the Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

### 11.2 Lobbying

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to subsection 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract, after the Contract execution and during the Contract's term.

## SECTION 12. CONTRACT MONITORING

### 12.1 Performance Standards

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work. The Department will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof. Coordination must be maintained by the Contractor with representatives of the Department.

### 12.2 Performance Deficiencies and Financial Consequences

The Performance Guarantees in **Attachment A**, Statement of Work, dictate the levels of service delivery for individual services and the financial consequences which may apply should the performance standard not be met. In accepting the financial consequences stated in **Attachment A**, Statement of Work, the Department does not waive its right to pursue other remedies provided for under this Contract. Contractor shall be excused for failing to meet any Performance Guarantee to the extent such failure is caused by the Department, or any Department's contracted vendors supplying data related to this Contract, not performing any of its obligations under the Contract.

In addition to the processes set forth in the Contract, if the Department determines that there is a performance deficiency that requires correction by the Contractor, then the Department will notify the Contractor. The correction must be made within a timeframe specified by the Department. The Contractor must provide the Department with a corrective action plan, subject to the Department's approval, describing how the Contractor will address all performance deficiencies identified by the Department.

If the corrective action plan is unacceptable to the Department, which acceptance shall not be unreasonably withheld, or implementation of the plan fails to remedy the performance deficiencies, the Department will retain ten percent (10%) of the total invoice amount and may suspend or cancel the Contract or may suspend work or terminate the Contract as set forth in section 1.3. Any applicable reduction will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount may be

forfeited in order to compensate the Department for the performance deficiencies and the Department may, to the extent agreed to by both parties, suspend or cancel purchase order(s) or may terminate the Contract as set forth in section 1.3.

### **12.3 Liquidated Damages**

The Contractor will promptly notify the Department upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

The Contractor acknowledges that untimely performance or other material noncompliance will damage the Department, but by their nature such damages may be difficult to ascertain. Accordingly, any liquidated damages provisions in the Statement of Work will apply to the Contract. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

### **12.4 Force Majeure, Notice of Delay, and No Damages for Delay**

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the 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 the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the 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 will be asserted by the Contractor. The 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. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Department with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that

are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

## **SECTION 13. CONTRACT AUDITS**

### **13.1 Performance or Compliance Audits**

Upon request, the Contractor will provide supporting documentation to validate the fees charged on the invoice for the Services provided under this Agreement. Additionally, no more than one (1) time per year, and only to the extent the controls being audited are not addressed in an independent audit or independent assessment report that the Contractor previously provided to the Department, upon at least thirty (30) days' written notice, the Department may, at its own expense, conduct an assessment of the Contractor's physical and/or technical environments related to the use and disclosure of PHI received from, or created or received by the Contractor on behalf of Provider or the safeguarding of such PHI to monitor compliance with this Agreement. The Contractor will reasonably cooperate with such assessment by providing access to knowledgeable personnel, physical premises, and documentation necessary to assess the controls applicable to the infrastructure and application software that process, store or transport data for the Department pursuant to this Agreement. For the avoidance of doubt, this does not grant any additional system or network access not already granted under the Agreement. Notwithstanding the forgoing parameters, the State of Florida's Chief Financial Officer and the Office of the Auditor General also have authority to perform the aforementioned audits and inspections.

### **13.2 Payment Audit**

Records of costs incurred under terms of the Contract will be maintained in accordance with subsection 9.3 of the Contract. Records of costs incurred will include the Contractor's general accounting records with respect to this Contract, together with supporting documents and records of the Contractor and all subcontractors performing work pursuant to this Contract, and all other records of the Contractor and subcontractors with respect to this Contract considered necessary by the Department, State of Florida's Chief Financial Officer or the Office of the Auditor General for audit.

## **SECTION 14. BACKGROUND SCREENING AND SECURITY**

All Contractor employees, Subcontractors and agents of the Contractor performing work under the Contract must comply with all background screening and security requirements of the Department, as detailed below.

### **14.1. 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 its direction with Access to State of Florida Data or who enter either the premises or facilities where State of Florida Data is stored or accessible. Contractor is not required to conduct the aforementioned background screening of a Person if that Person does not have Access

to State of Florida Data and if that Person, whenever on Department premises or facilities, is escorted by Department's authorized personnel.

The Contractor warrants that all Persons will have passed the Background Screening described herein before they have 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.

