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Tallahassee, FL 32399-0950
850-488-2786

Ron DeSantis, Governor

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

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

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

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.

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 (11th 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 (11th 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 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; 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 (3rd) 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 (1st) 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

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
ITN NO: DMS-20/21-036 HEALTH INSURANCE MANAGEMENT INFORMATION SYSTEM
REQUEST FOR BEST AND FINAL OFFER
DUE: May 20, 2021 BY 9:00 AM ET

I. INTRODUCTION

Pursuant to the Health Insurance Management Information System ITN Sections 4.7.3., Revised Replies and Best and Final Offers, and 4.7.4, Other Department Rights During Negotiations, the Department requests a Best and Final Offer (BAFO). Please submit the Best and Final Offer by **9:00 AM ET on May 20, 2021**, to the Procurement Officer, Emily Leffler, at Emily.Leffler@dms.fl.gov.

Respondents must email the Best and Final Offer with files attached as a .pdf or in their native format (.docx or .xlsx where applicable) to the Procurement Officer. If the Best and Final Offer exceeds the file limit to submit via email, the Respondent must submit its Best and Final Offer on a thumb drive to the Procurement Officer by the above-stated deadline.

Best and Final Offers are expressly understood to be for the provision of services and features with no minimum guaranteed purchase of services or features.

All revisions made by the Department to the attachments provided with this Request for Best and Final Offer are reflected in track changes; track changes reflect changes made to the original documents posted with the ITN. Any Respondent-proposed edits not reflected in the attachments were deemed not acceptable to the Department. Do not make any changes, revisions, exceptions, or deviations to the Department's language in the provided documents.

II. BEST AND FINAL OFFER SUBMISSION

The Best and Final Offer must include the following requested documents:

A. ATTACHMENT A – FINAL STATEMENT OF WORK

By submitting a Best and Final Offer, the Respondent confirms acceptance of the Attachment A – Final Statement of Work, as is; ***do not make any changes, revisions, exceptions, or deviations.***

B. ATTACHMENT B – FINAL CONTRACT

By submitting a Best and Final Offer, the Respondent confirms acceptance of the Attachment B – Final Contract, as is; ***do not make any changes, revisions, exceptions, or deviations.***

C. ATTACHMENT C – COST REPLY

The Respondent should provide its best and final pricing based on the redlined Attachment A and Attachment B provided. Cost Replies should address all items below, where applicable:

- **Cost Reply tab of Attachment C, Cost Reply** – Specify prices as annual recurring charges for the Original Term of years one (1) through five (5) and the Renewal Term of years (6) through ten (10).
- **Additional Charges tab of Attachment C, Cost Reply** – Provide pricing for any services which will be charged in addition to the pricing on the Cost Reply tab.
- Any Services specified in Attachment A, Final Statement of Work, for which pricing is not provided on the Additional Charges tab will be assumed to be included in the annual occurring charges specified in the Cost Reply tab.

III. SUPPLEMENTAL INFORMATION

The Best and Final Offer shall constitute the Respondent's final Reply to this ITN and should be reflective of all terms and conditions applicable to the Respondent's proposed services.

Should the Respondent's BAFO response contain website references, that are external to the documents, the information referenced on the website should be provided in the BAFO response.

The Respondent is under no obligation to submit a Best and Final Offer; however, the Respondent will no longer be considered for an award if the Department does not receive a Best and Final Offer.

By the submission of its Best and Final Offer, the Respondent certifies that, if awarded a Contract, it will comply with all terms and conditions found in the aforementioned documents included with this Request for Best and Final Offer.

IV. REDACTED COPY

If the Respondent considers any portion of the documents, data, or records submitted to the Department in its BAFO to be trade secret or otherwise exempt from public inspection or disclosure pursuant to Florida's Public Records Law, the Respondent must provide the Department with a separate, electronic redacted copy of the BAFO in accordance with Section 3.8 of the ITN.

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Benefitfocus®

May 19, 2021

Benefitfocus is pleased to submit our Best and Final Offer (BAFO) for ITN NO: DMS-20/21-036 Health Insurance Management Information System. We are excited to continue our long-term partnership and we want to provide additional value to the Department through this offer.

Benefitfocus recognizes the State of Florida, Department of Management Services (DMS) is required to adhere to state budgetary requirements. We have negotiated in good faith a current annual cost for services that meets DMS' budgetary needs. However, with the onset of the unplanned COVID pandemic and a desire to provide additional value with savings, Benefitfocus presented our initial cost proposal with a discounted rate each year of the proposed contract and renewals of \$13,794 totaling \$68,970 over the 5 year contract term plus another \$68,970 for 5 potential 1 year renewals, even though costs to provide services increase (through inflation) to us annually.

Additionally, based on our recent successful negotiations of the Statement of Work and Final Contract, we also recognize an opportunity to lower costs in good partnership and provide no cost integrations as DMS may need through existing and future connections to our system.

And lastly, we accept and confirm the attached Statement of Work and Contract are FINAL.

The following is a summary of our BAFO and the overall cost savings to the Department:

Current Contract Annual Amount	ITN Original Cost Proposal Annual Amount	Annual Savings	BAFO Proposal Annual Amount	*Total Annual Savings over Current Contract	% Total Annual Savings over Current Contract
\$459,792	\$445,998	\$13,794	\$440,998	\$18,794	4%
No Cost Data Integrations	Cost	Amount Waived			
5	\$12,000/ea	\$60,000			
Total 5 yr Contract Savings	\$153,970 (Annual + 5 Integrations)				



Total 5 yr Renewal Savings	\$93,970				
Grand Total Savings to DMS	\$247,940				

*These annual savings do not reflect inflation for any year of the contract/renewals.

We look forward to your favorable consideration of our BAFO submission and look forward to continuing our long-term partnership with DMS and the State of Florida.

Sincerely,

Damon Haycock
Analytics Support Manager
Director, Public Sector



**ATTACHMENT C
COST REPLY**

Respondent Name: Benefitfocus.com, Inc.

Instructions:

- 1) In the pricing table below, enter an annual price for HIMIS Services using the below assumptions.
- 2) Respondents must offer pricing for all Services and for all years of the Original and Renewal Terms.
- 3) If the Respondent intends to offer a Service at no additional cost, enter the word "Included" in the appropriate cell.

Number of Lives (as of 7-1-2020) 365,060
 Data Source: Medical Claims 9
 Data Source: Pharmacy Claims 1
 Data Source: Member Enrollment 1 (may be several files)
 Historical File Load 10 years min
 Duration of Storage 5 years min
 Frequency of Refresh Monthly
 Number of User Roles Minimum two roles: Executive Level and Power User
 Number of Users 8

	Original Term				
	Year 1	Year 2	Year 3	Year 4	Year 5
Start-up/Preparation and Implementation	\$ -				
Basic Annual Service/Subscription	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00
CMS MSP Submission	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00
Population Health Management Annual Review	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00
Total Annual Cost	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00

	Renewal Term				
	Year 6	Year 7	Year 8	Year 9	Year 10
	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00
	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00
	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00
	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00

Original Term (Years 1-5) Total \$ 2,204,990.00

Renewal Term (Years 6-10) Total \$ 2,204,990.00

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**ATTACHMENT C
COST REPLY**

	Original Term		Renewal Term		Other than implementation or circumstances expressly provided for in the Statement of Work, specify any circumstances in which additional charges do not apply.
	Unit	Unit Cost	Unit	Unit Cost	
<i>Example</i>	<i>each</i>	<i>\$ 50.00</i>	<i>each</i>	<i>\$ 50.00</i>	<i>Does not apply to the first 100 additional changes.</i>
Additional Data Integrations with New Partners	each	\$ 12,000.00	each	\$ 12,000.00	Does not apply to the first 5 additional integrations.

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EXHIBIT C
PRIVACY, SECURITY, AND CONFIDENTIALITY
BUSINESS ASSOCIATE AGREEMENT

This Privacy, Security, and Confidentiality Business Associate Agreement (“Agreement”) is between the State of Florida Department of Management Services (“Agency”), and Benefitfocus.com, Inc., (“Business Associate”), (each individually, a “Party,” and collectively, the “Parties”), with an effective date of the last date of execution below.

WHEREAS, Business Associate has agreed to perform services for or on behalf of Covered Entity;

WHEREAS, such services may involve the use or disclosure of Protected Health Information that are protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. §§ 160 and 164, the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), and the regulations promulgated thereunder; and section 110.123(9), Florida Statutes (F.S.); and

WHEREAS, this Agreement is intended to satisfy the requirements for Business Associate contracts under 45 C.F.R. § 164, subparts C and E, and the HITECH Act, and to address the confidentiality requirements of section 110.123(9), F.S.

