

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH  
PHARMACY BENEFIT MANAGEMENT SERVICES**

**IMPORTANT INFORMATION ABOUT THIS DOCUMENT AND ITS USE**

The selected Bidder(s) who will provide Pharmacy Benefit Management services will be expected to enter into a contract with DCH that is substantially the same as this contract. However, DCH reserves the right to change any portion of this contract and Bidder's chart of exceptions in no way creates a binding contract with DCH. In no event is a Bidder to submit its own standard contract terms and conditions as a response to the RFA. The Bidder must submit with its approach any exceptions and exact contract deviations that it wishes to negotiate; however, many clauses are required by Georgia state law or DCH policy and cannot be negotiated.

All Bidder exceptions must be set forth in detail in the table below and in the format below. Bidders shall provide the table below in PDF format and in Word 97 format. Any sections not addressed will be deemed acceptable to the Bidder. Contract exceptions and proposed language shall be set forth in this manner so that all Bidders' responses may be compared and considered during evaluation, and to ensure that DCH and Bidder may complete contract negotiations within the five day contract negotiation period.

Every change to the contract must be labeled with the exact sub-section number, the Bidder's reason for requesting the change, the reason why Bidder's proposed language meets the goal of the original language (or why Bidder believes the change is appropriate) and must include the original sub-section, with the Bidder's changes clearly visible (preferably in Word tracked changes).

Responses to the RFA that do not include proposed contract changes in the required format (or a statement that all contract terms are acceptable, with no changes) may not be considered and may be returned without review.

**CONTRACT EXCEPTIONS AND PROPOSED CHANGES EXAMPLE**

Sub-section number	Reason for requesting change	Explanation of why proposed change addresses goal of original language	Proposed alternative or additional language, in tracked changes
35.A	We need one additional day of notice before DCH assigns the contract to another agency	11 Calendar Days provides sufficient notice	A. The rights of DCH under this Contract may be assigned to any other agency of the State of Georgia, with eleven (11) Calendar Days prior notice to Contractor.

## **LIST OF EXHIBITS AND ATTACHMENTS TO CONTRACT**

Exhibit 1: Request For Approach  
Exhibit 2: Contractor's Approach  
Exhibit 3: Administrative Fees and Services  
Exhibit 4: Performance Guarantees  
Exhibit 5: Disaster Recovery Plan  
Exhibit 6: Irrevocable Letter of Credit  
Exhibit 7: Intentionally Reserved  
Exhibit 8: Information Security

Attachment A: Drug Free Workplace Certificate  
Attachment B: Certification Regarding Debarment, Suspension, Proposed Debarment, and Other  
Responsibility Matters  
Attachment C: Nonprofit Organization Disclosure Form  
Attachment D: Confidentiality Statement For Safeguarding Information  
Attachment E: Business Associate Agreement  
Attachment F: Vendor Lobbyist Disclosure and Registration Certification Form  
Attachment G: Statement of Ethics  
Attachment H: DCH Ethics in Procurement Policy  
Attachment I: Code of Ethics and Conflict of Interest Policy

**CONTRACT BETWEEN**

**THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH**

**AND**

**[INSERT CONTRACTOR'S NAME]**

**FOR**

**PHARMACY BENEFIT MANAGEMENT SERVICES**

**Contract No. XXXX**

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**THIS CONTRACT** is made and entered into by and between the Georgia Department of Community Health (“DCH”) and \_\_\_\_\_ (“Contractor”), together, the “Parties,” and is effective on the date on which it is signed by both of them (the “Effective Date”).

**RECITALS**

**WHEREAS**, DCH is responsible for health care policy, purchasing, planning and regulation pursuant to the Official Code of Georgia Annotated (O.C.G.A.) § 31-2-1 *et seq.*;

**WHEREAS**, DCH has been established and is responsible for the administration of the State Health Benefit Plan (hereinafter referred to as the “SHBP”) pursuant to the authority granted in O.C.G.A. §§ 45-18-1 *et seq.*, §§ 20-2-880 *et seq.* and §§ 20-2-910 *et seq.*;

**WHEREAS**, DCH provides health benefits under the SHBP for certain current and former State and public employees, and, in most cases, their dependents;

**WHEREAS**, the provision of healthcare services to be performed for the SHBP through this Contract are exempt from the State Purchasing Act pursuant to the Official Code of Georgia Annotated (“O.C.G.A.”) §§ 31-5A-1, 45-18-2, 45-18-3, 45-18-6, DCH has contracted directly with Contractor;

**WHEREAS**, DCH had caused Request for Approach (“RFA”) Number \_\_\_\_\_, which is attached to this Contract as Exhibit 1 and expressly incorporated into this Contract as if completely restated herein, that was issued through DCH for an organization to provide pharmacy benefit management services under the self-insured plan options of the SHBP;

**WHEREAS**, Contractor is a pharmacy benefit manager (“Pharmacy Benefit Manager” or “PBM”) that has access to and will maintain contractual arrangements with pharmacies, and other health care providers in order to offer a network of prescription drug services and to administer prescription drug benefits in coordination with the Plan Options defined below, which are available to the Members defined below;

**WHEREAS**, DCH has received from Contractor an Approach in response to the RFA (“Contractor’s Approach” or “Approach”), which is attached to this Contract as Exhibit 2 and expressly incorporated into this Contract as if completely restated herein;

**WHEREAS**, Contractor, including its Subcontractors, represents that it has the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in this Contract in an efficient, cost-effective, professional manner, with a high degree of quality and responsiveness and has performed similar services for other public and private entities;

**WHEREAS**, DCH and Contractor are both committed to the delivery of quality health care services in an efficient and effective manner, recognizing the need to control and contain costs, and recognizing the need to maintain and improve the quality of health care;

**WHEREAS**, Contractor has thoroughly reviewed, analyzed and understood the RFA;

**WHEREAS**, Contractor has timely raised all questions or objections to the RFA and received satisfactory answers or responses;

**WHEREAS**, Contractor has had the opportunity to review and fully understand DCH's operating environment for the activities that are the subject of this RFA and Contract and Contractor understands the needs and requirements of DCH;

**WHEREAS**, DCH accepts Contractor's Approach except as expressly stated otherwise in this Contract; and

**WHEREAS**, DCH and Contractor desire to set forth the terms and conditions under which Contractor will provide PBM services.

**NOW THEREFORE**, for and in consideration of the foregoing Recitals and the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCH and Contractor (each individually a "Party" and collectively the "Parties") hereby agree as follows:

## **1. DEFINITIONS AND TERMS**

Whenever capitalized in this Contract, the following terms have the respective meaning set forth below, or, if not set forth below, the meaning set forth in the RFA, unless the context clearly requires otherwise. In the event of a conflict or disagreement among the Parties as to the meaning of a capitalized term, DCH's interpretation shall control.

- 1.1 **"Acceptance"** means a notice from DCH to Contractor that a Deliverable has conformed to its applicable Acceptance Criteria in accordance with the process described in Section 15.F, *System Changes*.
- 1.2 **"Acceptance Criteria"** means the Specifications against which each Deliverable shall be evaluated in accordance with Section 15.F, *System Changes*.
- 1.3 **"Acceptance Tests"** means the tests or reviews that are performed by DCH to determine there are no Deficiencies in the Deliverables and that must be satisfied before Acceptance can occur as set forth in Section 15.F, *System Changes*.
- 1.4 **"Account Manager or Account Director"** means the individual employed full-time by (and is legally empowered by) Contractor to oversee the management and coordination of the DCH account.
- 1.5 **"Administrative Fee or Fees"** means the schedule of monthly payments from DCH to Contractor based on the respective monthly enrollment counts of Employees enrolled in Plan Options, and any other fees for Services, as set forth in Exhibit 3, *Administrative Fees and Services*.

- 1.6 **“Average Wholesale Price (AWP)”** means a reference price for prescription drug products, which is based on a date sensitive, 11-digit NDC of the actual product dispensed as supplied by a nationally recognized pricing source for retail and mail order adjudicated claims, such as MediSpan.
- 1.7 **“Bank Account”** means the separate bank account established by Contractor for purposes of disbursing funds on behalf of SHBP.
- 1.8 **“Brand Drug”** means a single source and multi-source FDA approved prescription drug that is not available as a generic drug and as determined by a nationally recognized source such as Med-Span or FirstData Bank.
- 1.9 **“Business Day(s)”** means every day except Saturdays, Sundays, and those holidays designated by law pursuant to O.C.G.A. § 1-4-1.
- 1.10 **“Calendar Day(s)”** means any of the seven days of the week.
- 1.11 **“Case Management”** means a collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet a Member’s health needs. It uses communication and available resources to promote quality, cost-effective outcomes and maximize benefits. It is distinguished from Utilization Management in that it is voluntary, and it is distinguished from Disease State Management by its intensity and focus on any disease(s) and/or condition(s) the Member may have.
- 1.12 **“Claim”** means any bill, invoice, or other written statement from a specific Pharmacy or Provider submitted in accordance with the requirements of the SHBP for a specific Eligible Member.
- 1.13 **“Claims Run-Out Period”** means the time period beginning on the date of termination of this Contract and ending 365 Calendar Days following the date of such termination or expiration as set forth in Section 9, *Payment for Services*, of this Contract.
- 1.14 **“CMS”** means the Centers for Medicare and Medicaid Services.
- 1.15 **“Coinsurance”** or **“Copayment”** means the amount to be paid by the Member for each prescription or authorized refill of the Member or his or her dependents as determined in accordance with the terms of the Plan Option in which the Member is enrolled.
- 1.16 **“Complete Claim”** or **“Clean Claim”** means a claim for charges received by Contractor, that is not in dispute, is not missing any information necessary to process said claim, is not under appeal as to the benefit entitled for such claim, and/or does not involve coordination of benefits, third party liability or subrogation, and is represented by a properly completed billing form by the

Pharmacy or Provider in order to be processed and paid by Contractor. A Completed Claim becomes a “**Paid Claim**” once it is paid by Contractor and submitted to DCH for reimbursement. Each unique prescription that results in payment shall be calculated separately as a Paid Claim.

- 1.17 “**Compound Prescription**” means a prescription drug which requires the dispensing pharmacist to produce an extemporaneously produced mixture containing at least one federal legend drug, the end product of which is not available in an equivalent commercial form.
- 1.18 “**Confirmation**” means DCH’s receipt of notice from Contractor that Contractor has, as applicable: completed a Deliverable in accordance with its Acceptance Criteria or pre-tested a Deliverable for compliance with the Specifications; and confirmed the Deliverable is ready for applicable Acceptance Tests.
- 1.19 “**Contract**” means this instrument and all Exhibits and Attachments to this instrument, which are incorporated in this instrument by reference as if fully restated. If provisions in the Contract conflict, the DCH Director of Contracts Administration shall determine which provisions control, following this general order of preference: this instrument; Exhibit 3, *Administrative Fees and Services*; Exhibit 4, *Performance Guarantees*; Attachment E, *Business Associate Agreement*; Exhibit 8, *Information Security*; Exhibit 1, *Request for Approach*; Exhibit 2, *Contractor’s Approach*, and all other Exhibits and Attachments.
- 1.20 “**Coinsurance**” or “**Copayment**” means the amount to be paid by the Member for each health care service as determined in accordance with the terms of the Plan Option in which the Member is enrolled.
- 1.21 “**Corrective Action Plan**” means a detailed written plan submitted by Contractor to DCH and approved by DCH in writing as a method for Contractor to remedy or resolve Contractor’s unsatisfactory performance.
- 1.22 “**Covered Drugs**” means those Medically Appropriate or Medically Necessary drugs that require a prescription under state or federal law, including Compound Prescriptions, and are prescribed by Providers and filled through a Pharmacy, and which are not expressly excluded in Plan Documents either categorically or due to operation of limits or maximums described in the Plan Documents.
- 1.23 “**Customer Service**” means a customer service unit responsible for responding to questions, comments, and inquiries from Members, Providers and Pharmacies, as prescribed by Contractor’s policies and procedures approved by DCH and as described in Contractor’s Approach.
- 1.24 “**DCH Content**” means any materials provided by DCH to Contractor in order for Contractor to provide the Services. DCH Content includes, but is not limited to, images, photographs, illustrations, graphics, audio clips, video clips and text such as operating procedures, scripts, or any other form of text.

- 1.25 **“DCH Data”** means all information provided to Contractor by DCH or Members or SHBP Vendors as a result of this Contract, including, but not limited to DCH Content, eligibility information, Member specific information, claims information, documents, messages (verbal or electronic), reports, or agendas and other documentation related to meetings involving or arising out of this Contract.
- 1.26 **“DCH Program Manager”** means the DCH employee identified as Program Manager in Section 34, *Notice*.
- 1.27 **“Dedicated”** means Contractor’s staff members who are solely assigned to perform Services in furtherance of this Contract, which means the Contractor does not assign them to work for any other client or customer.
- 1.28 **“Deficiency”** means a failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes it not to conform to its Specifications. Also referred to as a problem, defect, issue or error in the RFA.
- 1.29 **“Deliverable”** is a specific task or product, such as a written product, report, system test, audit or meeting that must be accomplished by Contractor (either independently or in concert with DCH or third parties) during the course of Contractor’s performance under this Contract by a deadline specified in the Contract or the DCH-approved Implementation Plan.
- 1.30 **“Demand Management (DM)”** means a 24-hour, 7 days a week nurse advice line, staffed with registered nurses who are licensed in the state in which they are employed, who access a health information protocol system to provide non-diagnostic assessments, triage, health information, education, home treatment options, and authorization of referrals to emergency room, urgent care facilities, and/or physician offices.
- 1.31 **“Designated”** means Contractor’s staff members who are assigned to perform Services in furtherance of this Contract, but may also be assigned by Contractor to work for other clients or customers.
- 1.32 **“Disease State Management (DSM)”** means intervention and educational programs established, operated and managed by a medical management vendor. These programs are designed for individuals with chronic diseases which are intended to prevent recurrence of symptoms, improve medication adherence, maintain high quality of life, and prevent or reduce the need for medical resources by using an integrated, comprehensive approach to health care.
- 1.33 **“Discounts”** means the percentage difference between the applicable average wholesale price (AWP) for a Covered Drug and (i) the maximum allowable cost (MAC), where applicable, or (ii) Contractor’s negotiated reimbursement amount with a Network Pharmacy for prescription drugs, over the counter items and other

services provided by such Network Pharmacy to Members. This discount excludes the Dispensing Fee, Copayment, Coinsurance and/or sales tax, if any.