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:

- 14.1.1.** Social Security Number Trace; and
- 14.1.2.** Criminal Records (Federal, State and County criminal felony and misdemeanor, national criminal database for all states which make such information 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.

#### **14.2. 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 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 as follows:

- 14.2.1.** Computer related crimes
- 14.2.2.** Information technology crimes;
- 14.2.3.** Fraudulent practices;
- 14.2.4.** False pretenses;
- 14.2.5.** Frauds;
- 14.2.6.** Credit card crimes;
- 14.2.7.** Forgery;
- 14.2.8.** Counterfeiting;
- 14.2.9.** Violations involving checks or drafts;
- 14.2.10.** Misuse of medical or personnel records; and
- 14.2.11.** Felony 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 will promptly notify the Department of any determinations made pursuant to this subsection. The Department reserves the right to require removal of any Persons from performing work on the Contract for cause, including technical or training qualifications, quality of work, change in security status or non-compliance with a Department's security or other requirement..

**14.3. 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.

**14.4. Annual Certification**

Upon reasonable request by the Department, the Contractor may be required to submit an annual certification demonstrating compliance with Section 14 of the Contract to the Department once annually.

**14.5. Self-Disclosure**

The Contractor shall ensure that all Persons have a responsibility to self-report five (5) business days to the Contractor any updated court disposition regarding any disqualifying offense, regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict). The Contractor shall immediately reassess whether to disallow that Person Access to any State of Florida premises or from directly performing services under the Contract. Additionally, the Contractor shall 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 shall maintain that certification in the employment file.

In addition, the Contractor shall ensure that all Persons have a responsibility to self-report to the Contractor five (5) business days any arrest for any Disqualifying Offense. The Contractor shall notify the Department's Contract Manager two (2) business days of pertinent details concerning any reported arrest.

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

The Department reserves the right to audit the Contractor's background screening process upon two (2) 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 two (2) business days prior written notice to the Contractor to ensure that Access to State of Florida Data is secure and in compliance with the Contract and all applicable state and federal rules and regulations.

**14.7. Data Access**

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 maintain a written policy for the protection of customer data.

The Contractor shall maintain and update, to the extent the Contractor deems necessary, the written policy and information required in this subsection for the duration of the Contract and a period of one (1) year from the date of termination of this Contract, or one (1) year after access rights are terminated, whichever is longer. Upon reasonable request, Contractor will share the Table of Contents of such policy(ies), or the policy itself, to be determined by Contractor.

Access as referenced in this Section shall mean 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.

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

- 14.7.1.1.** The identity of all individual(s) who Accessed State of Florida Data in any way, whether those individuals are authorized Persons or not;
- 14.7.1.2.** The duration of the individual(s)' Access to State of Florida Data, including the time and date at which the Access began and ended;
- 14.7.1.3.** 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
- 14.7.1.4.** 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.

**14.7.2.** Notwithstanding any provision of the Contract to the contrary, the Contractor shall notify the Department as soon as possible and in all events within one (1) business day in the event it discovers any confirmed and unauthorized Access of State of Florida State of Florida Data, or any confirmed and unauthorized transmission of State of Florida Data. This notification is required whether the event affects one (1) employee/retiree or the entire population. The notification shall be clear and conspicuous and include a description of the following:

- 14.7.2.1.** The incident in general terms.
- 14.7.2.2.** The type of personal information that was subject to the unauthorized Access and acquisition.
- 14.7.2.3.** The number of individuals who were, or potentially have been affected by the breach.
- 14.7.2.4.** 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.

**14.7.3.** Upon becoming aware of confirmed and unauthorized access to State of Florida Data, the Contractor's Account Manager shall set up a conference call with the Department's Contract Manager. 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 confirmed unauthorized access to State of Florida Data outside of normal business hours, the Contractor shall notify the Department's Contract Manager and in all events, within one (1) business day.

#### **14.8. Indemnification**

The Contractor agrees to defend, indemnify, and hold harmless the Department, the State of Florida, its officers, directors and employees for any claims, suits or proceedings related to a breach of this section. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this section for a two (2) year period of time following the breach.

### **SECTION 15. E-VERIFY**

The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors to the extent required by paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. In order to implement this provision, upon request by the Department, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., 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), F.S. 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 reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.095(1), F.S.