NOW THEREFORE, in consideration of the mutual covenants provided herein and other good and valuable consideration, Covered Entity hereby agrees to provide certain information to Business Associate, and Business Associate hereby agrees to comply with this Agreement; the applicable provisions of 45 C.F.R. §§ 160 and 164; the HITECH Act; and sections 110.123(9) and 501.171, F.S.; and to assist Covered Entity with its compliance therewith, as follows:

1. Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as defined in 45 C.F.R. §§ 160 and 164 and/or the HITECH Act.

- (a) “Agency” means the Florida Department of Management Services (“DMS”), an executive agency of the State of Florida, and the Division of State Group Insurance (“DSGI”) with its principle place of business at 4050 Esplanade Way, Suite 215, Tallahassee, FL 32399-0950.
- (b) “Agreement” means this Privacy, Security, and Confidentiality Business Associate Agreement.
- (c) “Breach” when referring to a breach of Protected Health Information or PHI means the acquisition, access, use, or disclosure of PHI that is not permitted by 45 C.F.R. § 164, subpart E, which compromises the security or privacy of PHI. See definition of “Protected Health Information” or “PHI,” herein.
- (d) “Business Associate” refers to Benefitfocus.com, Inc., who hereby agrees to provide services to the Division of State Group Insurance as a business associate, as that term is defined in 45 CFR §160.103.

- (e) "Covered Entity" means the State of Florida's Division of State Group Insurance ("DSGI").
- (f) "Contract" means the contract awarded to the Business Associate pursuant to DMS-20/21-036.
- (g) "Individual" has the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- (h) "Parties" mean collectively the Agency and Business Associate. A "Party" means either the Agency or Business Associate.
- (i) "Protected Health Information" or "PHI" means individually identifiable health information as defined in 45 C.F.R. § 160.103, whether secured or unsecured, and in any type of format.
- (j) "Plans" means the insurance coverages offered through Covered Entity, as authorized in section 110.123, F.S.
- (k) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information set forth in 45 C.F.R. § 160 and 45 C.F.R. § 164, subparts A and E, as amended.
- (l) "Secretary" means the Secretary of the U.S. Department of Health and Human Services or designee.
- (m) "Security Rule" means the security provisions set forth in 45 C.F.R. § 160 and § 164, subparts A and C, as amended.

2. Obligations and activities of Business Associate

Business Associate Agrees to:

- (a) Comply with all applicable provisions of 45 C.F.R. §§ 160 and 164, subparts A, C, and E; the HITECH Act; sections 110.123(9) and section 501.171, F.S.; and the terms of this Agreement.
- (b) Not use or further disclose PHI other than as permitted or required by Sections 3 and 7 of this Agreement or as required under federal or Florida law.
- (c) Ensure the confidentiality, integrity, and availability of all Electronic PHI Business Associate creates, receives, maintains, or transmits.
- (d) Ensure that every agent and subcontractor that creates, receives, maintains, or transmits PHI complies with the restrictions and conditions contained in this Agreement, HIPAA, and the HITECH Act.
- (e) Make any amendment(s) to PHI in a designated record set that Covered Entity or an Individual directs or agrees to pursuant to 45 C.F.R. § 164.526, in a prompt and reasonable manner or take other measures as necessary to satisfy Covered Entity

obligation(s) under 45 C.F.R. § 164.526.

- (f) Create and retain all records necessary to determine compliance with HIPAA, the Privacy Rule, Security Rule, and HITECH Act.
- (g) Make its internal practices, books, and records available to the Secretary in a time and manner designated by Covered Entity or the Secretary, for purposes of determining compliance with HIPAA, the Privacy Rule, Security Rule, and HITECH Act.
- (h) Cooperate with any investigations by the Secretary to determine compliance with HIPAA, the Privacy Rule, Security Rule, and HITECH Act.
- (i) Document disclosures of PHI and provide to an Individual, at the request of Covered Entity or an Individual, an accounting of such disclosures in accordance with 45 C.F.R. § 164.528. Business Associate shall assist Covered Entity in complying with HIPAA regulations relating to the required Disclosure, Amendment, or Accounting.
- (j) Certify that it is in compliance with all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange ("EDI") Standards, in accordance with 45 C.F.R. § 162; and the Annual Guidance as issued by the Secretary pursuant to the HITECH Act, section 13401. Business Associate further agrees to ensure that every agent and subcontractor that conducts standard transactions on its behalf, agrees to comply with the EDI Standards and the Annual Guidance.
- (k) Use the Minimum Necessary type and amount of PHI required to perform services in accordance with 45 C.F.R. § 164, subpart E.
- (l) Comply with all requirements of 45 C.F.R. § 164, subpart E, that apply to Covered Entity to the extent Business Associate carries out any obligations(s) of the Covered Entity under subpart E.

3. Permitted and required uses and disclosures of PHI by Business Associate

- (a) Except as expressly permitted in this Agreement or in writing by Covered Entity, Business Associate shall not divulge, disclose, or communicate PHI to any third party in violation of this Agreement without prior written approval from Covered Entity.
- (b) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (c) Business Associate must comply with 45 C.F.R. § 164, subpart E, and may not use or disclose PHI in violation of 45 C.F.R. § 164, subpart E.
- (d) Business Associate may use and disclose PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

- (e) Business Associate may use and/or disclose PHI for Business Associate's proper management and administration, provided that: (1) Business Associate obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (2) the person notifies Business Associate of any instances of the Breach of PHI for which it is aware. Business Associate also may make disclosures that are required by law. Business Associate's use of PHI as described in this paragraph is subject to and limited as described in 45 C.F.R. § 164.504(e)(2) and (4).
- (f) Business Associate may create a Limited Data Set only as necessary and required for the purpose of performing its obligations and services for Covered Entity, provided that Business Associate complies with the provisions of this Agreement.
- (g) Business Associate shall disclose PHI when required by the Secretary to investigate or determine Covered Entity or Business Associate's compliance with 45 C.F.R. § 164, subpart E.
- (h) Business Associate shall provide access to PHI in a designated record set as required under 45 C.F.R. § 164.524.
- (i) Business Associate shall, upon request by Covered Entity or Individual, disclose PHI to Covered Entity, Individual, or Individual's designee, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §§ 164.502(a)(4)(ii), 164.524(c)(2)(ii), and 164.524(c)(3)(ii) with respect to an Individual's request.

4. Obligations of Covered Entity

Covered Entity Agrees to:

- (a) Notify Business Associate, upon request, of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.
- (b) Notify Business Associate of any changes in, or revocation of, Authorization by an Individual or his or her personal representative regarding the use or disclosure PHI, if such changes affect Business Associate's use or disclosure thereof.
- (c) Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, if such changes affect Business Associate's use or disclosure thereof.
- (d) Not provide Business Associate with more PHI than that which is minimally necessary for Business Associate to provide the services and, where possible, Covered Entity shall provide any PHI needed by Business Associate to perform the services in the form of a Limited Data Set, in accordance with 45 C.F.R. § 164.504(e)(3)(iv).
- (e) Not request Business Associate to use or disclose PHI in any manner that would violate HIPAA, the HITECH Act, or Florida law.

5. PHI Security Requirements

- (a) Protection of Protected Health Information. Business Associate shall protect against any reasonably anticipated threats or hazards to the confidentiality, security, or integrity of PHI and protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under 45 C.F.R. § 164, subpart E. Business Associate shall implement policies and procedures to prevent, detect, contain, and correct security violations.
- (b) Security of Electronic Protected Health Information. Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards to prevent security violations and the unpermitted acquisition, access, use, or disclosure of PHI in accordance with 45 C.F.R. § 164, subpart C.
- (c) Business Associate's Due Diligence. Business Associate shall make a good-faith effort to identify any unpermitted access, acquisition, use, or disclosure of any type of PHI or unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- (d) Compliance. Business Associate shall ensure that its agents and subcontractors comply with 45 C.F.R. § 164, subparts A, C, and E, and all applicable standards relating to all Electronic PHI.
- (e) Compliance Date. Business Associate certifies compliance with this section of the Agreement on or before the date on which its representative signs this Agreement as set forth in the signature blocks at the end of this document.

6. Notification and reporting requirements

- (a) Reporting of Security Incidents. Within two (2) Business Days of discovery, Business Associate will report to the Covered Entity any Security Incident that involves the (1) unpermitted acquisition, access, use, or disclosure of PHI; and/or (2)(a) modification or destruction of Electronic PHI or (b) interference with system operations in an information system containing Electronic PHI. For any other type of Security Incident, Business Associate shall report such incident to Covered Entity upon request. Such reports shall include a description of the incident, identification of any Individuals affected (if any), and the types of PHI involved (if any). The day the Security Incident is discovered or would have been discovered with the exercise of reasonable diligence will be considered the first (1st) Business Day of the reporting period.
- (b) Notification to Covered Entity regarding a Breach of PHI. Within two (2) Business Days of discovery, Business Associate will notify Covered Entity of any Breach of unsecured PHI in accordance with 45 C.F.R. § 164.410. Within two (2) Business Days of discovery, Business Associate will notify Covered Entity of any other unpermitted acquisition, access, use, or disclosure of PHI not provided for in this Agreement. The notice pursuant to this subparagraph shall comply with the notification requirements of 45 C.F.R. § 164.410(c), including the identification of each affected Individual, the types of PHI involved in the breach, and a description of the incident. The day the breach is discovered or would have been discovered

with the exercise of reasonable diligence will be considered the first (1st) Business Day of the reporting period.