- 1.34 **“Dispensing Fee”** means an amount paid by Contractor to a Network Pharmacy per Claim for providing professional services necessary to dispense medication to a Member.
- 1.35 **“Drug Utilization Review (DUR)”** means a point of sale claim edit to facilitate drug utilization review objectives. DUR may be concurrent or prospective. A **“Retrospective Drug Utilization Review”** or **“Retro-DUR”** is a post payment claims analysis to facilitate drug review objectives.
- 1.36 **“Electronic Data Interchange (EDI)”** means the structured transmission of data between organizations by electronic means, which is used to transfer electronic documents or business data from one computer system to another computer system or network. Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), EDI is based on the X12N EDI data transmission protocol standard.
- 1.37 **“Eligible Member” or “Member”** means all Employees and their dependents who are currently enrolled in a Plan Option.
- 1.38 **“Employee”** means the individual who is eligible to enroll in the SHBP due to his or her current or former employment with an Employing Entity, or as a result of applicable law, and who is currently enrolled in a Plan Option.
- 1.39 **“Employing Entity”** means an employer that offers the State Health Benefit Plan to employees, or to employees and former employees.
- 1.40 **“Generic Drug (Generic(s))”** means a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name that is therapeutically equivalent and interchangeable with a drug having an identical amount of the same active ingredient(s), regardless of its single source or multi-source status, and approved by the Federal Drug Administration and determined by a nationally recognized source as MediSpan or FirstData Bank.
- 1.41 **“Health Information Exchange (HIE)”** means having the capability to electronically move clinical information between health care information systems while maintaining the meaning of the information being exchanged.
- 1.42 **“Health Information Technology (HIT)”** means the use of computerized systems to securely exchange, store, and protect the integrity of individually identifiable health information, as defined in 45 C.F.R. Part 160.

- 1.43 **“Health Information Technology for Economic and Clinical Health (HITECH) Act”** means Title XIII of Division A and Title IV of Division B of ARRA.
- 1.44 **“Health Insurance Portability and Accountability Act of 1996 (HIPAA)”** means 42 USC 1302, et seq. and the regulations promulgated thereunder at 45 C.F.R. Parts 160, 162 and 164.
- 1.45 **“Health Reimbursement Arrangement (HRA)”** means an account set up on behalf of the Employee in accordance with applicable Internal Revenue Code requirements, under which expenses associated with Covered Services (as defined by the Plan Documents) and for Covered Drugs for which Claims have been submitted under any of the Plan Options are reimbursed. The HRA accounts generally are integrated with the applicable Plan Option, but there may be instances in which a standalone HRA exists as the result of a residual HRA balance upon termination of coverage under a Plan Option.
- 1.46 **“Implementation”** means preparation of readiness to provide the Administrative Services. Tasks associated with Implementation are set forth in an Implementation Plan.
- 1.47.A **“Implementation Plan”** means the overall plan of activities for the Contract, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard to the SHBP, as submitted with the Approach and as updated in accordance with Section 3.6 of this Contract. The Implementation Plan shall be incorporated herein, and each revised Implementation Plan shall be incorporated herein upon its acceptance by DCH.
- 1.47 **“Ingredient Cost”** means the agreed upon pass-through rate, inclusive of any agreed upon payment logic applied, paid to the pharmacy for the drug dispensed based on the type of medication provided (as outlined in the cost proposal) and does not include the Dispensing Fee, Copayments, Coinsurance, Deductibles or sales tax, if any.
- 1.48 **“Key Staff”** means those individuals listed as key staff in the Contractor’s proposal.
- 1.49 **“Mail Order Service”** means a service described in Section 5.9 through which Members may submit a prescription along with the applicable Copayment/Coinsurance to Contractor for dispensing via mail order. This service is used to dispense maintenance drugs taken by Members on a regular basis.
- 1.50 **“Maximum Allowable Cost (MAC)”** means a cost management program that sets upper limits on the payment for equivalent drugs available from multiple manufacturers. It is the highest unit price that will be paid for a drug and is

designed to increase generic dispensing, to ensure the pharmacy dispenses economically, and to control future cost increases.

- 1.51 **“Managed Behavioral Health/Substance Abuse (MBH/SA)”** means the provision of inpatient and/or residential or outpatient mental health and substance abuse treatment and services for Members.
- 1.52 **“Medicare Voluntary Data Sharing Agreements (VDSAs)”** means an agreement with CMS to share coverage information and enables a health plan to electronically exchange Medicare and group health plan coverage information with CMS.
- 1.53 **“Medical Management Vendor (MM Vendor)”** means the entity with whom DCH has contracted to provide medical management services. Medical management services include but are not limited to Case Management, Demand Management, Disease State Management, Managed Behavioral Health/Substance Abuse, Prior Authorization and Utilization Management.
- 1.54 **“Member” or “Eligible Member”** means all Employees and their dependents who are currently enrolled in a Plan Option.
- 1.55 **“Member Identification Card”** means the card issued by Contractor identifying the Member as eligible to receive Covered Drugs under any of the Plan Options.
- 1.56 **“National Drug Code (NDC or NDC-11)”** means the universal product identifier. It is a unique, eleven-digit, three-segment number that identifies the labeler/vendor, product and trade package size.
- 1.57 **“Network Pharmacy” or “Network Pharmacies”** means the Retail Pharmacies that have entered into or are governed by contractual arrangements with Contractor or Contractor’s Subcontractor under which they agree to provide Covered Drugs to Members at specific Discounts.
- 1.58 **“Non-Covered Drugs or Non-Covered Services”** means all health care services rendered to Members other than Covered Services, as defined by the Plan Option, and Covered Drugs. Providers are not entitled to reimbursement under the Plan for Non-Covered Services or Non-Covered Drugs provided to Members.
- 1.59 **“Pass Through and Transparent Pricing”** means the arrangement whereby SHBP receives the full value (100%) of Contractor’s negotiated Discounts with Network Pharmacies, and Contractor’s only profit is the Administrative Fee. If Contractor owns the mail order and/or specialty pharmacy provider services, then the guaranteed rates stated in Exhibit 3, Administrative Fees and Services, which have taken into account Contractor’s actual acquisition cost, must be the rates passed on to DCH and therefore meet the requirement for pass through pricing.

- 1.60 **“Performance Standards”** means the standards set forth in the Performance Guarantees attached at Exhibit 4.
- 1.61 **“Pharmacy”** means a retail establishment that provides pharmacy services, inclusive of Network Pharmacies and pharmacies that are not in the Network.
- 1.62 **“Pharmacy Drug Benefit Management Vendor (PBM Vendor)”** means the entity with whom DCH has contracted to administer prescription drug benefits.
- 1.63 **“Pharmacy and Therapeutics (P&T) Committee”** means a panel of experts consisting of physicians, pharmacists and clinical experts who assist Contractor in developing formularies and preferred drug lists that clinically appropriate and cost rational.
- 1.64 **“Plan”** means the State Health Benefit Plan (SHBP), as further defined below.
- 1.65 **“Plan Documents”** means the documents that contain the terms and conditions of the Plan Options, as determined and developed during Implementation and as determined and developed during the Term of the Contract to reflect changes to Plan design or changes to requirements of SHBP programs. These include the State statutes and regulations that govern the SHBP, policies and procedures of DCH’s SHBP Division, and clinical guidelines of SHBP Vendors, DCH reimbursement guidelines, and those reimbursement guidelines of SHBP Vendors that are approved in writing by the DCH Program Manager, written requirements of any programs established by SHBP Vendors that are approved in writing by the DCH Program Manager, Employee contribution rates approved by DCH’s governing board, and the Summary Plan Description and other summaries of benefits approved in writing by the DCH Program Manager. In the event of ambiguity or conflict among the terms set forth in these documents, DCH shall interpret the terms in accordance with SHBP Regulation 111-4-1-.10 and applicable federal law.
- 1.66 **“Plan Option(s)”** means the self-insured health plan options of the SHBP. The Plan Options currently include the (i) Preferred Provider Organization/HRA option, (ii) High Deductible Health Plan option, (iii) Health Maintenance Organization option, and (iv) to the extent applicable, any residual HRA balance upon termination of coverage under any of these Plan Options, if applicable.
- 1.67 **“Preferred Drug List”** means the list of clinically appropriate, cost-rational preferred drugs, organized into different tiers or levels indicating how much the Eligible Member cost share (Copayment/Coinsurance) will be for each drug.
- 1.68 **“Prior Authorization”** means the process of obtaining certification or authorization from Contractor for specified medications or specified quantities of

medications. The process involves clinical appropriateness review against pre-established criteria.

- 1.69 **“Provider”** means a physician, health care professional or health care facility licensed, certified or accredited as required by state law.
- 1.70 **“Quality Assurance Program”** means a program designed to (i) ensure accurate claims adjudication, including accounting for changes to the Plan design during the Term of the Contract, and (ii) evaluate data to determine possible improvements in benefit design and/or ways to ensure maximum patient outcomes.
- 1.71 **“Quality Management/Quality Improvement (QM/QI)”** means a systematic, data-driven effort to measure and improve health care services including Member safety as related to the efforts or results of treatment modalities or practices for a particular disease, condition, or process. The goal of Quality Management/Quality Improvement is to improve utilization management functions by monitoring and analyzing the data and modifying processes in response to this data.
- 1.72 **“Retrospective Drug Utilization Review” or “RetroDUR”** means the analysis of past utilization for clinical education purposes to targeted prescribers. RetroDUR includes development of a clinical intervention letter with industry standards outlined and a recommended course of action.
- 1.73 **“Rebates”** mean compensation or remuneration of any kind received or recovered from a pharmaceutical manufacturer attributable to the purchase or utilization of Covered Drugs by Members including, but not limited to, incentive rebates categorized as mail order purchase discounts; credits; rebates, regardless of how categorized; market share incentives; promotional allowances; commissions; educational grants; market share or utilization; drug pull-through programs; implementation allowances; clinical detailing; rebate submission fees, administrative or management fees, or fees related to access to aggregate SHBP data. Rebates also include any fees that Contractor receives from a pharmaceutical manufacturer for administrative costs, preferred drug list placement, and/or access.
- 1.74 **“Retail Pharmacy”** means a pharmacy establishment at which prescription drugs are dispensed in a retail setting by a registered pharmacist under the laws of each state.
- 1.75 **“Software”** means all computer instructions or data and any updates thereto, including executable computer program code together with the associated data files, data structures and databases within the control of and used by Contractor to administer the Plan Options and programs described in this Contract.

- 1.76 “**Services**” means all services that Contractor provides pursuant to this Contract, either directly or through Subcontractors.
- 1.77 “**Specialty Drugs**” means pharmaceutical products that are generally biotechnical in nature, with many requiring injection or non-oral methods of administration and that may have special shipping or handling requirements. Some of the disease categories treated by Specialty Drugs are cancer, HIV/AIDs, organ transplant, Gaucher disease, hemophilia and multiple sclerosis.
- 1.78 “**Specifications**” means the technical and other written specifications that define the requirements and Acceptance Criteria, as described in the RFA, the Contractor’s Approach, subsequent Deliverables which have received Acceptance, and the Documentation. Such Specifications shall include and be in compliance with all applicable State and federal policies, laws, regulations, and technical standards. The Specifications are, by this reference, made a part of this Contract, as though completely set forth herein.
- 1.79 “**State Health Benefit Plan (SHBP)**” or “**Plan**” means the State Health Benefit Plan, which is comprised of three health insurance plans established by Georgia law: 1) a plan for State employees (O.C.G.A. § 45-18-2), 2) a plan for teachers (O.C.G.A. § 20-2-891), and 3) a plan for non-certificated public school employees (O.C.G.A. § 20-2-911). Currently, benefit options are the same under all three plans and they are usually referred to together as the State Health Benefit Plan. The SHBP includes the Plan Options.
- 1.80 “**SHBP Vendors**” means the TPA Vendor(s), the Medical Management Vendor(s), the Wellness Vendor(s) and the PBM Vendor(s).
- 1.81 “**Subcontractor**” means a person, partnership, or company, not in the employment of Contractor, which is performing Services under this Contract under a separate agreement with or on behalf of Contractor. Subcontractor includes affiliates (entities that control, are controlled by, or are under common control with the Contractor) of Contractor that perform Services under this Contract.
- 1.82 “**Summary Plan Description**” means a booklet that contains information regarding Member eligibility requirements, and summary descriptions of covered benefits and exclusions under the Plan Options, including prescription drug benefits.
- 1.83 “**Systems**” means Contractor’s Information Systems that it makes available to DCH to access and facilitate the transfer of information in conjunction with this Contract or that otherwise support functions associated with this Contract.

