

CONTRACT NO.: DMS 13/14-030
BETWEEN
FLORIDA DEPARTMENT OF MANAGEMENT SERVICES
AND
COMPBENEFITS COMPANY AND
COMPBENEFITS INSURANCE COMPANY (DBA HUMANA)

AMENDMENT NO.: 5

This Amendment to Contract No.: DMS 13/14-030 (the "Contract") is by and between the State of Florida acting through the Florida Department of Management Services (the "Department") and CompBenefits Company and CompBenefits Insurance Company (dba Humana) ("Contractor"), each a "Party" and collectively known as the "Parties".

WHEREFORE, the Parties do hereby agree to amend the Contract as follows:

1. Section 3.1, Ownership of Deliverables and Records Retention, is hereby deleted in its entirety and replaced as follows:

3.1 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.

2. Section 3.2.6, E-Verify, is hereby deleted in its entirety and replaced as follows:

3.2.6 E-Verify

The Contractor and its subcontractors have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees 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 Department's Contract Manager within five (5) days of Contract execution.

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 for this Contract should the Department have a good faith belief that the subcontractor has knowingly violated section 448.095(1), Florida Statutes.

3. Section 3.2.7, Scrutinized Company List, is hereby deleted in its entirety and replaced as follows:

3.2.7 Scrutinized Companies

In accordance with the requirements of section 287.135(5), Florida Statutes, the Contractor certifies that it is not participating in a boycott of Israel. At the Department's option, the Contract may be terminated if the Contractor is placed on the Quarterly List of Scrutinized Companies that Boycott Israel (referred to in statute as the "Scrutinized Companies that Boycott Israel List") or becomes engaged in a boycott of Israel.

The State Board of Administration maintains the "Quarterly List of Scrutinized Companies that Boycott Israel" at the following link:

<https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx>.

In accordance with the requirements of section 287.135, Florida Statutes, the Contractor certifies that it is not on the Scrutinized List of Prohibited Companies (referred to in statute as the "Scrutinized Companies with Activities in Sudan List" and the "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List") and, to the extent that it is not preempted by Federal law, that it has not been engaged in business operations in Cuba or Syria. At the Department's option, the Contract may be terminated if such certification (or the certification regarding a boycott of Israel) is false, if the Contractor is placed on the Scrutinized List of Prohibited Companies, or, to the extent not preempted by Federal law, if the Contractor engages in business operations in Cuba or Syria.

The State Board of Administration maintains the "Scrutinized List of Prohibited Companies" under the quarterly reports section at the following link:

<https://www.sbafla.com/fsb/PerformanceReports.aspx>.

4. Section 5, Audit Rights, is hereby deleted in its entirety and replaced as follows:

Section 5 Audit Rights

The Department has the right to conduct performance and/or compliance audits related to this Contract of any and all areas of Contractor and Subcontractors. The Department may at any time enter and inspect the Contractor's physical facilities where operations required under this Contract are performed, with reasonable Notice. Except in emergency situations, reasonable Notice will be provided for audits conducted at Contractor's premises. 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 healthcare provider contracts 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. Contractor will make available all data or information requested by the Department in furtherance of an 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 10.4 of this Contract, Article 1, section 24 of the Florida Constitution, and Chapter 119, Florida Statutes.

Contractor shall use reasonable efforts to obtain a release statement from its contracted healthcare providers 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. Department will use reasonable efforts to minimize the number and duration of such audits or inspections conducted and to conduct such audits and risks in a manner that minimizes disruption to Contractor's business operation.

This provision will not limit the rights of other state agencies or officers, such as the state's chief financial officer, Office of the Inspector General, and the Office of the Auditor General, to perform audits and inspections independently of, or in conjunction with the Department.

The Department will be responsible for the independent third-party auditor cost associated with any audit performed.

5. Section 10.23, Public Records, is hereby deleted in its entirety and replaced as follows:

10.23 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. Contractor must comply with all applicable provisions of Florida's public records law. Violation of this section shall constitute grounds for termination of the Contract.

10.23.1 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.

10.23.2 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.

10.23.3 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 10.23.2 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.

10.23.4 Indemnification

The Contractor shall protect, defend, and indemnify the Department for any and all claims arising from or relating to the Contractor's determination that the redacted portions of its records are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If the Contractor fails to submit a redacted copy of information it claims is Confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in answer to a public records request or other lawful request for these records.

10.23.5 Contractor as an 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.**

6. Section 10.29, Warranty of Ability to Perform, is hereby deleted in its entirety and replaced as follows:

10.29 Warranty of Ability to Perform

Contractor shall provide the Department appropriate documentation demonstrating that the Contractor is in good standing and legally authorized to transact Services business in Florida. Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding investigation, or any other legal or financial condition, that would in any way prohibit, restrain or diminish Contractor's ability to satisfy Contract obligations. Contractor warrants that neither it nor any affiliate is currently on the Convicted Vendor List, Discriminatory Vendor List, or Antitrust Violator Vendor List maintained pursuant to sections 287.133, 287.134, and 287.137, Florida Statutes, or on any similar list maintained by any other state or the federal government. Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.

7. Section 10.34, Convicted Vendor, Discriminatory Vendor, and Antitrust Violator Vendor Lists, is created and hereby added as follows:

10.34 Convicted Vendor, Discriminatory Vendor, and Antitrust Violator 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 Violator Vendor List:

- 1) 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.

- 2) 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.
 - 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.
8. Section 10.35, Section 508 Compliance, is created and hereby added as follows:

10.35 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."

9. This Amendment is hereby made a part of this Contract. All other terms and conditions of the Contract shall remain in full force and effect. Except as otherwise expressly set forth herein, the terms and conditions contained in the Contract and subsequent amendments are unchanged. This Amendment sets forth the entire understanding between the Parties with regard to the subject matter hereof.
10. This Amendment is effective on the last date of execution.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

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

DEPARTMENT OF MANAGEMENT SERVICES



J. Todd Inman, Secretary

10/27/2021

Date

**COMPBENEFITS COMPANY AND
COMPBENEFITS INSURANCE COMPANY (DBA HUMANA)**

DocuSigned by:



Signature

Ellen Sexton, SVP Specialty

Print Name and Title

10/13/2021 | 4:41 PM EDT

Date