- (c) Notification to Individuals. In the case of a Breach regarding unsecured PHI, Business Associate shall first (1st) notify Covered Entity of the details of the breach. Upon approval by Covered Entity, Business Associate shall notify each Individual whose unsecured PHI was breached in accordance with 45 C.F.R. § 164.404. Notification shall be in writing and delivered by first-class mail to the Individual, the Individual's personal representative, or the Individual's next of kin (if the individual is deceased) at the last known address of the Individual, next of kin, or personal representative, as applicable. The notification may be delivered by e-mail if requested by the recipient. When there is insufficient or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes written or electronic notification, a substitute form of notice shall be provided. When there are ten (10) or more Individuals for whom there is insufficient or outdated contact information, Business Associate shall place a conspicuous posting on its web site or run the notice in major print or broadcast media, including major media in the geographic areas where the Individuals likely reside. In any case deemed by Business Associate to require urgency due to possible imminent misuse of unsecured PHI, Business Associate may also provide information to Individuals by telephone or other means, as appropriate.
- (d) Notification to Media. When Business Associate reasonably believes there has been a Breach of unsecured PHI involving more than five-hundred (500) persons, after prior approval by Covered Entity, Business Associate shall provide notice to prominent media outlets serving the state or the relevant portion of the state involved, in accordance with 45 C.F.R. § 164.406.
- (e) Notification to the Secretary. Business Associate shall cooperate with Covered Entity to provide notice to the Secretary of the Breach of unsecured PHI in accordance with 45 C.F.R. § 164.408. When Business Associate reasonably believes that there has been a Breach of Unsecured PHI involving five-hundred (500) or more individuals, such notice must be provided immediately. If the breach was with respect to fewer than involving five-hundred (500) individuals, Business Associate may maintain a log of the breach and annually submit such log to Covered Entity so that it may satisfy its obligation to notify the Secretary of breaches.
- (f) Content of Notices. All notices must comply with the minimum notice provisions set forth in 45 C.F.R. §§ 164.404, 164.406, 164.408, 164.410, and section 13402(f) of the HITECH Act, as applicable, except that any references therein to a "covered entity" shall be read as references to Business Associate.
- (g) Financial Responsibility. Business Associate shall be responsible for reasonable costs related to the notices required under this Agreement.
- (h) Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate regarding the unauthorized access, acquisition, use, or disclosure of any type of PHI in violation of this Agreement.

7. Security and Confidentiality under Florida law

- (a) Business Associate agrees to observe the confidentiality requirements of section 110.123(9), F.S. In general, the referenced statute provides that patient medical records and medical claim records of state employees, former state employees, and their covered dependents are confidential and exempt from the provisions of section 119.07(1), F.S. Any person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation, including those residing or existing internal and external to Covered Entity's computer system, commits an offense in violation of section 815.04, F.S.
- (b) These confidentiality requirements protect the disclosure of all Covered Entity's records and information, in whatever form, including the copying or verbally relaying of confidential information. If Business Associate is served with subpoena requiring the production of Covered Entity's records or information, Business Associate shall immediately contact the Department of Management Services, Office of the General Counsel, at (850) 487-1082. A subpoena is an official summons issued by a court or an administrative tribunal, which requires the recipient to do one (1) or more of the following:
 - (1) Appear at a deposition to give sworn testimony and/or require that certain records be brought to be examined as evidence.
 - (2) Appear at a hearing or trial to give evidence as a witness and/or require that certain records be brought to be examined as evidence.
 - (3) Produce certain records for examination.
- (c) Business Associate acknowledges that the confidentiality requirements herein apply to all its agents and subcontractors. Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions, against Covered Entity, including costs and attorneys' fees, resulting from Business Associate's breach of this Agreement.
- (d) Business Associate shall take reasonable measures to protect and secure electronic data that contains personal information in accordance with section 501.171, F.S. (the "Florida data breach notification law"). The Parties expressly acknowledge and agree that the terms and provisions of this Agreement are intended to also control with respect to "Personal Information" as defined in, and addressed by, section 501.171F.S., that Business Associate creates, maintains, or receives. As such, any references to Protected Health Information and HIPAA in this Agreement shall include, respectively, Personal Information and the confidentiality, security and reporting obligations, under the Florida data breach notification law. Within two (2) days of discovery, Business Associate shall report any breach of security to Covered Entity and shall provide Covered Entity with all information required under section 501.171(6)(a), F.S.
- (e) Unless otherwise agreed to in writing, Business Associate will not allow any data, PHI, Electronic PHI, or other information to be accessed or stored outside of the United States.

8. Term and Termination of Agreement

- (a) Term. This Agreement shall commence as of the Effective Date of this Agreement and will naturally terminate on the later of (i) the last of the Parties' related agreements for Business Associate's Services terminate, or (ii) when all of the PHI in Business Associate's possession, custody, or control is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provision in this section.
- (b) Termination for cause. Without limiting any other termination rights, the Parties may have, Covered Entity may terminate this Agreement upon discovery of a material breach. Covered Entity shall provide Business Associate an opportunity to cure the breach or end the violation. If the Business Associate does not cure the breach or end the violation within a reasonable time as specified by Covered Entity, Covered Entity shall have the right to immediately terminate the Agreement. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (c) Return or destruction of PHI upon termination. Upon notice of termination of this Agreement, Business Associate shall destroy or return to Covered Entity any and all PHI created or received by Business Associate. Within fifteen (15) Calendar Days of any notice of termination of this Agreement, Business Associate shall notify Covered Entity in writing as to whether Business Associate elects to return or destroy such PHI. Except as provided in subsection (d), within thirty (30) Calendar Days of the notice of termination of this Agreement, Business Associate shall return to Covered Entity or destroy any and all PHI maintained by Business Associate in any form and shall retain no copies thereof. Business Associate also shall recover and return or destroy, within such time period, any and all PHI in the possession of its subcontractors or agents.

If Business Associate elects to destroy PHI, Business Associate shall obtain written confirmation from Covered Entity that such actions will not violate the State of Florida's record retention policies. Upon destruction, Business Associate shall provide written certification to Covered Entity that such PHI has been destroyed. If any subcontractor or agent of Business Associate elects to destroy PHI, Business Associate will require such subcontractor or agent to provide written certification to Business Associate and to Covered Entity when such PHI has been destroyed.

- (d) If it is not feasible for Business Associate to return or destroy any PHI, Business Associate shall notify Covered Entity in writing that Business Associate has determined that it is not feasible to return or destroy the PHI and the specific reasons for such determination.

If it is not feasible for Business Associate to obtain any PHI in the possession of the subcontractor or agent, Business Associate shall provide a written explanation to Covered Entity and require the subcontractor or agent to agree to extend any and all protections, limitations, and restrictions set forth in this Agreement to the subcontractor or agent's use or disclosure of any PHI retained after the termination of this Agreement, and to limit any further use or disclosure to the purposes that

make the return or destruction of the PHI not feasible.

9. Miscellaneous

- (a) Material Breach. A violation of any provision of this Agreement shall be deemed a material breach of this Agreement and the Contract.
- (b) Warranties and Representations. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, or HITECH Act will be adequate or satisfactory for Business Associate's own purposes.
- (c) Assignment. Business Associate shall not assign either its obligations or benefits under this Agreement without the express written consent of Covered Entity, which shall be at the sole discretion of Covered Entity. Given the nature of this Agreement, neither subcontracting nor assignment by Business Associate is anticipated and the use of those terms herein does not indicate permission to assign or subcontract has been granted.
- (d) Regulatory References. A reference in this Agreement to a section of HIPAA, the Privacy Rule, the Security Rule, or HITECH Act means the section as in effect or as amended and for which compliance is required.
- (e) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of PHI, Standard Transactions, the security of PHI, HIPAA, or the HITECH Act; the publication of any decision of a court of the United States or any state relating to any such law; or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either Party may, by written notice to the other Party, amend this Agreement in such manner as such Party determines necessary to comply with such law or regulation. If the other Party disagrees with such Amendment, it shall notify the first Party in writing within thirty (30) Calendar Days' notice. If the Parties are unable to agree on an Amendment within thirty (30) Calendar Days thereafter, then either of the Parties may terminate the Agreement on thirty (30) Calendar Days written notice to the other Party.
- (f) Survival. The rights and obligations of Business Associate under Section 8 of this Agreement shall survive the termination of this Agreement.
- (g) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HITECH Act, and F.S.
- (h) No Third-Party Beneficiary. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assignees of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- (i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida to the extent not preempted by

applicable federal law.