- 1.84 **“TPA Vendor”** means an entity contracted by DCH to provide third party administration services for Plan Options and to provide Medicare Advantage Plans.
- 1.85 **“Utilization Management Program (UM Program)”** means a service(s) and/or utilization review service(s) performed through programs offered by the Medical Management Vendor which seek to assure that Covered Services and Covered Drugs provided to Members are in accordance with Plan Option provisions and appropriate under the standards and requirements established by the Medical Management Vendor.
- 1.86 **“Work Product”** means all Deliverables, records, telephone call recordings, reports, analyses, communications with Members, claims information, any software or hardware or other equipment upgrades or enhancements requested by and made for DCH’s sole use, meeting agendas and other documentation, data and other related materials (whether electronic, hardcopy or otherwise) either:
- a. prepared by Contractor or created by Contractor based upon and using information supplied by DCH or Members, or supplied by Providers as a result of their treatment of Members, or supplied by SHBP Vendors as a result of the SHBP Vendors’ provision of services for the Plan; or
  - b. prepared or created by Contractor for DCH, including, but not limited to, all reports demonstrating the extent to which Contractor met Performance Standards and Deliverables set forth in the Contract, and all written or recorded communications between Contractor and DCH related to the Services.
- 1.87 **“Wellness Vendor”** means an entity with which DCH has contracted to provide wellness and prevention programs.

2. **SCOPE OF SERVICE**

- A. The purpose of this Contract is the provision of Administrative Services necessary for the provision of prescription drug coverage for Members in accordance with the terms of the Plan Options, which are set forth in the Plan Documents. Subject to the terms and conditions set forth herein, DCH retains Contractor to furnish all of the goods, services, and other Deliverables required by the Contract.
- B. Contractor shall act as an independent contractor in the performance of its duties under this Contract. DCH is the administrator of the SHBP and shall retain final authority and responsibility for the operation of the SHBP, for the determination of which laws, regulations, policies and procedures apply to the SHBP, which documents are Plan Documents, and for the proper interpretation of Plan Documents, eligibility requirements, rules, policies and procedures that apply to the SHBP.

Contractor may act on behalf of DCH in connection with SHBP only to the extent expressly stated in this Contract. In performing its duties under this Contract, Contractor shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and shall be held to such standard in any conflict arising between the Parties.

DCH is the sponsor of the SHBP and retains sole and absolute authority to design, amend, terminate or modify, in whole or in part, any portion of the SHBP in accordance with applicable law.

- C. Additionally, the Parties agree that DCH shall not pay or otherwise compensate Contractor for any services, goods, or deliverables outside of the Services described in the Contract. In the event of a dispute regarding whether an item is within the scope of services, the Parties will attempt to reach a mutually agreeable solution. If the Parties fail to reach a mutual agreeable solution, Section 32, ***Conflict Resolution***, of this Contract shall control, govern, and not be subject to appeal.
- D. In event of a conflict in language between the various documents incorporated by reference into this Contract (other than the Contract itself), the order of interpretation set forth in the definition of Contract shall control.

### 3. **DCH RESPONSIBILITIES**

DCH shall complete the following tasks and actions:

- 3.1 **Eligibility Determinations**. Make all determinations related to eligibility for SHBP coverage, and administer and make final decisions with respect to all appeals related to eligibility and enrollment.
- 3.2 **Eligibility Verification System**. Arrange for a mechanism for timely verification of eligibility of Members in accordance with the provisions under the specific Plan Options.
- 3.3 **Communications**. Make diligent good faith efforts to facilitate effective and continuous communication with Contractor, and to notify Members of the status of Contractor and Network Pharmacies under this Contract through appropriate education and information to Members.
- 3.4 **Administrative Fees**. Pay to Contractor the monthly Administrative Fees as set forth in Exhibit 3, in accordance with Section 9, ***Payment for Services***, Section 27, ***Unsatisfactory Performance and Damages***, and Exhibit 4, ***Performance Guarantees***. The Administrative Fees are the sole source of profit for Contractor under this Contract.

- 3.5 Use of Name/Trademarks/Logos for Marketing Purposes. DCH shall permit Contractor to use DCH name, trademarks and logos for the limited purpose of informing Members of the available prescription drug coverage under the Plan Options. Additionally, Contractor's Network Pharmacy directories and any electronic or internet publication of such directories displaying the names, trademarks and/or logos of DCH shall be approved by the SHBP Division Chief or her designee, as applicable, in writing prior to distribution or other release. Any other desired use or dissemination by Contractor of the name of DCH or the SHBP in any connection with the services provided by Contractor shall require the prior written consent of DCH and the SHBP, as applicable. Contractor shall immediately cease to use DCH name, trademark and/or logo upon receipt of a communication from DCH directing Contractor to cease and desist from using the same or upon the termination of this contract. Contractor's logos shall not be used by DCH or the SHBP without the prior written consent of Contractor.
- 3.6 Review and Approval of Implementation Plan. Contractor shall provide a detailed workplan for Implementation of the Administrative Services described in this Contract ("Implementation Plan"). The Implementation Plan, which must be submitted to DCH within fifteen (15) Calendar Days of the Effective Date, must include the information specified for the Implementation Plan in the RFA and deadlines for delivery, acceptance, and other activities related to any Deliverables. DCH shall review and accept the Implementation Plan if it meets Contract requirements including but not limited to Contractor and DCH team assignments. DCH shall provide oversight for the implementation team. The schedule of deadlines in the Implementation Plan shall not change as a result of time required by Contractor to correct deficiencies, unless otherwise agreed beforehand in writing by the DCH Program Manager. However, the schedule may, in DCH's discretion, be extended on a day-to-day basis to the extent that DCH's review of a Deliverable and review of corrections of deficiencies is longer than described in the Implementation Plan. Contractor shall update the Implementation Plan regularly (no less than quarterly) and as otherwise necessary throughout the Implementation for each plan year to accurately reflect the status of activities, tasks, events, Services and projected schedule therefor. Contractor will present the updated Implementation Plan at a time agreed to by the parties in writing, and the updated Implementation Plan will highlight changes made from the prior Implementation Plan. Any such update changes must be approved in writing by the DCH Project Manager prior to their final incorporation into the Implementation Plan. Any Implementation Plan change request which would result in an increased cost to DCH must be prepared as an amendment to the Contract. The Implementation Plan progress updates shall allow adequate time, in DCH's reasonable judgment, for DCH to review and comment on the updates, as well as any new or modified Deliverables, and revision or correction of Deliverables by Contractor. However, unless otherwise specifically agreed to in writing, DCH's agreement on a change to the Implementation Plan will not relieve Contractor of liability, including but not limited to liquidated damages,

from failures to perform its obligations as required herein. The Implementation Plan updates shall be incorporated into the Contract upon acceptance by DCH.

- 3.7 Communication Materials. DCH shall review and approve all communication materials including letters, brochures and informational mailings and any other documents that Members at large or Providers shall receive prior to their being sent to Members or Providers on behalf of DCH.
- 3.8 Electronic Communications. DCH shall review and approve the content of any web-site information, telephone recorded greetings and messaging (including on-hold messaging), telephone prompts, and automated voice response system(s) prior to their being made available exclusively or uniquely for Members on behalf of DCH. Contractor shall not make changes to the website or any of the greetings and systems described above without written approval of DCH. However, in the event of unexpected or urgent changes, Contractor will provide DCH with the most advanced notice possible and provide DCH with the opportunity to review and make any necessary changes as soon as possible after implementation.
- 3.9 Readiness Review. At least sixty (60) Calendar Days prior to the January 1, 2014, or such later date deemed appropriate and necessary by the DCH Program Manager, DCH will conduct a readiness review of Contractor, including an on-site review of Contractor's facilities. Contractor shall participate in all readiness review activities conducted by DCH staff to ensure Contractor's operational readiness. DCH will provide Contractor with a summary of findings as well as areas requiring corrective action.
- 3.10 Member Eligibility. DCH shall provide Contractor with the most current and complete set of Member eligibility data, which shows Members eligible for prescription drug coverage administered by Contractor, and assist Contractor with data interfaces in accordance with Section 5.1.5 (sub-section under *Eligibility*)
- 3.11 Recommended Design of Prescription Drug Benefits Under Plan Options. DCH and Contractor will develop recommended terms and conditions of Plan Options for prescription drugs, including, but not limited to benefits, exclusions, limits, cost-sharing elements, clinical guidelines, reimbursement guidelines, and all terms and conditions necessary for compliance with applicable law, during Implementation. DCH and Contractor will develop modifications to these terms and conditions as needed, but at least as frequently as once per year, so that such modifications are available for presentation to senior DCH leadership by July 1. DCH has final decision-making authority with respect to all such terms and conditions.
- 3.12 Banking.
  - 3.12.1 Funding and Payment of Claims. The Plan Options are self-funded. Funds for payment for benefits payable pursuant to the Plan Options are

funds maintained by DCH in accordance with the laws that establish the State Health Benefit Plan. Contractor is not responsible for providing funds for payment for benefits payable pursuant to the Plan Options, which are set forth in the Plan Documents. When Administrative Services Fees are offset due to overpayments, or when Contractor pays DCH directly in the amount of overpayments, Contractor is temporarily providing funds for claims improperly paid.

- 3.12.2 Bank Account. Contractor shall establish and maintain a separate Bank Account for purposes of disbursing funds on behalf of SHBP. Contractor shall not combine the balance of funds in this account and all claim payments made on behalf of SHBP with Contractor's accounts for funds of other clients.
- 3.12.3 Balance In Account. DCH shall maintain a balance in the Bank Account in an amount which will be sufficient at all times to fund the checks written on it for payment of SHBP benefits administered by Contractor.
- 3.12.4 Issuing and Providing Funds for Checks. When the checks Contractor writes and issues for SHBP benefits are presented to the bank, the bank will notify Contractor and Contractor will direct the bank to accept or reject the checks. Then the bank will withdraw funds from the Bank Account to fund the checks that are cashed.
- 3.12.5 Transfers of Funds. Funds also may be withdrawn from the Bank Account when a transfer of funds by Contractor has been made to pay SHBP benefits. For example, funds may be withdrawn when a wire transfer has been made to a Provider or Pharmacy to pay for services.
- 3.12.6 Calls for Funds. Contractor will send DCH a funding request for Paid Claims and DCH will (wire) transfer funds to the Bank Account. DCH will send funds to the Bank Account on a weekly basis.
- 3.12.7 Payment of Administrative Fees. Administrative Services Fees are paid to Contractor by DCH via an Automated Clearinghouse (ACH) on a monthly basis.
- 3.12.8 Unfunding. If transfer of funds from DCH is not received by Contractor on or before the time it is due, Contractor will provide DCH with immediate notice, so that DCH can promptly correct the problem.
- 3.12.9 Stale Dated Checks. Contractor shall perform due diligence for stale dated checks, which shall include monitoring for and re-issuing stale-dated checks that originated prior to the Effective Date and/or after the Claims Run-Out Period. Contractor will place stop payments on all stale

dated checks Contractor has issued under this Contract. Checks become stale dated after a certain period of time, which will be reasonable and mutually agreed upon by the Parties. Contractor must maintain separate reports or a tracking mechanism for stale dated checks (including those issued from a prior vendor or after the Claims Run-Out Period about which Contractor is aware) due to the requirement of DCH to maintain a liability in its financial records for seven (7) years.

3.12.10 Funding after Expiration or Termination of Contract. When this Contract terminates or expires, the current method of providing funds to the Bank Account will remain in place for up to six months after the Claims Run-Out Period. At the end of this period, Contractor, upon approval of DCH, will place stop payments on all checks that remain uncashed, and DCH will instruct Contractor to close the Bank Account and recover any funds remaining in it to DCH. Contractor will provide Bank Account statements and bank reconciliation reports, including reports DCH needs for the purposes of escheatment.

3.12.11 Escheat. To the extent that abandoned or unclaimed property does not exist as a result of the negligence of Contractor or breach by Contractor of this Contract, DCH is solely responsible for complying with all abandoned property or escheat laws, and for making any required payments, and for filing any required reports. Contractor is required to perform due diligence in accordance with O.C.G.A. Section 44-12-192 on stale-dated checks. Three months after the Effective Date of the Contract and for every three months thereafter, Contractor will provide DCH with a report of all unclaimed funds.

3.12.12 Bank Account Responsibility. Contractor shall defend, indemnify and save DCH harmless from any loss proximately caused by a breach, negligence, or criminal or intentionally wrongful acts by any employee, contractor or agent of Contractor, or any employee, contractor or agent of Subcontractors, arising out of his or her use of the Bank Account and the corollary check stock under his or her control. These obligations in this section shall survive the termination or expiration of this Contract. Nothing herein shall limit Contractor's indemnification obligations as defined by Section 28, *Indemnification*.

#### 4. **GENERAL CONTRACTOR RESPONSIBILITIES**

4.1 General Legal Compliance. As of the Effective Date, and at all times throughout the term of this Contract, Contractor shall be and remain in compliance with all applicable laws, as further described in Section 31, *Compliance with all Laws*.