### **SECTION 16. COMMUNICATIONS AND CONFIDENTIALITY**

The Contractor shall not, without first notifying the Department's Contract Manager and securing the Department's prior written consent, make public statements or publicly disseminate any information which concern the Contract or its subject matter, including, but not limited to:

- 16.1.** Disclose or permit disclosure of any data or information obtained or furnished in accordance with the Contract,
- 16.2.** Use any statement attributable to the Department or its employees,
- 16.3.** Mentioning the Contract in a press release or other promotional material,
- 16.4.** Otherwise linking Contractor's name and either a description of the Contract or the name of the State, the Department or any SDC customer in any material published, either in

print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

Public statements include press releases, publicity releases, promotions, marketing materials, corporate communications, or other similar communications. The Department's written consent shall not be construed to supersede or waive the Contract requirements imposed on the Contractor to maintain confidential information.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and commodities provided pursuant to the Contract and must comply with all applicable state and federal laws, including, but not limited to Chapter 119, F.S., and sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures with respect to State of Florida Data shall be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor shall comply with any applicable professional standards with respect to confidentiality of information. Should any inconsistencies exist between Contractor's confidentiality procedures and the Department's security policies, protocols and procedures, the parties will meet as soon as possible to discuss.

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

Contractor may refer to the Contract as an experience citation with other customers without prior approval. However, the Department will not provide qualitative information about the Contractor's performance if contacted to provide a reference.

## **SECTION 17. LICENSING**

All third (3<sup>rd</sup>) party license costs for Contractor-provided hardware and/or software shall be the responsibility of the Contractor. The Contract will take precedence over any and all End User License Agreement, in relation to the Department, conflicting terms.

## **SECTION 18. PERFORMANCE BOND**

Within thirty (30) days of Contract execution, Contractor will deliver to the Department's Contract Manager a Performance Bond in the amount of the annual Contract amount. The bond shall be used to guarantee satisfactory performance by the Contractor throughout the term of the Contract.

**18.1** No sooner than two (2) years after Contract execution, if it is in the best interest of the State of Florida, as determined by the Department, the Contractor's Performance Bond may be reduced for the remainder of the term. This reduction shall require an Amendment to the Contract with the agreement by both parties.

**18.2** The Performance Bond shall be maintained throughout the term of the Contract, naming the Department as the beneficiary. The Performance Bond must be issued by an acceptable surety company, as determined by the Department, and which surety must be licensed to do business in the State of Florida. The insurer or bonding company shall pay losses suffered by the State directly to the Department.



- 18.3 The Contractor and insurer or bonding company shall provide the Department prior written notice or immediate notice upon knowledge of any attempt to cancel or to make any other material change in the status, coverage, or scope of the Performance Bond, or of the Contractor's failure to pay bond premiums.
- 18.4 The Department shall not be responsible for any premiums or assessments on or in relation to the Performance Bond.
- 18.5 The Performance Bond is to protect the Department and the State against any loss sustained through failure of the Contractor's performance in accordance with the Contract. No payments shall be made to the Contractor until the Performance Bond is in place and approved by the Department in writing.
- 18.6 Within thirty (30) days of Contract execution, and by Contract execution anniversary each year following, the Contractor shall provide the Department with a surety bond continuation certificate or other acceptable verification that the Performance Bond is valid and has been renewed for an additional year.
- 18.7 The Performance Bond provided under this Section shall be used solely to the extent necessary to satisfy the damage claims made by the State pursuant to the terms of the Contract. In no event shall the Performance Bond be construed as a penalty bond.

**SECTION 19. SPECIFIC APPROPRIATION**

The following is the specific state funds from which the state will make payment under the first (1<sup>st</sup>) year of the contract:

Line No. 2792 of the Fiscal Year 2021/2022 General Appropriations Act, paid from the State Employees Group Health Insurance Trust Fund.

IN WITNESS WHEREOF, in order to be legally bound, the parties have caused their authorized representative to execute this Contract as of the date set forth above and below.

**STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES**

DocuSigned by:  
*Ryan Stokes*  
FF111DF156DA44B...

Ryan Stokes

Print Name

Director, Division of State Group Insurance

Title

6/30/2021 | 4:04 PM EDT

Date

**BENEFITFOCUS.COM, INC.**

DocuSigned by:  
*Nancy Nunn*  
C2FCD423700B422...

Nancy Nunn

Print Name

VP, Corporate Controller

Title

6/30/2021 | 3:33 PM EDT

Date