- (j) Venue. The venue of any proceedings shall be the appropriate federal or state court in Leon County, Florida.
- (k) Indemnification and Performance Guarantees. Business Associate shall indemnify, defend, and hold harmless the Agency, State of Florida, and individuals covered by the Plans for any financial loss as a result of the claims brought by third-parties and which are caused by the failure of Business Associate, its officers, directors, or agents to comply with the terms of this Agreement.
- (l) Independent entities. Business Associate and Covered Entity are independent entities, and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between Business Associate and Covered Entity. Neither Business Associate nor Covered Entity will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent, except as otherwise expressly provided in this Agreement.
- (m) Conflicts. In the event that any terms of this Agreement are inconsistent with the terms of any other contract between the Parties, the terms of this Agreement shall control.
- (n) Requirement to Cooperate with the Inspector General. Under section 20.055(5), F.S., it is the duty of every state employee, agency, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.
- (o) Public Records. Solely for the purposes of this section, the contract manager is the agency custodian of public records. If, under this Agreement, the Business Associate is providing services and is acting on behalf of a public agency, as provided by section 119.0701, F.S., the Business Associate shall:
 - (1) Keep and maintain public records required by the public agency to perform the service;
 - (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 reasonable time and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law;
 - (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 Agreement term and following the completion of the Agreement if the Business Associate does not transfer the records to the public agency; and
 - (4) Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the Business Associate or keep and maintain public records required by the public agency to perform the service. If the Business Associate transfers all public records to the public

agency upon completion of the Agreement, the Business Associate shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Business Associate keeps and maintains public records upon completion of the Agreement, the Business Associate 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.

(5) **IF THE BUSINESS ASSOCIATE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE BUSINESS ASSOCIATE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED FOR THE CONTRACT MANAGER.**

STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES

BENEFITFOCUS.COM, INC.

DocuSigned by:
Ryan Stokes
FF111DF158DA44B...
Signature

DocuSigned by:
Nancy Nunn
G2FC0423700D422...
Signature

Ryan Stokes
Name

Nancy Nunn
Name

Director, Division of State Group Insurance
Title

VP, Corporate Controller
Title

6/30/2021 | 4:04 PM EDT
Date

6/30/2021 | 3:33 PM EDT
Date

Approved as to Legality and Form:

DocuSigned by:
Michael Suarez
51E8B9A1431548C...
DMS Legal

6/30/2021 | 11:26 AM EDT
Date

EXHIBIT D**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CJIS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information."

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

Definitions

- 1.01 Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.
- 1.02 Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.
- 2.00 Responsibilities of the Contracting Government Agency
 - 2.01 The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CJIS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).
- 3.00 Responsibilities of the Contractor
 - 3.01 The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

4.00 Security Violations

4.01 The CGA must report security violations to the CJIS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

4.02 Security violations can justify termination of the appended agreement.

4.03 Upon notification, the FBI reserves the right to:

a. Investigate or decline to investigate any report of unauthorized use;

b. Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CJA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5.00 Audit

5.01 The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6.00 Scope and Authority

6.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.

6.02 The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.

6.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CJIS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

6.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

6.05 All notices and correspondence shall be forwarded by First Class mail to:

Assistant Director
Criminal Justice Information Services Division, FBI
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

Printed Name/Signature of Contractor Employee

Date

Printed Name/Signature of Contractor Representative

Date

Organization and Title of Contractor Representative



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

Ron DeSantis, Governor

ATTACHMENT A

STATEMENT OF WORK

FOR

HEALTH INSURANCE MANAGEMENT INFORMATION SYSTEM

THE STATE OF FLORIDA

DEPARTMENT OF MANAGEMENT SERVICES

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SECTION 1. INTRODUCTION

The Contractor shall provide a comprehensive system integrating data from multiple sources, including health and pharmacy plans, with robust reporting and analysis capabilities that will allow the Department to effectively measure and manage the deliverables described in Section 3 of this Statement of Work, including, but not limited to, maintaining eligibility files, assessing health and cost drivers, establishing medical trends and rates, identifying trends, and potential activities of fraud, waste and abuse occurring in the program. Additionally, the Contractor must be able to meet the requirements set forth in section, F.S., 45 CFR Parts 160 and 164, and the Contract.

The Contract shall commence on on **July 1, 2021**, 12:00:00 a.m., EST, and the Contractor shall begin providing system availability on **January 1, 2022**, 12:00:00 a.m., EST.

The Contractor shall perform the following services:

- 1.1 Maintain and update a Health Insurance Management Information System (HIMIS), which shall aggregate and standardize data from various multiple sources and/or data file formats.
- 1.2 Upload into HIMIS, monthly data files containing enrollment data, medical claims data, pharmacy claims data, and any other data relevant to the Department may deem relevant, from the Department and/or other vendors contracted with the Department.
- 1.3 Conduct validation testing, as defined in Section 3.6, Data Integrity, for file submissions and provide data quality checklists.
- 1.4 Work with all required entities to correct, reconcile, or otherwise explain data anomalies within time periods established by the Department.
- 1.5 Ensure that data is accessible and available to the end user, Department and/or its designee(s).
- 1.6 Perform quarterly data exchange and integration with The Centers for Medicare & Medicaid Service (CMS) on behalf of the Department in accordance with the Department's voluntary data sharing agreement with CMS.
- 1.7 Prepare and present an annual Population Health Management Report as described below.

SECTION 2. DEFINITIONS

The following capitalized terms used in this Statement of Work have the meanings ascribed below:

- 2.1. Access – To review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.
- 2.2. Account Management Team – The individuals employed by the Contractor who will have primary responsibility for the Department’s account.
- 2.3. Business Day – Any day of the week excluding weekends and holidays observed by State agencies pursuant to subsection 110.117(1)(a)-(j), Florida Statutes (F.S.).
- 2.4. Calendar Day – Any day in a month, including weekends and holidays.
- 2.5. Contract – The final, negotiated agreement between the Department and Contractor.
- 2.6. Data – Representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, whether it is exempt, confidential, Protected Health Information that are protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. §§ 160 and 164, the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), and the regulations promulgated thereunder; and section 110.123(9), F.S. Data may be in any form, including but not limited to, in storage media, stored in the memory of the computer, in transit or presented on a display device, or a hard copy. Data may be in any form, including but not limited to, storage media, computer memory, in transit, presented on a display device, or in physical media such as paper, film, microfilm, or microfiche. Data includes the original form of the Data and all metadata associated with the Data.
- 2.7. Department – The Florida Department of Management Services.
- 2.8. Deliverables – Those services, items and/or materials provided, prepared and delivered to the Department in the course of performance under this Contract by the Contractor.
- 2.9. Enrollee – Those persons defined in subsection 110.123(2)(b), F.S.
- 2.10. Implementation Plan – The written description provided by the Contractor, as approved by the Department, of the schedule of actions necessary to implement the services and begin fulfilling the Contract in a timely manner. The Implementation is further described in section 3.1.
- 2.11. Member (or Participant) – Those persons defined in subsection 110.123(2)(e), F.S.
- 2.12. Notice – Written notification from one party of this Contract to the other party regarding performance under the Contract.
- 2.13. Performance Guarantees – Specific measurement indicators assigned to Contract tasks representing timeliness and quality of task output.
- 2.14. Plan Year – Based on the calendar year from January 1 to December 31.

- 2.15. Services – Services to be performed by the Contractor as specified in this Contract. The term “Services” includes, but is not limited to, any unspecified service that is inherent in proper delivery of a specified Service.
- 2.16. Subcontractor –An entity not under the direct control or instruction of Contractor responsible for completing a portion of services under the applicable Statement of Work. The term “Subcontractor” does not include healthcare providers.
- 2.17. User– Any Department employee(s) and/or its designee(s) with Access to the HIMIS.

SECTION 3. MINIMUM SERVICE REQUIREMENTS

3.1. Implementation Plan

- 3.1.1. Contractor shall design, implement, maintain, and operate a HIMIS for the Department, adhering to all service requirements and associated service and deliverables as required, described, and detailed by these requirements. Contractor shall meet all service and delivery timelines specified in the statement of work or elsewhere in the Contract. Contractor shall provide the import and cleansing of appropriate source data and analytical reporting enhancements with advanced functionality, including but not limited to, data mining and support.
- 3.1.2. Contractor shall submit the final Implementation Plan to the Department for approval no later than ten (10) business days following full execution of the Contract. If the Department deems the Implementation Plan to be insufficient, Contractor shall work diligently to deliver an updated, final Implementation Plan satisfactory to the Department, recognizing that time is of the essence. The Implementation Plan shall be based on the proposed Implementation Plan submitted by Contractor during the procurement process.
- 3.1.3. The Implementation Plan shall fully detail all steps necessary to begin importing data files pursuant to the Contract start date, and providing system availability on the date identified in Section 1. Introduction. Specifically, the Implementation Plan shall identify due dates of all tasks with a person from the Contractor or the Department, assigned responsibility for each task.
- 3.1.4. The Implementation Plan shall include the following action items:
 - 3.1.4.1. Scheduling regular implementation status meetings and/or conference calls between the Contractor’s Account Manager and the Department’s Contract Manager. Contractor shall appoint one (1) of its team members to be responsible for recording detailed meeting minutes and follow-up action items on behalf of all team members, including assignment of tasks and due dates. Minutes of decisions made and a list of action items shall be sent to contract manager within five (5) business days of the end of the meeting/call.