4.2 Change in Corporate Status or Ownership Obligations.

- 4.2.1 Contractor shall immediately notify DCH of any of the following changes that apply to Contractor:
  - 4.2.1.1 Change in business address, telephone number, facsimile number, or e-mail address;
  - 4.2.1.2 Change in corporate status or nature, which shall not occur without DCH's prior written consent;
  - 4.2.1.3 Change in business location;
  - 4.2.1.4 Change in solvency;
  - 4.2.1.5 Change in corporate officers, executive employees, or corporate structure;
  - 4.2.1.6 Material change in ownership (more than 5%) or control;
  - 4.2.1.7 Change in federal employee identification number or federal tax identification number; or
  - 4.2.1.8 Change in Long-Term Credit Rating or Short-Term Credit Rating as measured by Standard & Poor's Rating Services.
- 4.2.2 Contractor shall immediately notify DCH of any of the following changes that apply to Subcontractors:
  - 4.2.2.1 Change in corporate status or nature;
  - 4.2.2.2 Change in solvency; and
  - 4.2.2.3 Material change in ownership (more than 10%).
- 4.2.3 Contractor shall not, without the prior written consent of DCH, take the following actions:
  - 4.2.3.1 Change its legal status;
  - 4.2.3.2 Change its legal structure; or
  - 4.2.3.3 Sell, transfer, convey or assign more than a 10% interest in Contractor.
- 4.2.4 Should DCH not consent to any of the actions set forth in Section 4.2.3 and Contractor desires to proceed with such action, then DCH may, at its

option, elect to terminate this Contract at such date as determined by DCH.

4.3 Compliance with Contractor's Approach. Contractor shall comply fully with its Approach in response to the RFA, except as expressly described in this Contract.

5. **SPECIFIC CONTRACTOR RESPONSIBILITIES AND DELIVERABLES**

Contractor shall perform and complete all the tasks, obligations and responsibilities described and set forth in this Contract. Contractor shall complete the following actions, tasks, obligations and responsibilities:

5.1 Eligibility Submission. Contractor shall comply with the provisions of the Plan's eligibility and enrollment requirements as outlined in the RFA paragraphs 4.11.1-4.12.2. DCH shall solely determine eligibility for the Plan. Contractor agrees to accept, in the proprietary DCH format, (currently the Membership Enrollment Management System (MEMS)) format, the nightly electronic file updates with Eligible Members for the various Plan Options. The file updates include only additions, deletions and changes to the Membership records. Full eligibility files will be submitted to Contractor on a monthly basis.

5.1.1 Contractor shall pay any costs associated with any Systems development and testing necessary to accept DCH formatted eligibility files.

5.1.2 Contractor shall use Connect: Direct and secure File Transfer Protocol, and shall update or replace these Systems at its own cost for current use, and as DCH requires in the future.

5.1.3 Contractor shall provide to DCH view-only access to SHBP's eligibility data contained on its Systems. Contractor shall provide training for the on-line tool and ongoing support for DCH.

5.1.4 Contractor shall accept retroactive additions/deletions of at least one year (365 Calendar Days) and collect and reconcile claim payments made in error during this period.

5.1.5 Contractor shall perform real-time data interfaces with SHBP Vendors, in the formats set forth in Paragraph 4.12.1 of the RFA. Among other things, these real-time data interfaces will be necessary to ensure that the HRA balances and benefit accumulators (such as deductibles and out-of-pocket maximums) reflect current pharmacy utilization.

5.1.6 DCH anticipates that it will provide an eligibility interface to Contractor in an X12N 834 compliant electronic data interchange transaction set in the future. Notwithstanding, the SHBP reserves the right to continue to use the MEMS proprietary format that is used on the Effective Date and the

file layout in Exhibit 2 of the RFA or that DCH selects during the Term of the Contract.

5.1.7 Contractor shall accept and process eligibility loads each Calendar Day of the year and shall stop an eligibility upload in the event that established error thresholds are exceeded.

5.2 Relationship with Network Pharmacies. Contractor shall be responsible for the administration of the prescription drug benefits available under the Plan Options and in connection therewith shall advise Network Pharmacies of this Contract and benefits, policies and procedures of the Plan Options. Contractor shall maintain formal contracts with all Network Pharmacies that address the level of reimbursement, provider access, quality requirements and other key factors. Contractor shall inform Network Pharmacies in writing that their records are subject to audit under this Contract.

5.3 Account Services. Account services are set forth in Section 16, *Contractor Staffing*.

5.4 Member Identification (“ID”) Cards. Contractor shall arrange for the issuance of a Member Identification Card for each Member.

5.4.1 The ID Cards shall meet the requirements set forth in the Implementation Plan, and shall contain appropriate Contractor contact information, an identification number, Contractor’s twenty-four (24) hours, seven (7) day/week toll-free Customer Services telephone numbers (technical and clinical), and relevant benefits information.

5.4.2 Contractor will send Member ID Cards to Members in accordance with the Implementation Plan requirements. Such requirements shall include that ID Cards be mailed to Members at least ten (10) Business Days before the beginning of each Plan year, two Member ID Cards must be provided when a spouse is enrolled, any additional ID Cards must be provided promptly upon request, and Contractor shall reissue Member ID Cards within five (5) Business days of notice if a Member or spouse reports a lost card or for any reason that results in a change to the information disclosed on the Member ID Card. Such requirements shall also include that ID Cards be mailed to newly enrolled Members after each year’s open enrollment period within five (5) Business days of receipt of enrollment data from DCH.

5.4.3 Contractor shall submit a front and back sample of the ID card within sixty (60) Calendar days of the Effective Date for review and approval by DCH.

5.4.4 Contractor shall produce weekly and monthly reports on the number of ID Cards produced and the number of ID Cards rejected during the abstraction process.

5.5 Plan Documents and Communication Materials. During Implementation, Contractor shall provide DCH all clinical guidelines, reimbursement guidelines, coding manuals, provider manuals and other documents that describe how claims are to be paid in accordance with DCH's proposed plan design, and identify any discrepancies between those documents and the prior year's SPDs. DCH and Contractor will identify all documents that will be followed when processing Claims and resolving appeals, and these documents will be approved in writing by the Program Manager as prescription drug coverage components of the Plan Documents. Once approved by the Program Manager, Contractor shall follow these Plan Documents when processing Claims and resolving appeals. Contractor shall seek written guidance of DCH whenever interpretation of Plan Documents is required, and shall seek written approval of DCH before following any document other than the Plan Documents when processing Claims or resolving appeals.

5.5.1 Contractor shall produce a prescription drug coverage summary for each Plan Option, or, at the request of DCH, will provide information and necessary support for DCH to include in the SPD. Contractor shall mail upon request by DCH, the drug coverage summary information to Employees not actively working for an Employing Entity and shall have the drug coverage summary information available via electronic means to Employees who are actively working for Employing Entities.

5.5.2 Contractor shall provide to DCH for review and approval the prescription drug coverage summary document or, if requested by DCH, the recommended language for inclusion in the SPD for each Plan Option within ninety (90) Calendar Days of the Effective Date. Thereafter, the summary or recommended language must be provided to DCH for review and approval, rejection or modification at least ninety (90) Calendar Days prior to publication and distribution each calendar year.

5.5.3 Contractor shall develop proposed collateral materials, marketing materials, program descriptions, SPD language, and other materials necessary to adequately inform and educate Members concerning utilization of prescription drug benefits under the Plan Options and any changes to the terms or conditions of the Plan Options as they relate to prescription drug benefits. Contractor shall provide these materials to DCH in electronic format for review, revision and approval by DCH at least ninety (90) Calendar Days before the desired date of use or publication for any SPD language, and at least forty-five (45) Calendar Days, or when requested by DCH, before the desired date of use or publication for any other materials. Before submitting Member communication materials to DCH, Contractor's materials shall be

reviewed and approved by the appropriate Account Directors, with consultation by Contractor's legal counsel if the materials describe benefits or actions Members must take in order to obtain benefits. Contractor's materials shall be accompanied by an affirmation that the materials are accurate, grammatically correct, and do not conflict with the current SPD or any other Plan Documents or materials posted on Contractor's websites or otherwise being made available to Members.

5.5.3.1 In all cases, when a plan design change or PDL change occurs during the plan year and upon request by DCH, Contractor shall provide analyses to identify Members impacted for targeted communication, within ten (10) Business Days of request for such analyses by DCH. Development of DCH approved communication letters, analyses, and mailing to Members or Providers will be provided at no additional cost to DCH.

5.5.3.2 Contractor shall make all DCH approved Member communication materials available to Members electronically and, upon request by any Member, shall mail the materials to the Member in paper format.

5.6 Pharmacy Network. Contractor shall make available to Members a Georgia statewide and national network of Pharmacies. Contractor will determine which pharmacies are Network Pharmacies. Contractor shall provide DCH with ninety (90) Calendar Days advance notice of any change expected to result in a five per cent (5 %) or more loss in Network Pharmacies, or as soon as learning of such a potential change. In addition, Contractor will operate and maintain its Pharmacy Network in accordance with the requirements outlined in the RFA.

5.6.1 Pharmacy Credentialing. Contractor will require each Network Pharmacy to comply with all requirements of the law relating to the furnishing of prescription drug services and items to the public, and now has and will maintain in effect all permits, licenses and governmental or board approvals which may from time to time be necessary for that purpose.

5.6.2 Network Pharmacy Communication. Contractor shall communicate to all Network Pharmacies during implementation and shall provide the summary of benefits under the Plan Options to each new Network Pharmacy, which summary shall include Covered Drugs, Exclusions, and other relevant material. Contractor must be available to assist Network Pharmacies regarding the requirements of the Plan Options and must monitor Network Pharmacy knowledge and understanding of Plan Option requirements, and take corrective actions to ensure compliance with the requirements of the Plan Options.

- 5.7 Preferred Drug List (PDL) Development. Contractor shall furnish a PDL for use with the Plan Options, which shall be operated and maintained in accordance with the requirements in the RFA.
- 5.7.1 Classification. Contractor shall make the final classification of an FDA-approved prescription drug product to a certain tier of the PDL by considering a number of factors including, but not limited to, clinical and economic factors. Clinical factors may include, but are not limited to, evaluations of the place in therapy, relative safety or relative efficacy of the prescription drug product, as well as whether supply limits or notification requirements should apply. Economic factors may include, but are not limited to, the prescription drug product's acquisition cost including, but not limited to, available Rebates, and assessments on the cost effectiveness of the prescription drug product. Whether a particular prescription drug product is appropriate for an individual Member is a determination that is made by the Member and the prescribing physician. Contractor shall customize the PDL, when necessary, based on DCH direction and approval.
- 5.7.2 Drug Changes. Contractor shall obtain DCH approval for all drug changes made on the PDL for each Plan Option, and DCH reserves the right to approve or reject proposed changes to the PDL.
- 5.7.2.1 Contractor agrees to notify DCH sixty (60) Calendar Days in advance when a drug is targeted to be removed from, or added to, the PDL, or if a change in Copayment level is proposed. With this notice, Contractor will provide a detailed disruption and financial impact analysis.
- 5.7.2.2 As part of this process, Contractor will obtain DCH's approval before any products are moved from covered to non-covered status under the PDL, or products are changed from one tier to another.
- 5.8 Retail Pharmacy Program. Contractor will process the Claims received from Retail Pharmacies in accordance with the SPD for the applicable Plan Option, and, as applicable, the pricing and other terms of the Network Pharmacy's participation agreement. DCH's payment will be the same amount that Contractor would reimburse the Network Pharmacy.
- 5.8.1 Paper Claim Processing. Contractor shall accept completed paper claims from Members, Providers and Pharmacies. Contractor shall apply the full point of sale benefit design edits to all paper claims. Contractor shall handle paper claims in accordance with its Approach in response to RFA Paragraphs 6.2.1-6.2.8 and agreed upon process from DCH.

- 5.8.2 Electronic Claims. Contractor shall support an Automated Clearinghouse (ACH) mechanism that allows Pharmacies to request and receive electronic funds transfer (EFT) of Claims payments for pharmacy services. Contractor will ensure their POS adjudication software is compliant with the most current National Council for Prescription Drug Programs (NCPDP) standards and all subsequent NCPDP versions upon release or when required by DCH, at no additional cost to DCH. Contractor shall require its Network Pharmacies to possess capability to submit and receive Claims information through electronic data interchange (EDI), i.e. electronic Claims. As part of this Electronic Claims Management (ECM) function, Contractor shall also provide on-line and phone-based capabilities to obtain Claims processing status information. This will include EFT (electronic fund transfers) and have real-time POS (point of sale) capabilities.
- 5.9 Mail Order Service Program. The Mail Order Service Program will dispense Covered Drugs to Eligible Members, and generic drugs when authorized, in accordance with applicable law and regulations in the state in which the Mail Order pharmacy is located, the terms of the SPD for the applicable Plan Option and this Contract. In addition, Contractor will operate the Mail Order Service Program in accordance with the requirements stated in the RFA and Exhibit 4, ***Performance Guarantees***.
- 5.10 Specialty Drug Program. The Specialty Drug Program will dispense Covered Specialty Drugs to Eligible Members, and generic drugs when authorized, in accordance with applicable law and regulations in the state in which the Specialty Drug pharmacy is located, the terms of the SPD for the applicable Plan Option and this Contract. Contractor will notify SHBP and the Members at least 60 Calendar Days prior to the addition of a drug to the Specialty Drug Program list, and at least 90 Calendar Days prior to the deletion of a drug from the Specialty Drug Program list. In addition, Contractor will operate the Specialty Service Program in accordance with its Approach responses to RFA Paragraphs 8.1-8.15 and mutually agreed to with DCH, and as stated in Exhibit 4, ***Performance Guarantees***.
- 5.11 Current File Uploads. Contractor shall load into its claims files one (1) year of claims history, all current Prior Authorizations, open mail order refills and accumulator files that exist for current Members from the existing prescription benefits managers at no charge.
- 5.12 Claims Adjudication. For Claims filed under the Retail, Mail Order and/or Specialty Drug Programs, Contractor shall comply with the following provisions:
- 5.12.1 Processing Claims. Contractor will adjudicate claims for prescription drug benefits in accordance with the applicable Plan Design. Disapproved retail claims will be transmitted to the submitting pharmacy via the

electronic claims adjudication system with an explanation of the cause or causes for disapproval. Should SHBP determine that a previously disapproved claim should be approved, and so directs the Contractor, the adjudication of the claim will be accomplished promptly by the Contractor.