- 3.1.4.2. Conducting background screening in accordance with Contract section 14.1, including Subcontractors.
 - 3.1.4.3. Finalizing and signing Confidentiality agreements with all parties involved.
 - 3.1.4.4. Setting up for secure data feeds from each data source for initial and ongoing submissions. Submit the Data Interface Plan and Data Submission Manual.
 - 3.1.4.5. Testing enrollment and claims files, including validation testing. Submit the data quality checklist.
 - 3.1.4.6. Uploading a minimum of five (5) years historical data, with the ability to add up to four (4) additional years of historical files.
 - 3.1.4.7. Finalizing and validating billing procedures, invoice design, and other financial processes, all subject to Department's prior approval.
 - 3.1.4.8. Provide User training on all system functionality.
 - 3.1.5. Contractor shall develop and execute the Implementation Plan, subject to Section 5, Performance Guarantees and Financial Consequences, and upon written approval of the Department.
- 3.2. Account Manager
- 3.2.1. Contractor shall assign a dedicated, but not necessarily exclusive, Account Manager as the primary contact for the Contract.
 - 3.2.2. Account Manager shall participate on the implementation team.
 - 3.2.3. Account Manager shall provide:
 - 3.2.3.1. A meeting agenda five (5) business days in advance of meetings.
 - 3.2.3.2. Meeting minutes within five (5) business days after meetings.
- 3.3. Account Management Team
- 3.3.1. In addition to the Account Manager, the Contractor shall assign a dedicated Account Management Team to the Department that may include an executive sponsor, claims manager, and analytic support manager.
 - 3.3.2. Account Management Team shall devote the time and resources needed to successfully manage the account, and be available for frequent telephonic, email, and on-site consultations, when required by the Department.

- 3.3.3. Contractor shall respond to all written, telephonic, and e-mail communications from the Department as described in the Section 5, Performance Guarantees and Financial Consequences.
- 3.3.4. Account Management Team shall be clearly identified in the Contractor's organizational chart.
- 3.3.5. Contractor shall notify the Department within three (3) business days of any changes to the Account Management Team as described in the Section 5, Performance Guarantees and Financial Consequences, and provide detailed contact information regarding new personnel.
- 3.3.6. Contractor warrants and represents that all persons assigned to this Contract shall be employees or authorized subcontracted employees of Contractor, and shall be fully qualified to perform the work required herein.

3.4. Account Staff

Contractor shall designate staff to train and provide ongoing support to Department staff and/or the Department's designee(s) for functionality of the HIMIS throughout the contract term, including but not limited to the following areas:

- 3.4.1. All HIMIS features, functions, and capabilities, which entails practical training, problem solving, and designing reports requiring more advanced functionality.
- 3.4.2. System issues or problems, including walking the staff through proven steps to complete a task and suggesting alternative solutions.
- 3.4.3. Understanding the HIMIS information and practical uses of the data.
- 3.4.4. How to view or present the data and information in alternative ways.

3.5. Service Administration and Hardware/Software

- 3.5.1. Contractor shall create, maintain, and update a HIMIS, which shall transfer and maintain aggregate data from various sources and data file formats. Contractor shall accept submission of claims, eligibility, and other program data from all sources monthly or on an alternative timeframe, as determined by the Department.
- 3.5.2. Contractor shall design, develop, and operate a single customized, fully integrated database (data warehouse) located at the Contractor's facility, using Contractor's software in an Application Contractor (ASP) mode, or other software as proposed by the Contractor and approved by the Department.
- 3.5.3. Contractor shall maintain a web-based site where Users designated by the Department can Access information, seek help, and create reports. System availability is subject to Section 5, Performance Guarantees and Financial Consequences.

- 3.5.4. Contractor shall host and maintain all data from sources designated by the Department.
- 3.5.5. Contractor shall integrate all information by individual Member and/or family (enrollment, medical, pharmacy, and other programs including but not limited to: wellness, disease management, dental, and vision).
- 3.5.6. Contractor shall provide cost and utilization benchmarking at the national, regional, and state level. Benchmarking data shall include Contractor's book of business or comparable dataset, and be subcategorized by employer size, geographic area, plan types (PPO, HMO and other types), and service industry (i.e. state governments).
- 3.5.7. Contractor shall perform data matches against other databases, including but not limited to state and national databases if requested by the State (i.e., Medicare eligibility, Medicaid eligibility, KidCare, Healthy Kids, and so forth).
- 3.5.8. Contractor shall submit quarterly to The Centers for Medicare & Medicaid Service (CMS) in adherence with the Medicare Secondary Payer (MSP) Group Health Plan (GHP) reporting requirements mandated by Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007. Contractor must stay current with any requirement changes provided by CMS.
- 3.5.9. Contractor shall provide pharmacy industry reference data (Redbook, First Databank, or Medi-Span) to support analysis by therapeutic group and class, comparisons to average wholesale price by drug name and National Drug Code (NDC) directory, assessment of generic equivalents, and other comparisons.
- 3.5.10. Contractor shall develop, implement, and maintain a Disaster Recovery Plan which the Department will review within thirty (30) calendar days of the Contract effective date. At a minimum, the Contractor shall maintain a backup of files/data and the HIMIS shall be fully operational within seventy-two (72) hours of a disaster. The Contractor shall guarantee the same service level as before the Disaster Recovery Plan was activated. Any changes to the plan throughout the term of the Contract must obtain Departmental approval prior to implementation..
- 3.5.11. Contractor must have the ability to store in the active database at least ten (10) years of historical data throughout the term of the Contract.
- 3.5.12. Contractor shall maintain all historical data received during the term of the Contract and provide a methodology satisfactory to the Department for the archiving and retrieving of historical data at no additional cost to the Department. All data collected by, transferred to, or otherwise received by the Contractor during the term of the contract shall remain the property of the State. The Contractor has no rights to this data and all elements and components shall be returned to the State upon

successful transition to a new vendor or at contract termination, whichever occurs first.

- 3.5.13. The Contractor shall ensure acceptance and processing of all data files that may be submitted to the Contractor utilizing secure FTP or SSL web upload interface through the secure website, or submission using alternative methods or new standards available, if approved in writing, in advance, by the Department.
- 3.5.14. Contractor must have ability to process multiple-year transactions and generate reports within a reasonable time frame. The Contractor shall benchmark speed and performance of data upload/report generation based on expected file sizes and shall maintain sufficient network bandwidth to support concurrent transactions by multiple Users, maintaining acceptable performance against benchmarks. All reports must be processed in no more than twenty-four (24) hours. The Contractor will not be held responsible for issues on State or other outside networks or the public internet.
- 3.5.15. Contractor shall provide hardware, service pack upgrades, security patches when necessary, new versions, and other software releases during the Contract's term at no additional cost to the Department.
- 3.5.16. Contractor shall furnish, install, operate, and maintain all property, i.e., hardware and software (including all necessary license(s)), required to perform the Contractor's obligations under this Contract at no additional cost to the Department.
- 3.5.17. All system maintenance shall be scheduled and the Contractor shall notify the Department at least seventy-two (72) hours in advance of planned downtime.
- 3.5.18. Contractor shall notify and receive approval from the Department at least thirty (30) calendar days prior to all material changes, including but not limited to staffing and system, operational, and process changes affecting the HIMIS. This requirement does not apply to force majeure events described in section 12.4 of the Contract, or changes in staff, provided however, that the Contractor notifies and receives approval from the Department promptly upon learning of, or upon receiving notice of, such events or changes.
- 3.5.19. Contractor shall provide a Data Interface Plan detailing all mapping of inbound and outbound file extracts, transfers, or loads, and all configurations related to Services performed under the Contract. Throughout the term of the Contract, Contractor shall update its Data Interface Plan for changes, including but not limited to system, operational, and process changes affecting the HIMIS. The updated Data Interference Plan shall be provided to the Department at least thirty (30) calendar days to any such changes. This information shall be considered property of the State.

3.6. Data Integrity

- 3.6.1. Contractor shall provide a data quality checklist, subject to audits conducted by the Department or its designee, prior to loading each file transmission, to identify and assist in correcting current and future problems with data submissions to the Contract Manager. The checklist must identify and define the data quality measures used by Contractor to validate data integrity for initial and ongoing file submissions. Data quality reports and/or custom data quality thresholds shall be provided to the Department with each monthly data submission.
- 3.6.2. Contractor shall perform automated validation testing for each file submission for: 1) data completeness (no missing data values; row counts and totals match expected values), 2) data accuracy (data properly transmitted and loaded), 3) data quality (data matches defined layout and expected data types), 4) data cleanliness (duplicate check, null value check, invalid values check), and 5) data reasonableness tests as determined by the Contractor and the Department.
- 3.6.3. Contractor shall establish, use, document, and otherwise maintain professionally and technically sound quality assurance standards for the HIMIS.
- 3.6.4. Contractor shall link all data at the Member/Enrollee level. As part of data quality assurance and data reconciliation process, if there is no match on the patient's Social Security Number, Contractor shall use other data elements to match claims and eligibility, in a format agreed upon by the Department.
- 3.6.5. Contractor shall produce and provide a data submission manual with Department approval, that includes timeframes, data files, required data elements with definitions, element types, and values, to ensure the correct submission of data. The manual shall be updated and redistributed to reflect changes to statute, rules, or other changes to submission methods, as needed. Additionally, the manual shall be reviewed at least annually by December 31st.
- 3.6.6. Contractor must accommodate for changes to industry standard coding systems in accordance with their national implementation date.
- 3.6.7. Contractor's system shall standardize data to provide accurate comparisons among all healthcare providers and plans regarding claims and utilization data, as well as comparisons to industry norms.
- 3.6.8. Contractor shall complete data validation and submit the data quality checklist to the Department on each file per the following Department standards.
 - 3.6.8.1. Submit evidence of completion within seven (7) business days of receipt of the data.
 - 3.6.8.2. Notify data submitters of issues with file submission within one (1) business day of validation completion.

- 3.6.8.3. Resolve issues within five (5) business days of notification with data submitter.
- 3.6.8.4. Notify the Department if data files are not fixed and resubmitted within one (1) week.
- 3.6.8.5. Ensure that one hundred percent (100%) of files are loaded within one (1) business day of final validation testing completion and issue resolution (if necessary).
- 3.6.8.6. All files shall be loaded simultaneously.

3.7. Security and Infrastructure

- 3.7.1. Contractor shall provide audit trails of all who access data related to the Contract.
- 3.7.2. Contractor's data center network must include a robust firewall, intrusion prevention and intrusion detection systems, updated anti-viral, anti-malware, anti-spyware, and anti-spam utilities, and twenty-four (24) hour, seven (7) days a week monitoring services to prevent and detect unauthorized Access.
- 3.7.3. Contractor shall store all server, web service and database Access logs for one (1) year following the Contract, or one (1) year after access rights are terminated, whichever is longer, to ensure that full audit trails are available and can be followed if necessary.
- 3.7.4. Contractor shall utilize best practices and regulations to identify unauthorized or inappropriate access to any device or service within the network, suspicious network scans, or other anomalies.
- 3.7.5. The Contractor and its Subcontractors, if any, are strictly prohibited from releasing or using data, or any other information, for any purpose other than those purposes specifically authorized by the Department.
- 3.7.6. Federal standards require encryption of all electronic protected health data at rest and during transmission. Contractor shall cooperate with the Department to maintain the security of protected information according to all applicable state and federal standards. All web access to information shall be secured by Hyper Text Transfer Protocol Secure (HTTPS).
- 3.7.7. The Contractor shall encrypt all individually identifiable Protected Health Information as defined in **Exhibit C**, Privacy, Security, and Confidentiality Business Associate Agreement, in compliance with applicable laws.
- 3.7.8. Contractor shall provide role-based security access so that certain groups of Users have full individual Member level access while other Users only have access to de-identified data.

- 3.7.9. Contractor shall ensure that all information is maintained within the Contractor's database is protected with multi-layered security protocols.
 - 3.7.10. Contractor agrees to immediately (within one (1) business day) notify the Department upon becoming aware of any data breach and/or unauthorized access related to information and Services provided under this Contract.
 - 3.7.11. Contractor agrees to the **Data Security Plan** and agrees the Department has authority to review these documents.
 - 3.7.12. Contractor shall have third-party assurance standards and reports, , which may include Statement on Standards for Attestation Engagements no. 18 (SSAE 18), SOC I (Type II), HITRUST or similar third-party assessment report. Upon reasonable written request, Contractor agrees to provide the State evidence of such reports annually.
 - 3.7.13. Contractor's data center must be physically secured. Access must be restricted to authorized personnel using multi-layered controls and procedures.
 - 3.7.14. Contractor shall provide regular maintenance and updates to their security systems and infrastructure. This includes reviewing and testing technical, administrative, physical, and/or software protocols. Benefitfocus shall perform the above stated regular maintenance and updates during standard maintenance timeframes in accordance with Benefitfocus' performance guarantees, and timeframes will be communicated in advance to the Department.
- 3.8. Reporting and Analysis
- 3.8.1. Contractor shall maintain and update a HIMIS which allows Users to produce, print, and/or download reports in .PDF, MS Word, MS Excel, .CSV, or .TXT format.
 - 3.8.2. Contractor shall compare data from multiple health plans in a single report format.
 - 3.8.3. Contractor shall provide a means for analysis using any data field available.
 - 3.8.4. Contractor shall provide a wide range of reports that are pre-defined, such as clinical-based reports, financial reports, eligibility reports, and pharmacy reports.
 - 3.8.5. Contractor shall produce cost trend reports on pharmacy, inpatient and outpatient hospital, professional, or surgical claims/experience, in total, per case, per Member (per capita), and/or per Enrollee.
 - 3.8.6. Contractor shall produce utilization trend reports on admissions or services (medical and pharmacy), length of stay, days of care, number, and setting (inpatient/outpatient/physician office) of surgical cases.

- 3.8.7. Contractor shall produce reports on overall frequency of inpatient and outpatient surgeries, appropriateness of site of care, and total cost of both inpatient and outpatient surgeries.
- 3.8.8. Contractor shall produce evaluation reports on cost-of-benefits, discount savings, and claims lag time with normative comparisons.
- 3.8.9. Contractor shall support International Statistical Classification of Diseases ICD-9 and ICD-10 claims data.
- 3.8.10. Contractor shall produce clinical evaluation reports with comparison on:
 - 3.8.10.1. Use and cost by Major Diagnostic Category (MDC) and Diagnosis Related Group (DRG);
 - 3.8.10.2. Use and cost by Episode Group;
 - 3.8.10.3. Reports to compare cost effectiveness of inpatient, outpatient, and physician office surgeries; and
 - 3.8.10.4. Member health risk.
- 3.8.11. Contractor shall provide quality of care reports which include:
 - 3.8.11.1. Information on outliers, re-admissions, complications of treatment, nosocomial infections, and deaths, by provider, in total, and per case; and
 - 3.8.11.2. Agency for Healthcare Research and Quality (AHRQ) quality indicators or related indicators and HEDIS measurements, or similar quality measurement standards.
- 3.8.12. Contractor shall have clinical reports for the following areas:
 - 3.8.12.1. Disease management
 - 3.8.12.2. Gaps in care
 - 3.8.12.3. Population health
 - 3.8.12.4. Preventive care
 - 3.8.12.5. Emergency room analysis
 - 3.8.12.6. Manageable conditions
 - 3.8.12.7. Disease prevalence
 - 3.8.12.8. Chronic conditions
 - 3.8.12.9. Co-morbidities

- 3.8.13. Contractor shall provide reports on cost, use, and performance of medical and pharmacy providers on an inpatient or outpatient basis, ranked by selected criteria.
- 3.8.14. Contractor shall provide evaluation reports and/or maps by location for cost and use statistics by provider address zip code and Enrollee address zip code by procedure type, medical condition, and drug description.
- 3.8.15. Contractor shall provide cost and utilization reports on high-cost claimants using cost thresholds including medical and/or pharmacy data.
- 3.8.16. Contractor shall provide cost and utilization reports comparing State agencies, entities, and universities using the State's unique State agency identifier (Florida Accounting Information Resource (FLAIR) code).
- 3.8.17. Contractor shall provide financial management reports on the breakdown of Member and plan payments by plan, month, source of payment, and service type. Reports must also show monthly and quarterly trends based on the date the claims were paid as well as medical paid lag reports.
- 3.8.18. Contractor shall provide financial management reports providing year-over-year (or other time parameter as specified by the Department) analysis on cost drivers (i.e. volume, price and other factors) by plan on an incurred and paid basis.
- 3.8.19. Contractor shall provide utilization and trend reports on drug data by specialty, brand, generic substitutes, and generics, as well as medication compliance reports, and be able to link this to medical claims as necessary.
- 3.8.20. Contractor shall provide the ability to look up drug names by actual drug name or product name within the database and be able to report on these.
- 3.8.21. Contractor shall provide ad hoc reporting capability with graphic presentation ability (i.e. the ability to take report results and create custom bar, column and/or pie charts).
- 3.8.22. Contractor shall have a custom reporting module to create reports and select fields to be included in the reports with the following minimum options:
 - 3.8.22.1. Calculated fields
 - 3.8.22.2. Save and share templates
 - 3.8.22.3. Filters
 - 3.8.22.4. Export capabilities
- 3.8.23. Contractor shall have custom, interactive, User-defined dashboards that allow Users to determine: layout, content, filters, charts and graphs, and time periods. Users can save the dashboard as a template and export dashboard content.