- 5.12.2 Retail Claim Adjudication System. Contractor shall notify DCH at least 72 hours in advance of any scheduled downtime of the retail claim adjudication system, and within fifteen (15) minutes of any unscheduled downtime that occurs during normal DCH business hours, and within 1 hour of the start of the next business day for any unscheduled downtime that occurs after normal DCH business hours.
- 5.12.3 Claims System Edits. Contractor shall utilize a Claims system with processes and edits in place to identify improper Pharmacy billing. This includes, but is not limited to, up-coding, unbundling of services, and duplicate bill submissions. Contractor shall also identify overpayments and maintain records of any incorrectly paid Claims, issue requests for repayment and maintain a process for collecting benefit overpayments.
- 5.12.4 Quality Assurance Program (QA). Contractor shall maintain a QA Program for Plan Options. The QA Program shall monitor all claims processing and appeals functions for compliance with the requirements of the Plan Documents and applicable law. Contractor shall ensure that its Subcontractors have similar QA Programs and Contractor shall provide oversight and monitoring of its Subcontractors for quality purposes.
- 5.12.4.1 Contractor shall conduct an annual evaluation of its QA program to assess overall program effectiveness, measure goals and objectives (met or not met), identify potential and actual barriers, and recommend revisions and/or modifications to the design of the Plan Options for the upcoming year. Contractor shall provide such evaluation to DCH when concluded.
- 5.12.5 Financial Accuracy. Financial accuracy is defined as the percentage of dollars paid correctly. Contractor shall adhere to standards required in Exhibit 4, *Performance Guarantees*.
- 5.12.6 Benefit Determination and Appeals. DCH appoints Contractor as named fiduciary under each Plan Option responsible for performing the following services in accordance with the terms of the Plan Options, which are set forth in the Plan Documents: (i) performing Claims processing and payment, (ii) performing the fair and impartial review of initial appeal of any denied Claims, (iii) performing the fair and impartial review of subsequent appeals of denied Claims, (iv) performing Prior Authorization services, and (v) taking all actions required to comply with the

requirements of the RFA and of State and federal laws that apply to such Prior Authorizations, Claim processing and claim appeals processing. As such, DCH delegates to Contractor the discretionary authority to (i) construe and interpret the terms of the Plan Options as they relate to the payment of Claims (but not as to questions of eligibility), (ii) determine the validity of Claims and other charges submitted to Contractor under the Plan Options, and (iii) make final, binding determinations concerning the payment of Claims.

If Contractor determines that all or a part of a Claim is not payable under the Plan Option, Contractor will notify the claimant of the denial and of the claimant's right to appeal the denial, in the manner required by applicable law and the Plan Documents.

5.13 Pharmacy Network Discounts and Rebates. Contractor may enter into agreements with certain entities in order to obtain cost savings on prescription drugs for the benefit of the Plan and its Members. Further, Contractor may receive Rebates directly or indirectly from such entities based on the number of drugs purchased under the Plan. All adjudicated claims, including Retail point-of-sale, Mail Order, and specialty pharmacy, will be at 100% pass-through of negotiated dispensing fees, discounts and Rebates as defined in Section 1.59 of this Contract.

5.13.1 DCH will retain 100% of all Rebates received from prescription drugs. All negotiated pharmacy contracts and Rebate contracts are fully auditable by DCH. The SHBP is protected in this model by requiring guaranteed Discounts, fees and Rebates from Contractor. Discounts and Rebates achieved, on the SHBP's behalf, that exceed the financial guarantees are payable to DCH, for the benefit of the SHBP. Dispensing Fees that are paid lower than the guarantees are also passed through to DCH. Hence, the financial guarantees are the minimum Discounts and Rebates the SHBP will achieve and the maximum Dispensing Fees and Administrative Fees DCH will pay.

5.13.1.1 On an annual basis, Contractor shall reconcile Rebate guarantees to verify SHBP is receiving the guaranteed Rebates.

5.13.1.2 Rebates are guaranteed for the term of this Contract, as well as any extension of the underlying Contract.

5.13.1.3 Rebates are guaranteed on a minimum (not fixed) basis.

5.13.1.4 Contractor guarantees on a dollar-for-dollar basis that the average, realized AWP discounts for Brand Name and Generic Drugs will be no less than those quoted at Retail and Mail Order for the life of the Contract and on a dollar-for-dollar basis that the average, realized Dispensing Fee will be no more than quoted

at Retail and Mail Order for the life of the Contract, as shown in Exhibit 3, *Administrative Fees and Services*.

- 5.14 Network Pharmacy Payments. Contractor shall provide payment to Network Pharmacies in accordance with this Contract. Contractor ensures that Network Providers will accept such payment as payment in full for Covered Drugs provided to Eligible Members. Contractor shall remit timely payment to Providers under this Contract as provided by Georgia law, O.C.G.A. §33-24-59.5, via electronic fund transfer (EFT) within seven (7) working days of receipt of Complete Claims from Providers, provided that the bills are accurate and complete, and do not require any additional information to process. Replacement EFT payments must be done within seventy-two (72) hours of a missed EFT. Paper Claims must be paid in no more than fifteen (15) Calendar Days with an average ten (10) Calendar Day turnaround for 99% of the paper claims.
- 5.15 Prior Authorizations. Contractor shall operate, on behalf of Plan, a Prior Authorization program as outlined in this Contract. Contractor shall provide Prior Authorization services for Covered Drugs designated as requiring Prior Authorization in the applicable SPD, as modified throughout the Term of the Contract. The Prior Authorization program must include medical exception reviews and overrides, as appropriate; quantity limits; non-preferred product determination; and benefit exclusions as directed by DCH. Any requests which result in a denial must be reviewed by one of Contractor's pharmacists before dispensation is provided to the caller. Contractor is responsible for development and maintenance of custom protocols for all products identified as requiring Prior Authorization. Upon DCH's request, Contractor shall handle all first and second level appeals of a denial of prior authorization. In addition Contractor shall meet the following standards: complete all initial requests within 24 hours of receipt, complete first level appeals within three (3) Business days of receipt. All first and second level appeals must be reviewed by a Georgia licensed pharmacist with access to a physician for consultation.
- 5.16 Electronic Prescribing. Contractor shall support e-prescribing initiatives by DCH.
- 5.17 Data Reporting. Contractor shall provide data reports in accordance with the requirements in this Contract and the Implementation Plan. Contractor shall provide monthly, quarterly, and annual reports as well as ad hoc reports as requested by DCH at no additional cost. Such reports may contain individually identifiable claim information and other information for Members enrolled in Plan Options.
- 5.18 Performance Guarantees. Contractor shall meet the specific Performance Standards defined in Exhibit 4, as well as any reporting obligations related to the Performance Guarantees. The actions described in Exhibit 4, Performance Guarantees, shall be Deliverables.

- 5.19 Drug Utilization Review (DUR). Contractor shall operate, on behalf of Plan, a DUR Program and a Retro-DUR Program for Eligible Members of the SHBP as outlined in Contractor's Approach that responds to Paragraphs 9.2.1-9.2.10 of the RFA and within DCH required specifications.
- 5.20 Benefit Exclusions. Contractor will, in compliance with applicable state and federal laws, inform Network Pharmacies of all prescription drug coverage Exclusions contained in the Plan Options under the SHBP.
- 5.21 Laws and Regulations. Contractor shall comply with the provisions of the O.C.G.A. § 33-46-1 et seq., regarding private review agents and shall remain in compliance with all applicable State and federal laws and regulations.
- 5.22 Healthcare Information Exchange (HIE). Contractor shall have in place or develop initiatives towards HIE and health care transparency that would encourage the use of electronic health records, personal health records (PHRs), and make available to Members increased information on cost and quality of care, and offer incentives that reward high quality at low cost. Contractor shall demonstrate to DCH its strategies and development toward improving health care transparency and HIE activities on an annual basis.
- 5.23 Customer Service.
- 5.23.1 Contractor shall operate two toll-free dedicated Customer Services telephone lines to respond to questions, comments and inquiries from Members, Providers and Pharmacies regarding issues that arise at Retail Pharmacy, Mail Order Services and Specialty Drug transactions. One line shall be designated for technical claims questions, and the other shall be designated for Prior Authorization requests. These telephone lines shall remain open and operational 24 hours a day/ seven (7) Calendar Days a week, 365 Calendar Days of the year.
- i Policies and Procedures. Contractor shall develop policies and procedures that address staffing, personnel, hours of operation, access and response standards, monitoring of calls via recording or other means, and compliance with its Approach in response to RFA Paragraphs 4.7.1-4.7.17 and within DCH required specifications. Contractor shall submit these telephone policies and procedures, including performance standards pursuant to this Contract to DCH for review and approval within sixty (60) Calendar Days after the Effective Date.
- ii Non-English Speaking Calls. Contractor's Customer Services shall be staffed and equipped to handle calls from Spanish speaking callers, as well as calls from Members who are hearing impaired. Customer Services also shall be able to handle calls

from other non-English speaking callers through a translation service.

iii Other Minimum Requirements. At a minimum, DCH requires that Contractor's Customer Services:

- a. Have the capability to track call management metrics and provide monthly, quarterly and annual reports (as outlined in Exhibit 4, *Performance Guarantees*, and Contractor's Approach in response to RFA Paragraphs 4.7.1-4.7.17);
- b. Consist of Customer Services staff trained to respond to questions from Members, Providers and Pharmacies with regard to all services, including, but not limited to, Covered Drugs, the Pharmacy Network, and any Prior Authorization requirements;
- c. Consist of Customer Services staff that have specialized training in assisting the needs of a retired population who have no access to employer assistance and have Medicare coordination of benefits and procedures;
- d. Record all calls and keep recordings for a period of twenty (24) months; and
- e. Provide the SHBP and/or DCH staff with access to live and recorded calls remotely and onsite for monitoring and plan administration purposes. Contractor shall allow SHBP to select a sampling from recorded calls on a weekly basis or at other frequency as determined by DCH. DCH staff will provide Contractor with a list of DCH staff members authorized to access live or recorded calls on Contractor's Member Services system for the purpose of quality monitoring or other plan administration purposes.
- f. Customer Service facilities which handle DCH Member or Provider calls must be located within the continental United States of America.
- g. Contractor's customer service representatives must have the ability to warm transfer a call to the SHBP offices or another SHBP Vendor without the Member having to hang up and dial the SHBP Vendor directly.

- 5.23.4 Web Tools. As part of its Customer Service, Contractor agrees to make available to Members and DCH the Web Tools that are described in its Approach in response to RFA Paragraphs 4.8.1-4.8.8 and in Section 5.28 below and within DCH required specifications.
- 5.23.5 Resolution of Complaints. Contractor agrees to cooperate in activities with DCH in responding to and resolving complaints from any Member. Complaints may include but are not limited to the following: dissatisfaction with Customer Service, or Network Pharmacy access issues.
- 5.23.5.1 Tracking of Complaints. Contractor shall administer a tracking monitoring and response system for addressing the complaints or issues of Members and a reporting system for providing data to DCH on a monthly and quarterly basis.
- 5.23.5.2 Distinguished from Claims. To the extent that a complaint is actually a Claim for benefits, it will be handled in accordance with Section 5.12, and not this Section 5.23.5.
- 5.24 Member Communication Materials. Contractor shall provide DCH with Contractor's collateral materials, marketing materials, Provider directories, and other materials necessary to adequately inform and educate Eligible Members concerning utilization of the Prescription Drug Benefits. Contractor shall not release any communication materials without the prior approval of DCH.
- 5.25 Annual Enrollment Periods. Contractor agrees to participate in the SHBP open enrollment period by attending benefit fairs, open enrollment and retiree meetings, and train-the-trainer programs throughout the State upon DCH's request. Contractor must submit copies of all marketing materials (written for handouts and presentations) that it and any of its subcontractors may distribute during open enrollment to DCH for review and approval prior to dissemination.
- 5.26 Pharmacy Directory. Without cost to DCH or SHBP Members, Contractor shall publish or cause to be published the names, addresses, contact information of the Network Pharmacies to be furnished to DCH in the amounts requested for distribution to employing entities and shall also be made available for viewing and printing via Contractor's website. Contractor shall update Pharmacy Directories maintained on Contractor's website weekly. Contractor shall mail Pharmacy directories upon request to Members within ten (10) Business Days of receiving the request of the directory.
- 5.27 Adequate Provision of Services; Non-Discrimination. Contractor shall require Network Pharmacies to provide Covered Drugs to Members within the scope of the Pharmacy's license and in accordance with the Plan. At all times throughout the term of this Contract, Contractor shall require Network Pharmacies to

maintain adequate facilities, equipment, personnel and administrative services to perform their obligations under and as prescribed under the Plan. Network Pharmacies shall provide Covered Drugs to Eligible Members in the same manner, in accordance with the same standards and with the same time availability as offered to other non-Members. Network Pharmacies shall not differentiate or discriminate unlawfully in the treatment of any Member on account of race, color, national origin, religion, sex, marital status, sexual orientation, age, disability, health status, or source of payment and shall comply with Title VII of the Civil Rights Act of 1964 as well as applicable state laws regarding discrimination.