- 3.8.24. Contractor shall allow User to filter on all data fields to create subsets by removing or adding data with specific values for a field.
- 3.8.25. Contractor shall provide and/or include the capability to produce other reports, including yet-to-be-determined ad hoc reports, as needed by the Department.
- 3.8.26. Contractor's HIMIS shall accommodate the exporting of reports in at least the following file formats: .pdf, .xlsx, .csv.
- 3.8.27. Contractor shall model future benefits changes such as Member cost-share (i.e., deductible, copay, premium), adding or deleting covered benefits, and other changes to estimate the change's financial impact to the program. User shall be able to specify factors for inflation, change in use patterns, population changes, and retention rates. The report shall rely on actual claims experience and eligibility data.
- 3.8.28. Contractor shall have risk adjustment modeling capability to allow projections for different premium levels for risk adjustment, and calculate the impact of risk adjustment selection on plan premium rates.
- 3.8.29. Contractor shall have the capability to analyze specific characteristics regarding cost and use performance of specified physicians or hospitals. This report shall automatically adjust for case-mix—providing accurate comparisons among providers. At least one quality measure shall be based on nationally recognized mortality statistics (e.g., CMS).
- 3.8.30. Contractor shall report Enrollee's cost share and cost-of-benefit, including trending reports.
- 3.8.31. Contractor shall link all claims related to a hospital admission to make viewable all activity and charges associated with each admission.
- 3.8.32. Contractor shall link all claims related to all outpatient episodes of care.
- 3.8.33. Contractor shall permit full "drill-down" capabilities to the individual Member level.
- 3.8.34. Contractor shall individually assess and evaluate all Members, regarding their eligibility, claims and utilization.
- 3.8.35. Contractor shall track and evaluate cost and utilization data on Centers of Excellence (i.e., transplants) and other similarly certified or designated centers versus other non-designated centers.
- 3.8.36. Contractor shall track and evaluate the cost and utilization of multiple provider payment arrangements (i.e. Fee-for-Service, Capitated).
- 3.8.37. Contractor shall track and evaluate disease management programs, including identifying program Participants to review specific claims cost and utilization pre- and post-disease management program enrollment.

- 3.8.38. Contractor shall track and evaluate populations by cost and utilization by disease, demographic, or other clinical criteria (for example, to measure return on investment (ROI) on starting or stopping coverage of a certain medical service).
- 3.8.39. Contractor shall profile the claims cost and utilization at the medical- and pharmacy-provider level.
- 3.8.40. Contractor shall track and evaluate the cost and utilization of in-network and out-of-network services and providers by Members.
- 3.8.41. Contractor shall provide a searchable database for procedure and diagnosis codes for use in reports and filters.
- 3.8.42. Contractor shall have the capability to provide a report or module for audit of medical and prescription drug claims information and provide a detailed synopsis of anomalies and/or outliers involving quality assurance and possible fraud, waste, and/or abuse. This may be a separate system module.

3.9. Population Health Management Report

Annually, the Contractor shall conduct a population health management analysis related to designing a population health strategy. In providing this service, Contractor shall:

- 3.9.1. Include the performance of data analytics on the most recent Plan Year, as well as historical medical and pharmacy utilization data, including trends;
- 3.9.2. Create a health management strategy (descriptive narrative) with recommendations for plan modifications tailored to the population, which shall include, but is not limited to:
 - 3.9.2.1. Interventions to mitigate targeted risks.
 - 3.9.2.2. Suggestions for lifestyle management plan components.
 - 3.9.2.3. Suggestions for disease and condition management plan components.
 - 3.9.2.4. Suggestions for plan design modifications that will enhance participation and adherence rates.
 - 3.9.2.5. Suggestions for performance measures for the Department's contracted vendors.
 - 3.9.2.6. Pre- and post-program Return on Investment (ROI) protocols.
- 3.10. The annual report shall be delivered to the Department within forty-five (45) calendar days of the receipt of the last processable data file for the Plan Year (January 1 through December 31).

3.11. Training and Support

3.11.1. Contractor shall provide initial training at the Department's offices by a qualified trainer with extensive knowledge of Contractor's proposed solution. The Department shall not be responsible for any training and travel costs. Training shall be for up to eight (8) designated Department employees. Initial training schedule shall provide for the completion of training within thirty (30) calendar days prior to **January 1, 2021**, and shall include the following:

3.11.1.1. Course outlines which specify the objectives, scope and subject material to be taught.

3.11.1.2. Hands-on detailed applications training with emphasis on User-generated reporting.

3.11.1.3. Course material including manuals and related documentation necessary for training, which shall be retained by each attendee.

3.11.1.4. An electronic copy of all course materials shall be provided to the Department.

3.11.2. Contractor shall provide an online tutorial to assist Users in accessing, manipulating, and reporting the data. In addition, Contractor shall provide e-learning courses, frequently asked questions (FAQs), and an online Help Tool.

3.11.3. Contractor shall provide documentation with detailed information on available reports and/or report fields, including instructions, a description of the report and/or fields with definitions, the data source, specific procedure and/or diagnosis codes, and report output options.

3.11.4. Contractor shall provide training on enhanced functionality and service delivery with each new upgrade, release, version, or edition at no additional cost to the Department.

3.11.5. Contractor shall provide ongoing and on-demand training as requested by the Department at no additional cost to the Department up to the number of hours proposed in the Cost Reply, FORM 6.

3.11.6. Contractor shall accommodate training requests for new or additional staff up to six (6) employees per calendar year, upon the Department's request, and up to the number of hours proposed in the Cost Reply, FORM 6.

3.12. Consulting Services

3.12.1. Contractor shall provide technical assistance related to the HIMIS at the Department's request.

3.12.2. Contractor shall provide executive support and consult with Department's contract and account managers on strategic plans and agency goals.

3.12.3. On a semi-annual basis, Contractor shall review the State's data and provide detailed reports and/or offer advice/suggestions regarding areas where additional analysis may be warranted, reduction of costs may be identified, and claim reviews may be more meaningful.

3.13. Special Provisions

3.13.1. Contractor shall retain all its records past the Contract term in accordance with State and federal law and regulations, and follow the same for record retention and/or destruction.

3.13.2. Contractor recognizes and agrees that all data obtained and used by Contractor relating to this Contract shall remain the property of the State.

3.13.3. Contractor shall absorb the cost of its system programming of all benefit design changes during the term of this contract.

3.14. Transition of Services

If necessary, the Department may require the Contractor to provide uninterrupted Services for a period of time as determined by the Department, but not to exceed one hundred twenty (120) calendar days after the expiration of the contract, unless otherwise specified by law to allow the Contractor adequate time to transition Services.

Transition services shall be governed as follows:

3.14.1. The length of the transition period shall be determined by the Department, and Contractor shall be notified of the period in writing at least one hundred eighty (180) calendar days before the contract term date. The Department reserves the right to subsequently request amendment to the transition period upon thirty (30) calendar days advance written Notice to the Contractor, and such period shall be amended provided both parties are in agreement.

3.14.2. Contractor's transition services shall include: (i) continued provision of specified, identifiable services; (ii) Contractor's cooperation with the Department; (iii) submission of a schedule for transition activities; (iv) return of State-owned materials being utilized by Contractor; and (v) in post migration status, answering reasonable questions on an as-needed basis for six (6) months. To the extent the information is not confidential in nature or proprietary, transition services may also include reasonable cooperation with the new vendor including explanation of procedures and operations with respect to Department's data.

3.14.3. Upon request by the Department, the Contractor agrees to provide the Department with information necessary for transition, which may include the following: a detailed written plan for transition which outlines, at a minimum, the tasks, milestones, and deliverables associated with project transition.

3.14.4. Within fifteen (15) business days from receipt of the Contractor's proposed Transition Plan, the Department shall either approve the Transition Plan or notify the Contractor, in writing, of the required changes.

3.14.5. Within fifteen (15) business days from the Contractor's receipt of the required changes, the Contractor shall incorporate said changes into the Transition Plan and submit such revised Transition Plan to the Department, unless another timeframe is agreed to by the parties.

3.14.6. The Contractor shall work with the Department to transition the project services in accordance with the approved Transition Plan.

3.14.7. The Contractor is required to provide Contractor-related obligations and deliverables to the Department through the final financial settlement of this Contract, including but not limited to:

3.14.7.1 Providing all transition services received on or before the scheduled expiration or termination date of the Contract;

3.14.7.2 Completing all reports, assessments, and analyses required by the Contract; and

3.14.7.3 Agreeing to fully cooperate with the Department on all requirements of the Contract, including legally required or mutually agreed to post-contract audits.