5.28 Internet Presence/Web Site/Secure Member Portal. Contractor shall provide general and up-to-date information about the SHBP, the Pharmacy Network, its customer service, individual claims history, the appeals process, and other details on its web site as outlined in the Contractor's Approach to the RFA. This can be achieved via links to other sites, if needed. Contractor shall also maintain a site that allows Members to access a searchable Network Pharmacy directory that shall be updated, at a minimum, weekly upon changes to the Pharmacy Network. The web site shall have the capability for Eligible Members to securely submit questions and comments to Contractor and receive responses and must comply with DCH security requirements and must be consistent with applicable State and federal laws.

5.29 Health Information Technology. Contractor shall commit to developing improvements in its technology as outlined in its Approach in response to Paragraph 4.10.1 in the RFA (e.g., access to confidential personal health information online for Members, web-based health information for Members, electronic and more efficient communication among and between Providers and Pharmacies as well as among Members and Pharmacies and Providers, etc.).

5.30 Cost Avoidance Recovery, Coordination of Benefits, Subrogation.

Contractor must have procedures and processes in place for cost avoidance to the SHBP to identify, investigate, track and recover third party and workers' compensation liabilities, including coordinating coverage through cross-over with Medicare and other coordination of benefits ("COB").

5.30.1 Subcontractors. Contractor is authorized to enter into subcontract(s) for the identification of Claims for which a third party may be liable and for the pursuit of the SHBP's right of reimbursement, subject to the approval of DCH.

5.30.2 Scope of Subrogation Services. Contractor shall provide subrogation services with respect to Claims and claims that originated prior to the Effective Date, as directed by DCH.

5.30.3 COB Savings and Spending Reports. Contractor shall report COB savings under the Plan Options to the DCH with the amount of COB spending being reported separately from the savings amount. Reports shall be provided on a monthly, quarterly, and annual basis.

5.30.4 Network Providers. Contractor shall ensure that Network Providers agree to cooperate with DCH to exchange information relating to COB or subrogation claims with regard to any Member for whom the Network Provider is providing or has provided Covered Services under the Plan Options.

5.30.5 COB with Medicare. Contractor shall administer COB and subrogation of Medicare claims according to standard Medicare rules and regulations and pursuant to, and also consistent with, Plans' policies and procedures for Medicare eligible employees.

5.30.6 Reporting Refunds. Contractor must track and report all refunds for the SHBP, identifying trends and assisting in activities that will avoid incorrect payment of the SHBP funds. Contractor must provide reports on a monthly, quarterly and annual basis. Reports must include the following:

- Beginning backlog/status;
- Number of closed cases;
- Number of new cases added to backlog;
- Number of cases with recoveries;
- Dollar amount of total payout for each case;
- Dollar amount of recovery for each case;
- Month ending backlog;
- Trending by month and year;
- Ratio of recovery by month; and
- Comment area that may be needed to explain elements on report by month and year.

5.31 Medicare Secondary Payer. Contractor shall handle all Claims in relation to the Medicare Secondary Payment provisions in accordance with federal law and the requests of federal agencies.

5.31.1 Medicare Secondary Payer (MSP) Compliance and Laws. Contractor shall comply with all federal laws that apply directly to Contractor, as a Pharmacy Benefit Manager for the SHBP, such as Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. Compliance efforts shall be undertaken by both parties with the goal of providing complete and accurate data to the Center for Medicare and Medicaid Services.

5.31.2 MSP Debt Collections. Contractor shall take all actions reasonably necessary to assist the SHBP, DCH and Employing Entities to comply with Medicare Secondary Payment federal laws and federal agency requests (of which Contractor receives prior written notice from any source), including laws and requests related to debt collections.

5.31.2.1 Contractor shall take all actions reasonably necessary to prevent assignment of any Medicare Secondary Payer debt to the Department of Treasury. For example, Contractor shall receive and process Medicare demand letters within the timeframes specified by the federal government in order to avoid interest charges and assignment to the Department of Treasury, notify Employing Entities and the SHBP of Medicare payments and debts in relation to the demand letters, handle all telephone calls in relation to Medicare demand payments from Members, Employing Entities, and collection agencies.

5.31.2.2 In the event of assignment of a debt to the Department of Treasury for which Contractor has received prior written notice, Contractor shall take all actions reasonably necessary to assist DCH in preventing the offset of any federal payments to DCH or any Employing Entity.

5.31.2.3 In the event of an offset, Contractor shall take actions reasonably necessary to protest the offset and obtain a refund of the payment.

5.31.2.4 To the extent Contractor is aware of such assignment, Contractor shall notify a specified contact at DCH of any debts that have been assigned to the Department of Treasury or a collection agency for collection, if such debts are subject to being offset from federal payments to the Employing Entity. For any Employing Entity that is listed as the “employer” subject to offsets, Contractor shall communicate directly with the designated contact and inform that contact of Contractor’s progress in resolving the debt and handling its removal from the offset program.

5.31.3 MSP Reports. Upon request, Contractor shall provide timely and accurate reports to the specified contacts at DCH. Such reports shall contain all information required for DCH to assess the current status of Medicare Secondary Payer demands and debts, and the risk of offsets against DCH and any Employing Entity as mutually agreed upon by the Parties.

5.32 Coordination of Benefits and Subrogation. Contractor and Network Pharmacies recognize that certain claims for services rendered to Members are claims for

which another payor may be primarily responsible under coordination of benefit (COB) rules. Contractor shall use diligent good faith efforts to pursue and process any coordination of benefit or subrogation claims which relate to claims processed by Contractor. Reimbursements obtained by Contractor shall be paid to DCH according to the process and terms indicated in Contractor's Approach.

5.33 Electronic Data Processing (EDP) Environment and Software. The EDP environment, i.e., -the physical, Software, security features and the internal controls used by Contractor must meet the minimum internal accounting control standards outlined in the current edition of the Auditor's Study and Evaluation of Internal Control in EDP Systems, published by the American Institute of Certified Public Accountants.

5.33.1 EDP System Audits. Contractor shall agree to authorize DCH and the State Department of Audits personnel to have access to detailed EDP system documentation and all subsystems relevant to services provided for DCH at Contractor's facilities or such other documentation that is responsive to DCH request. Access must be granted within five (5) Calendar Days of the request. Documentation must include, but not be limited to file structures, program libraries, program logic, program edits, establishment of fee schedules, and interface programs or subsystems.

5.33.2 System Security. Contractor shall utilize sufficient and secure EDP/telecommunications facility with hardware, etc., sufficient to process, store and access the volume of submitted transactions on behalf of Eligible Members and to handle any projected and actual growth in membership over the term of the Contract. Moreover, Contractor must maintain documented, state-of-the-art Software to accurately process transactions submitted on behalf of Eligible Members and must provide a state-of-the-art secure EDP system that authorizes different levels of access and prevents and records attempts of unauthorized access to information (Software, data, or media of any kind). Contractor shall provide for sufficient information technology staff to customize the Software to meet the State's business needs. Contractor is responsible for the creation of a firewall to secure information about utilization, pricing information or other information that is useful to Contractor in marketing or expanding non-State business relationships. System Security must meet the security requirements set forth in Exhibit 8, **System Security**.

5.33.3 HIPAA-Compliant System. Contractor must utilize a Claims system that is HIPAA-compliant and that conforms to all security and privacy rules as required under federal and State laws and the security requirements set forth in this Contract.

5.33.4 Date-Stamp Capacity. Contractor shall maintain a Claims management system that can identify date of receipt (the date Contractor receives the

Claim as indicated by the date-stamp), real-time-accurate history of actions taken on each Pharmacy or Provider Claim when paid, denied, or appealed, and date of payment (the date of the check or other form of payment).

5.33.5 Electronic Data Transfer. Contractor shall provide all requirements for electronic transfers of data to and from DCH and make provisions for other administrators of Plan Options to use electronic transfers of data for interfaces as required in the RFA.

5.33.6 On-Line Processing. Contractor shall process Claims “on-line” or process Claims in “real time” for manually keyed initial Claims and adjustments. Contractor’s Claims process will include imaging, scanning, or other EDI media, an appropriate balance of on-line and batch processing applications is required. Contractor must also utilize an on-line system able to retain and display Claims information in detail for a period of twenty-four (24) months from the date of Claim payment or non-payment. The system must be able to retain and display Claims information in an off-line report for a minimum of an additional five years from the date of adjudication. Contractor will make use of on-line help screens and user manuals to increase the number of questions/problems that can be resolved without reference to paper manuals.

5.33.7 Enterprise Data Warehouse (EDW). Contractor will maintain an enterprise data warehouse (EDW) for ease in generating user-defined reports and ad hoc reports for DCH. The process of transferring data to the warehouse and using the SHBP data must be subject to the confidentiality and data security policies of DCH in accordance with requirements established by DCH.

5.33.8 Remote Access Test Region. Contractor shall provide, via the Internet, remote access to a test region for the Claims adjudication.

5.33.9 Absorption of Costs. Contractor shall be liable and responsible for all costs incurred to achieve and maintain compliance with state and federal laws in effect on the Effective Date and throughout the life of the Contract.

#### 5.34 System Access.

5.34.1 Contractor grants DCH the nonexclusive right to access and use the functionalities contained within the Systems, under the terms set forth in this Contract and described in the RFA, including without limitation remote access (on a view only basis) to the claims adjudication system. DCH agrees that all rights, title, and interests in the Systems and all rights

in patents, copyrights, trademarks, and trade secrets encompassed in the Systems will remain owned by Contractor or its licensors and contractors.

5.34.2 In order to obtain access to the Systems, DCH shall obtain, and be responsible for maintaining at no expense to Contractor, the hardware, Software, and Internet browser requirements Contractor provide to DCH, including any amendments thereto. DCH shall be responsible for obtaining an Internet Service Provider or other access to the Internet. DCH shall not: (a) access Systems or use, copy, reproduce, modify, or excerpt any of the Systems documentation provided by Contractor in order to access or utilize Systems, for purposes other than as expressly permitted under this Contract; or (b) share, transfer or lease DCH's right to access and use Systems, to any other person or entity which is not a party to this Contract. DCH may designate any third party to access Systems on DCH's behalf, provided the third party agrees to these terms and conditions of Systems access.

5.34.3 DCH will use commercially reasonable physical and software-based measures, and comply with Contractor's security procedures, as may be amended from time to time, to protect the System, its functionalities, and data accessed through Systems from any unauthorized access or damage (including damage caused by computer viruses). DCH will notify Contractor if DCH has knowledge of a breach of the security procedures, such as unauthorized use.

5.34.4 DCH's System access will terminate upon termination of this Contract, provided however that if Claims Run-Out Period is provided in accordance with this Contract in Section 9, *Payment for Services*, DCH may continue to access applicable functionalities within the Systems during the Claims Run-Out Period. Except as provided above, following any of the termination events described in this Contract, DCH agrees to cease all use of Systems, and Contractor will deactivate DCH's identification numbers, passwords, and access to the System.

5.35 Improper Payments, Waste, Fraud and Abuse. Contractor shall have written program integrity policies and procedures, including a mandatory compliance plan designed to guard against improper payments, waste, fraud and abuse. The program integrity policies and procedures shall include policies, procedures, and standards of conduct for the prevention, detection, reporting, overpayment recovery and corrective action for suspected, reported and/or investigated cases of improper payments, waste, fraud and abuse in the administration and delivery of services under this Contract.

5.35.1 Compliance Plan. Contractor must establish a compliance plan that must include, but may not be limited to, the following:

- 5.35.1.1 Provision for internal monitoring and auditing of suspected, reported and investigated improper payments, waste, fraud and abuse violations, including specific methodologies for such monitoring and auditing;
- 5.35.1.2 Written standards for organizational conduct;
- 5.35.1.3 Effective training and education for the Compliance Officer, as defined below, and the organization's employees, management, board members, and Subcontractors, as described herein below;
- 5.35.1.4 Inclusion of information about fraud and abuse waste identification and reporting in Provider and Member materials;
- 5.35.1.5 Provisions for the investigation, corrective action and follow-up of any suspected fraud and abuse reports; and
- 5.35.1.6 System testing to identify, and to follow up on, indicators of possible improper payments, waste, fraud and abuse.

5.35.2 Compliance Officer and Staff Training. As a part of its compliance plan, Contractor shall designate a Compliance Officer who is accountable to Contractor's senior management and is responsible for ensuring that policies are established and followed for effective lines of communication between the Compliance Officer and Contractor's staff, as well as between the Compliance Officer and DCH staff. Contractor shall be responsible for ensuring the effective training and education for the Compliance Officer and the organization's employees, management, board members, and Subcontractors.