The transition services rendered during or after the term of the Contract shall be provided at no additional cost unless mutually agreed based on the Statement of Work .

SECTION 4. DELIVERABLES

The Contractor shall provide the following deliverables during the term of the Contract:

TABLE 1 DELIVERABLES			
No.	Deliverable	Description	Due Date
1.	Implementation Plan	As described in Section 3.1 Implementation Plan.	No later than ten (10) business days following final execution of the Contract by both parties
2.	Data Quality Checklist	Complete data validation and submit the data quality checklist as described in Section 3.6.8.1 to the Department on each file within seven (7) business days of receipt.	Implementation and then monthly after Go Live date
3.	Data Loaded to Production	One hundred percent (100%) of files shall be loaded into production environment within twenty-four (24) hours of final validation testing completion and issue resolution (if necessary).	Implementation and then monthly after Go Live date

4.	Data submitted to CMS	Data submitted by deadline to CMS in adherence with the Medicare Secondary Payer Group Health Plan reporting requirements as described in Section 3.5.8.	Quarterly submission based on the CMS reporting schedule
5.	Population Health Management Report	As described in Section 3.9 Population Health Management Report.	The Population Health Management annual report shall be delivered to the Department within forty-five (45) calendar days of the receipt of the last processable data file for the Plan Year (January 1 through December 31).
6.	Data Interface Plan	Plan detailing all mapping of inbound and outbound file extracts, transfers, or loads, and all configurations related to services performed under the Contract as described in Section 3.5.19.	Implementation and subsequent updates as required within ten (10) business days of any change.
7.	Data Submission Manual	A manual that includes timeframes, data files, required data elements with definitions, element types, and values, to ensure the correct submission of data as described in Section 3.6.5.	Implementation and subsequent updates as required within ten (10) business days of any change.

SECTION 5. PERFORMANCE GUARANTEES AND FINANCIAL CONSEQUENCES

Payment of financial consequences pursuant to this Contract shall not be offset against regular invoices and shall be payable to the Department. Should a financial consequence become due, the Department will provide Benefitfocus with desired payment method and any supporting documentation (e.g. ACH instructions).

**TABLE 2
PERFORMANCE GUARANTEES AND FINANCIAL CONSEQUENCES**

PG	Financial Consequence	Objective/MSR	Performance Standard and Definition/Criteria	Measurement Period
PG-1	\$500.00 per Business Day beyond the Measurement Criteria	Implementation Plan / Implementation Plan #2	Contractor shall provide the final Implementation Plan, as approved by the Department, to the Department no later than ten (10) business days following final execution of the Contract by both parties.	Applicable for first (1 st) year, beginning at the Contract Execution Date
PG-2	\$500.00 per file per Business Day beyond the Measurement Criteria	Data readiness / Data Integrity #8	Contractor shall complete data validation and submit the data quality checklist to the Department on each file within seven (7) business days of receipt.	Measured monthly, reported quarterly

**TABLE 2
PERFORMANCE GUARANTEES AND FINANCIAL CONSEQUENCES**

PG	Financial Consequence	Objective/MSR	Performance Standard and Definition/Criteria	Measurement Period
PG-3	\$500.00 per file per Business Day beyond the Measurement Criteria	Data readiness / Data Integrity #8	Contractor shall notify data submitters of issues with file submission within one (1) business day of validation completion.	Measured monthly, reported quarterly
PG-4	\$500.00 per Business Day beyond the Measurement Criteria	Data readiness / Data Integrity #8	One hundred percent (100%) of files shall be loaded into production environment within one (1) business day of final validation testing completion and issue resolution (if necessary). All files from all vendors shall be loaded simultaneously.	Measured monthly, reported quarterly
PG-5	\$1,500.00 per Calendar Day beyond the Measurement Criteria	Security / Security and Infrastructure #10	Contractor agrees to immediately (within one (1) business day) notify the Department upon becoming aware of any data breach and/or unauthorized access related to information and services provided under this Contract.	Measured annually
PG-6	\$500.00 per Calendar Day beyond the deadline	Timely submission of data / Service Administration and Hardware/Software #8	Data submitted by deadline to CMS in adherence with the Medicare Secondary Payer Group Health Plan reporting requirements.	Measured and reported quarterly
PG-7	\$250.00 per Business Day beyond the Measurement Criteria	Timely report delivery / Population Health Management Report #1c	The Population Health Management annual report shall be delivered to the Department within forty-five (45) calendar days of the receipt of the last processable data file for the Plan Year (January 1 through December 31).	Measured annually
PG-8	\$250.00 per full percentage point below Measurement	Timely account service / Account Management Team #3	The Account Management Team assigned to the Department shall respond to telephone, e-mail and other written inquiries from the Department within the time requested. One-hundred percent (100%) of Department inquiries shall be initially responded to within one (1) business day.	Measured monthly, reported quarterly
PG-9	\$250.00 per full percentage point below Measurement	Website availability / Service Administration and Hardware/Software #3	HIMIS services shall be available to Users at least ninety-nine percent (99%) of the time for twenty-four (24) hours daily, calculated on a thirty (30) calendar days basis. These availability metrics do not apply to periods of scheduled maintenance and upgrades.	Measured monthly, reported quarterly

**TABLE 2
PERFORMANCE GUARANTEES AND FINANCIAL CONSEQUENCES**

PG	Financial Consequence	Objective/MSR	Performance Standard and Definition/Criteria	Measurement Period
PG-10	\$250.00 per Business Day beyond the Measurement Criteria	Timely notification of changes / Service Administration and Hardware/Software #19	Contractor shall notify the State as soon as possible, but at least thirty (30) calendar days prior to, all material changes including but not limited to staffing and system, operational, and process changes affecting the HIMIS. This requirement does not apply to force majeure events described in section 12.4 of the Contract, or changes in staff, provided however, that the Contractor notifies and receives approval from the Department promptly upon learning of, or upon receiving notice of, such events or changes.	Measured annually
PG-11	\$250.00 per Business Day beyond the Measurement Criteria	Timely notification of changes / Data Integrity #5	Data submission manual shall be updated and redistributed to reflect changes to statutes, rules, or submission methods, as needed. Notice shall be provided no later than ten (10) business days after any change.	Measured annually
PG-12	\$250.00 per Business Day beyond the Measurement Criteria	Timely notification of changes / Service Administration and Hardware/Software #20	Subject to Department approval, Contractor shall update its Data Interface Plan with appropriate mapping and definitions, as well as all changes including but not limited to system, operational, and process changes affecting the HIMIS. Notice shall be provided no later than ten (10) business days after any change (i.e. the date that any change is effective as specified in the Notice compared to the receipt date of the Notice).	Measured annually
PG-13	\$250.00 per Business Day beyond the Measurement Criteria	Timely report delivery/ Service Administration and Hardware / Software #15	The Contractor shall benchmark speed and performance of data upload/report generation based on expected file sizes and shall maintain sufficient network bandwidth to support concurrent transactions by multiple Users, maintaining acceptable performance against benchmarks. All reports must be processed within twenty-four (24) hours.	Measured daily, reported quarterly

**ATTACHMENT B
PRICE SHEET**

Respondent Name: Benefitfocus.com, Inc.

Instructions:

- 1) In the pricing table below, enter an annual price for HIMIS Services using the below assumptions.
- 2) Respondents must offer pricing for all Services and for all years of the Original and Renewal Terms.
- 3) If the Respondent intends to offer a Service at no additional cost, enter the word "Included" in the appropriate cell.

Number of Lives (as of 7-1-2020) 365,060
 Data Source: Medical Claims 9
 Data Source: Pharmacy Claims 1
 Data Source: Member Enrollment 1 (may be several files)
 Historical File Load 10 years min
 Duration of Storage 5 years min
 Frequency of Refresh Monthly
 Number of User Roles Minimum two roles: Executive Level and Power User
 Number of Users 8

	Original Term					Renewal Term				
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Start-up/Preparation and Implementation	\$ -									
Basic Annual Service/Subscription	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00	\$ 388,798.00
CMS MSP Submission	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00	\$ 48,000.00
Population Health Management Annual Review	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00
Total Annual Cost	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00	\$ 440,998.00

Original Term (Years 1-5) Total \$ 2,204,990.00

Renewal Term (Years 6-10) Total \$ 2,204,990.00

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	Original Term		Renewal Term		Other than implementation or circumstances expressly provided for in the Statement of Work, specify any circumstances in which additional charges do not apply.
	Unit	Unit Cost	Unit	Unit Cost	
<i>Example</i>	<i>each</i>	<i>\$ 50.00</i>	<i>each</i>	<i>\$ 50.00</i>	<i>Does not apply to the first 100 additional changes.</i>
Additional Data Integrations with New Partners	each	\$ 12,000.00	each	\$ 12,000.00	Does not apply to the first 5 additional integrations.

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