5.35.3 Policies and Procedures. Contractor shall maintain the following policies and procedures:

- 5.35.3.1 Policies to ensure that all officers, directors, managers and employees know and understand the provisions of Contractor's fraud and abuse compliance plan;
- 5.35.3.2 Policies to ensure that Member Services representatives and other staff who have access to highly confidential information will be subject to appropriate background checks;
- 5.35.3.3 Policies to establish a compliance committee that meets periodically and reviews improper payments, fraud, waste and abuse compliance issues;

- 5.35.3.4 Policies to ensure that any individual who reports SHBP violations or suspected fraud and abuse will not be retaliated against;
  - 5.35.3.5 Policies of enforcement of standards through well-publicized disciplinary standards; and
  - 5.35.3.6 Procedures for the detection of improper payments, waste, fraud and abuse that include, at a minimum, the following:
    - a. Claims edits;
    - b. Post-processing review of Claims;
    - c. Provider profiling and credentialing;
    - d. Algorithms;
    - e. Monitoring of claims processors;
    - f. Quality control; and
    - g. Utilization review.
  - 5.35.3.7 Procedures for reporting instances of reported, suspected, or investigated improper payments, waste, fraud and abuse cases to DCH's Office of the Inspector General;
  - 5.35.3.8 A well-publicized, toll-free telephone hotline and user-friendly email arrangement for anyone to report improper payments, waste, fraud and abuse; and
  - 5.35.3.9 Any other policies and procedures necessary for Contractor to abide by its Response to RFA Paragraphs 13.1-13.4.
- 5.35.4 Cooperation and Coordination with DCH and Other Agencies and their Agents. Contractor shall cooperate and assist any State or federal agency and their agents charged with the duty of identifying, investigating, or prosecuting suspected improper payments, waste, fraud and abuse cases. Contractor shall permit access to Contractor's place of business during normal business hours, provide requested information, including, but not limited to any and all requested claim data, provide any and all requested data, permit access to personnel, financial and medical records, and provide internal reports of investigative, corrective and legal actions taken relative to the suspected case of fraud and abuse directly or indirectly related to services under this Contract. This access to Contractor's place of business and requested information shall be provided at no extra charge. Contractor shall work closely with DCH Office of Inspector General (OIG) program integrity staff to ensure that the activities of one entity do not interfere with an ongoing investigation being conducted by the other entity. Contractor shall cooperate with DCH's SHBP Claims Research Team on issues identified as improper or excessive claims.

5.35.5 Notification and Reports. As permitted by applicable law, DCH must be informed about known or suspected cases of fraud and Contractor shall not investigate or resolve the suspicion without making DCH aware of, and if appropriate, as determined by DCH OIG, involved in the investigation. Fraud, improper payments, waste and abuse reports must be submitted to the Program Manager and DCH's OIG on a monthly, quarterly, and annual basis.

5.35.6 Detailed Process, Recovery and Investigations.

5.35.6.1 Contractor shall not settle any identified overpayment for less than 90% of the total identified overpayment without written authority from DCH.

5.35.6.2 Contractor shall implement technology and/or software to prevent and detect overpayments, which shall, at a minimum, automatically trigger a recovery review of transactions that are at a higher risk for overpayment, fraud or waste.

5.35.6.3 Contractor may use Subcontractors to provide recovery and investigation services.

5.35.6.4 Contractor shall follow the guidelines for payment plans and settlement that are approved in the final version of the Implementation Plan approved by the Program Manager.

5.35.6.5 If DCH obtains the services of another entity to perform recovery and investigations, (a "Recovery Audit Contractor") Contractor shall cooperate with that entity and provide that entity access to all DCH Data, Work Product, claims processing Systems and other information the Recovery Audit Contractor deems necessary and appropriate for its recovery and investigation work.

5.35.6.6 Contractor shall notify DCH of any fraud, waste, or abuse overpayment investigation that impacts, or is reasonably expected to impact the SHBP, and shall provide details of the investigation to DCH.

5.35.6.7 Contractor shall provide DCH copies of demand letters, settlement agreements or other documents related to investigations upon request.

5.35.6.8 Contractor shall cooperate with DCH and the Georgia Attorney General's office in litigation against those who are suspected of committing fraud.

5.35.6.9 Except as expressly authorized in the final Implementation Plan approved by the Program Manager, Contractor shall not agree to a settlement or a payment plan on the Plan's behalf without first obtaining written approval of the Program Manager.

5.35.7 Implementation, Recovery and Investigations. Contractor's Implementation Plan shall contain the following elements related to recovery and investigation:

5.35.7.1 Description of the implementation approach, methodology and training including a project timeline that includes duration, tasks by resource required for Contractor, DCH and the SHBP Vendors to transfer data, grant appropriate access and perform any necessary training to facilitate an outside recovery and/or investigation vendor after the first month of operation.

5.35.7.2 Description of the process for SHBP Vendors and other entities that may be selected by DCH to perform recovery and investigation services to access Systems and/or to send and receive data files.

5.35.7.3 Description of any actions DCH will need to take to assist with the performance of the recovery and investigation services.

5.35.8 Ongoing Service, Recovery and Investigations.

On a quarterly basis, Contractor shall:

5.35.8.1 Share root cause analysis of recoveries required because of Contractor error;

5.35.8.2 Provide requested workflows, data and other materials needed to review Contractor's process;

5.35.8.3 Address root causes uncovered as a result of recovery discovery;

5.35.8.4 Support DCH's recovery and investigation vendors by providing data, adjusting claims and posting payments as needed;

5.35.8.5 Report on its current process for prioritizing and addressing process and system gaps uncovered through routine analysis of processing and system errors;

5.35.8.6 Report total recovery dollars requested and received as a result of Contractor error for each SHBP Plan Option;

5.35.8.7 Provide benchmark and book of business results in addition to Plan specific results when reporting recoveries; and

5.35.8.8 Provide Plan specific recovery reports that include, but are not limited to the following data elements:

- Recovery types (Examples: COB, duplicate Claims, pricing, etc.);
- Total requested, by recovery type and recovery vendor;
- Total received, by recovery type and recovery vendor;
- Total by vendor, less vendor fees, recouped by Plan Option;
- Quarter and year to date results;
- Trends;
- Benchmark data; and
- Book of business data.

Upon DCH's request, Contractor shall:

5.35.8.9 Provide customized recovery reports;

5.35.8.10 Coordinate with DCH's Recovery Audit Contractor and other outside recovery and investigation vendors by incorporating in its reports the reports of recoveries received and processed from those vendors;

5.35.8.11 Provide Plan specific investigation reports on a monthly basis that include, but are not limited to the following data elements:

- Date case opened,
- Basis for review,
- Summary of case,
- Status of the case, and
- Total projected Plan claims dollars associated with the case.

5.35.8.12 Upon final resolution, dollars to be recovered and any projected savings from future avoidance of similar claims.

5.35.9 Meetings: Recovery and Special Investigations. Contractor shall meet on a quarterly basis with DCH to review reports and discuss recoveries. Contractor shall meet on a monthly basis to discuss investigations with DCH.

5.36 Independent Relationship. It is understood and agreed that Contractor has no responsibility to DCH or any other person or entity, for the following:

5.36.1 The propriety, necessity or advisability of any recommended treatment, medicine, drug, prescription, or other matter relating to the rendition of any medical or other health care services by any Network Pharmacy or Provider; or

5.36.2 Payment of any Members' bills, debts, obligations or other liabilities of any kind relating to or arising out of any health care services other than as set forth in the Plan Documents as they pertain to prescription drug coverage.

5.37 Quality of the Services. Contractor represents and warrants that the Services performed by the Contractor shall be performed in a professional and workmanlike manner.

5.38 Truth and Correctness. No representation or warranty by Contractor herein, nor any written statement or certificate or other instrument furnished to DCH by Contractor pursuant to this Contract or in connection with the transactions contemplated by this Contract, (i) contains, or will contain, any untrue statement of a material fact or (ii) omits, or will omit, to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which such statements are made, not misleading.

5.39 Readiness Review. Contractor shall participate in all readiness reviews activities conducted by DCH staff to ensure Contractor's operational readiness. Contractor will review and address all issues identified in the summary of findings document provided by DCH after each readiness review activity and resolve all issues identified within the agreed upon time frames.

5.40 Audit of Network Pharmacies.

5.40.1 Contractor shall audit a minimum of twenty-five percent (25%) of the pharmacy network annually, including retail, mail order and specialty pharmacies, with twenty percent (20%) of those audits occurring on-site and eighty percent (80%) of those audits occurring as desk audits. The audit shall include, but not be limited to, claims submission accuracy, investigation of potential fraud and abuse, application of TPL policies and monthly prescription limit overrides.

5.40.2 Contractor must report its findings to DCH monthly and, subject to DCH approval, shall be responsible for settlement and resolution of inaccurate payments with providers. All recoupments resulting from such audits shall be paid in full to DCH within five (5) Calendar Days of agreed upon

settlement amount, with no portion of the recoupment retained by Contractor.

- 5.41 Support of DCH Initiatives. Contractor shall support SHBP wellness programs and Disease Management programs through data sharing with SHBP Vendors and the decision support system vendor, communication to Members on pharmacy specific goals, communication to Providers (both Pharmacy and physician) regarding treatment guidelines and plan design, and through development of effective RetroDUR programs.

## **6. PAYMENT OF CLAIMS UNDER PLAN OPTIONS**

- 6.1 Funding and Payment of Claims. The Plan Options are self-funded. DCH is solely responsible for providing funds for payment for all Plan benefits payable to Network Providers or out-of-network Providers under the terms and conditions of the Plan Options, which are set forth in the Plan Documents. The funding and banking arrangements shall be established and maintained in accordance with Section 3.12, **Banking**.
- 6.2 Provider Reimbursement. Contractor shall reimburse Providers in accordance with the Plan Documents. Contractor shall ensure that Network Providers will accept such payments as payment in full for Covered Services and Covered Drugs provided to Eligible Members, less applicable Co-Payments, Co-Insurance and Deductibles which shall be collected by the Providers. Contractor shall coordinate timely with the Medical Management Vendor with regard to the application of the Utilization Management Program and Quality Improvement Program. Contractor shall remit timely payment to Providers under this Contract as provided by Georgia law, O.C.G.A. § 33-24-59.5, within seven (7) Business Days of receipt of Complete Claims from Providers, provided that the bills are accurate, complete and properly itemized, and do not require any additional information to process.
- 6.3 Prompt Payment. Contractor shall comply with O.C.G.A. § 33-24-59.5 with regard to the prompt payment of claims for healthcare services provided pursuant to this Contract.
- 6.4 Member Liability. Contractor shall ensure that Network Pharmacies agree to the terms below in this section and that the only charges for which a Member may be liable to the Network Pharmacy are the charges for prescription drugs that are not Covered Drugs or are Exclusions and the Co-payments or Co-insurance set forth in the applicable Plan. Network Pharmacies may bill a Member for prescription drugs that are not Covered Drugs or are Exclusions if the Network Pharmacy has obtained the written consent of the Member prior to rendering such services. Under no circumstance shall Contractor or any Network Pharmacy bill any Member for the difference between billed charges and the Network fee schedule for the provision of Covered Drugs under this Contract. Whenever any such

charge has occurred, the Network Pharmacy will refund such charge to the Member within fifteen (15) Calendar Days of discovering, or receiving notification of, such charge. If DCH receives notice of any such charge, DCH shall inform Contractor and Contractor shall require the Network Pharmacy to correct such breach at no charge in accordance with its then current contract with the Network Provider. The obligations set forth in this section will survive the termination of this Contract regardless of the cause giving rise to the termination, and will be construed for the benefit of Members.

## **7. DELIVERABLES**

- 7.1 Contractor shall provide all Deliverables within the time frames specified for the Deliverable in this instrument, *Exhibit 4, Performance Guarantees*, in the RFA, in the Approach, or in the Implementation Plan.
- 7.1.1 Contractor shall include at least five (5) Business Days for each Deliverable for DCH to conduct a complete review of each submitted Deliverable.
- 7.1.2 All Deliverables, or notice that Deliverables have been provided, shall be emailed or mailed to the DCH Program Manager identified in Section 34, *Notice*.
- 7.1.3 All Deliverables provided by Contractor must be acknowledged in writing by the DCH Program Manager to be considered received.
- 7.1.4 Based on DCH's review, DCH may accept or reject all or part of each Deliverable, or request that Contractor make revisions. This review process may be repeated or extended as determined by DCH when revisions to Deliverables are required and/or Deliverables are rejected.
- 7.2 If the Deliverable is determined to be not in compliance with this Contract, inaccurate, or incomplete, DCH will send written notification to Contractor's Relationship Manager outlining the reason(s) for such determination. Contractor, at no additional expense to DCH, will begin to correct the non-compliance as soon as possible, but no later than within two (2) Business Days of notice and will resubmit the Deliverable to DCH for its review as provided above.

## **8. TERM OF CONTRACT**

The term of this Contract shall begin on the Effective Date and shall continue until the close of the then current calendar year unless renewed as expressed herein. The Parties also agree that DCH, in its sole discretion, shall have **four (4) sequential** options to renew the term of this Contract for an additional term of **up to one (1) calendar year, which shall begin on January 1, and end at midnight on December 31, of that additional year**, each upon the same terms and conditions and at Contractor's price in

effect at the time of the renewal in accordance with the administrative fees outlined in Exhibit 3. Pursuant to O.C.G.A. § 50-5-64(a)(2), the renewal options shall be exercisable solely and exclusively by DCH, depending upon funding Contractor's performance, and DCH's sole discretion. As to each term, the Contract shall expire absolutely at the close of the then current calendar year without further obligation by DCH except that DCH will provide payment for services provided up to the date of termination unless renewed as expressly stated herein or subject to DCH's exercise of its remedies.

**9. PAYMENT FOR SERVICES**

A. DCH shall compensate Contractor in accordance with the amounts set forth in Exhibit 3, *Administrative Services and Fees*. Each invoice for payment must reference the Contract Number, Contractor's tax identification number, and be itemized to identify the activities being billed and all Deliverables due during the time period of the invoice. DCH will pay the invoice within thirty (30) Calendar Days of receipt, as adjusted to reflect payment offsets and payment delays permitted under this Contract, upon approval of Deliverables or partial Deliverables and the invoice by the DCH Program Manager.

B. Contractor shall mail each invoice to the following address:

GA Department of Community Health  
Two Peachtree Street NW  
35<sup>th</sup> Floor  
Atlanta, GA 30303  
ATTN: Trudie Nacin  
Chief, State Health Benefit Plan

with an email copy to: \_\_\_\_\_

C. If DCH rejects Contractor's performance of Administrative Services or Deliverables, Contractor shall promptly reperform such Services or Deliverables to remedy any deficiencies at no additional cost to DCH and resubmit to DCH for approval in accordance with the process described in Section 27, *Unsatisfactory Performance and Damages*.

D. The total of all payments made by DCH to Contractor under this Contract shall not exceed the costs referenced in Exhibit 3 to this Contract (the "Maximum Funds"), which have been provided for through the use of State or other designated funds. DCH shall have no responsibility for payment beyond that amount. It is expressly understood that the total amount of payment to Contractor will not exceed the Maximum Funds provided above, unless Contractor has obtained prior written approval, in the form of a Contract amendment, authorizing an increase in the total payment. Additionally, Contractor agrees that DCH will not pay or otherwise compensate Contractor for any work that it performs in excess of the Maximum Funds.

- E. Contractor shall not increase any charges for the Administrative Services set forth in Exhibit 3, nor may Contractor decrease the discounts set forth in Exhibit 3, during the Term of this Contract and during all renewal periods. However, Contractor shall automatically pass on any increases to discounts during the Term of this Contract.
- F. Moreover, Contractor's employees, designees, or assignees, consultants and independent contractors (collectively "Workers") shall not be entitled to, nor shall they receive any additional consideration, compensation, salary, wages, or any other type of remuneration from the State for services rendered under this Contract, except as specifically permitted herein. In particular, the Workers will not be entitled, by virtue of this Contract, to consideration from the State in the form of overtime, health insurance benefits, retirement benefits, disability benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid or unpaid leaves of absence of any type or kind whatsoever for any reason.
- G. Upon termination or expiration of this Contract, Contractor shall continue to perform throughout the Claims Run-Out Period those Administrative Services identified in Exhibit 3 as Claims Run-Out services with respect to all Claims for health services incurred prior to the termination or expiration of the Contract. All of the other terms and conditions of this Contract will apply during the Claims Run-Out Period. Contractor shall provide the Administrative Services designated in Exhibit 3 as Claims Run-Out services at the cost set forth for those services in Exhibit 3.

**10. FUNDING**

Notwithstanding any other provision of this Contract, the Parties hereto acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. At the sole discretion of DCH, this Contract shall terminate without further obligation of the State if the source of payment for DCH's obligation no longer exists or is insufficient. The certification by DCH of the events stated above shall be conclusive and not subject to appeal.

**11. PAYMENT OF TAXES**

- A. Contractor will forthwith pay all applicable taxes lawfully imposed upon it with respect to this Contract or any product delivered in accordance herewith. DCH makes no representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity.
- B. Furthermore, Contractor shall be responsible for payment of all expenses related to, based on, or arising from salaries, benefits, employment taxes (whether State

or Federal), and insurance (whether health, disability, personal, or retirement) for its employees, Subcontractors, designees, or assignees.

**12. RELATIONSHIP OF PARTIES**

Neither Party is an agent, employee, assignee or servant of the other. It is expressly agreed that Contractor and any Subcontractors and agents, officers, and employees of Contractor or any Subcontractor in the performance of this Contract shall act as independent contractors and not as officers or employees of DCH. DCH shall not be responsible for withholding taxes with respect to Contractor's compensation hereunder. The Parties acknowledge, and agree, that Contractor and any Subcontractor, and their respective agents, employees, and servants shall in no way hold themselves out as agents, employees, or servants of DCH. The Parties also agree that the Contractor and any Subcontractors, and their respective agents, employees, and servants shall have no claim against DCH hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. It is further expressly agreed that this Contract shall not be construed as a partnership or joint venture between the Contractor or any Subcontractor and DCH.

**13. INSPECTION OF WORK**

DCH, the State Department of Audits and Accounts, the U.S. Department of Health and Human Services, the General Accounting Office, the Comptroller General of the United States, if applicable, or any other State or federal authorized representatives, shall have the right to enter into the premises of Contractor and all Subcontractors, or such other places where duties under this Contract are being performed or records are being held for DCH in order to inspect, monitor or otherwise evaluate the services or any work performed pursuant to this Contract. Contractor shall bear all costs associated with inspections and evaluations of work where Contractor's or a Subcontractor's deficiency is the reason for the inspection. Unless State or federal officials determine that there are reasons that certain procedures should occur without advance warning, all inspections and evaluations of work being performed shall be conducted with prior notice and during normal business hours. All inspections and evaluations shall be performed in such a manner as will not, to the extent considered practical in the State or federal official's judgment, unduly delay work.

Contractor agrees to sign and comply with Attachment A, *Georgia DCH Non-Profit Organization Disclosure Form*.

**14. STATE PROPERTY**

Contractor shall be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this Contract. Contractor will also reimburse DCH for its loss or damage, normal wear and tear excepted, while such property is in Contractor's custody or use.

15. **OWNERSHIP AND USE OF WORK PRODUCT, DCH DATA AND RELATED MATTERS, AND ACCEPTANCE OF SYSTEM CHANGES**

A. **Ownership and Use of Work Product.**

1. All Work Product shall be the exclusive property of DCH, for whatever use DCH deems appropriate, and Contractor shall execute any and all documents necessary to effectuate this provision fully. For example, if the Work Product or Administrative Services includes the taking of photographs or videotapes of individuals, Contractor must obtain the written consent from such individuals authorizing the use by DCH of such photographs, videotapes, and names in conjunction with such use. Contractor shall also obtain necessary written releases from such individuals, releasing DCH from any and all claims or demands arising from such use. Contractor hereby transfers and assigns all rights in the Work Products to DCH. Contractor shall, at the expense of DCH, assist DCH or its nominees to obtain copyrights, trademarks, or patents for all such works in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to DCH right, title and interest in and to such works. Contractor also agrees to waive and not assert any moral rights it may have in any such works. Contractor shall provide all assistance reasonably requested by DCH in the establishment, preservation, and enforcement of its rights in such Work Products, without any additional compensation to Contractor. Contractor agrees to and hereby, to the extent permissible, waives all legal and equitable rights relating to the Work Products, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.
2. Contractor may retain a copy of such Work Product for its business records and in accordance with the Business Associate Agreement. Contractor shall retain all proprietary rights to all software, data systems, methodologies or formats used by Contractor to prepare the Work Product that are made, developed, or reduced to practice solely by Contractor.
3. Upon execution of a joint confidentiality and information sharing agreement, Contractor shall share Work Product with the SHBP Vendors upon DCH's written request in order that all SHBP Vendors may perform services under their respective contracts and satisfy the deliverables under those contracts. Nothing in this Agreement shall be construed to give DCH or another SHBP Vendor any right, title or interest in the proprietary rights described above. In the event of a dispute regarding what is or is

not Work Product, DCH shall make such determination, which determination shall be final, binding and not subject to appeal.

4. Contractor shall not share or publish Work Product without the prior written consent of DCH.

B. Ownership and Use of DCH Data.

1. DCH Data shall be the exclusive property of DCH, except that Contractor may retain a copy of such DCH Data for its business records and in accordance with the Business Associate Agreement. Upon execution of a joint confidentiality and information sharing agreement, Contractor shall share DCH Data with the SHBP Vendors upon DCH's written request in order that all SHBP Vendors may perform services under their respective contracts and satisfy the deliverables under those contracts. In the event of a dispute regarding what is or is not DCH Data, DCH shall make such determination, which determination shall be final, binding and not subject to appeal.
2. Contractor shall not share or publish DCH Data without the prior written consent of DCH.

C. Software and Other Upgrades.

The Parties agree that any upgrades or enhancements to software programs, hardware, or other equipment, whether electronic or physical, shall be made at Contractor's expense only, unless the upgrade or enhancement is made at DCH's request and solely for DCH's use exclusive of the Deliverables. Any upgrades or enhancements requested by and made for DCH's sole use shall become DCH's property without exception or limitation. Contractor agrees that it will facilitate DCH's use of such upgrade or enhancement and cooperate in the transfer of ownership, installation, and operation by DCH.

D. Infringement and Misappropriation.

Contractor warrants that all Work Product provided by Contractor do not and will not infringe or misappropriate any right of any third party based on copyright, patent, trade secret, or other intellectual property rights. In case the Work Product or any one or part thereof is held or alleged to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to Contractor to be likely to be brought, Contractor will, at its own expense, either:

1. Procure for DCH the right to continue using the Work Product; or

2. Modify or replace the Work Product to comply with the Specifications so that no violation of any intellectual property right occurs. If Contractor fails to comply with the terms and conditions set forth in this Section 15, DCH shall have the option to terminate the Contract; or
3. If Contractor fails to comply with the terms and conditions set forth in this Section 15.D, DCH shall have the option to terminate the Contract, in whole or in part, and receive a refund of amounts paid for the infringing or misappropriating Work Product and other Work Product returned by DCH in addition to any other remedies available to DCH. However, DCH's acceptance of a refund does not preclude DCH from availing itself of its others rights and remedies under this Contract, or under equity or at law.

E. Customization.

If DCH requests specific customization of Software programs, hardware, or other equipment, whether electronic or physical after the initial term of this Contract begins, Contractor shall promptly make the requested change or modification at no cost to DCH, except as allowed in Exhibit 3, *Administrative Services and Fees*.

F. System Changes.

1. All system changes required to comply, enable, and operate data transfers pursuant to this Contract shall be enabled, completed, and operated at no cost to DCH.
2. The Parties agree that the required system changes are not complete until they are fully implemented and tested and receive DCH's Acceptance prior to the deadline for use set forth in the Implementation Plan. DCH's determination on whether the system changes are complete and satisfactory shall be conclusive and final.
3. Contractor must give Confirmation for each system change prior to DCH beginning to perform Acceptance Tests. Upon delivery of a system change and receipt of Confirmation from Contractor that the system change meets its Specifications, DCH will, with Contractor's assistance and in accordance with the Implementation Plan, promptly review or perform Acceptance Tests on the system changes, as applicable, to determine whether the system changes conform to its Acceptance Criteria.
4. DCH will provide Acceptance for a system change if it has no Deficiencies. However, if a Deficiency is found, DCH will notify Contractor in an email or other document of Deficiencies used as the grounds for DCH's decision not to give Acceptance. Contractor shall correct Deficiencies and resubmit a corrected system change to DCH

which will review or perform Acceptance Tests on the system change to verify whether the system change lacks Deficiencies and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor's times for correcting Deficiencies and DCH's review of system changes shall be in accordance with the timeframes therefor set in the Implementation Plan. If time periods for correcting system changes by Contractor and reviewing and retesting corrected system changes are not in the Implementation Plan, each such time period shall be ten Business Days.

5. If Contractor is unable to correct all Deficiencies within the number of days indicated in the Implementation Plan following the system change's scheduled Acceptance, or if no such date is in the Implementation Plan, within 30 Calendar Days from such scheduled Acceptance date, DCH may, at its option: (a) continue reviewing or performing Acceptance Tests on the system change and require Contractor to continue until Deficiencies are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement system change for further review or Acceptance Tests; (c) set-off from the Charges to the extent DCH determines the Deficiencies for the system change have not been corrected and provide Acceptance for the system change; or (d) after completion of the process set forth in this Section and providing Notice of default to Contractor, immediately terminate this Contract, in whole or in part, without penalty or liability to DCH, and return to Contractor the system change and other Deliverables returned with the rejected system change. If DCH terminates this Contract under this Section, Contractor shall, within 20 Calendar Days thereafter, refund to DCH all payments made to Contractor for the returned Deliverables and Services rendered therefor.

G. Disaster Recovery.

1. Contractor shall provide a disaster recovery plan within ten (10) Calendar Days of the Effective Date, or a later date as is approved in writing by the Program Manager, and shall maintain for the Term of the Contract a detailed disaster recovery plan that will be implemented in the event that Contractor's facility experiences a disaster (for example, power outages, computer virus infections, natural disaster, etc.) that impacts, or could reasonably be expected to impact, Contractor's ability to provide the Administrative Services. This disaster recovery plan shall include but not be limited to the following:
  - i. Notification process;
  - ii. Identification of Contractor's disaster recovery location and equipment; and

- iii. Testing frequency of the plan; and step-by-step explanation of the backup and recovery procedures of services, which must include the number of hours to complete each step within a 12 hour period.
2. Contractor shall submit an updated disaster recovery plan by January 31 of each year of the Term, unless the DCH Program Manager provides written approval of a later date.
3. Contractor shall conduct an annual disaster recovery plan review and exercise at Contractor's own expense. The review must test all components of Contractor's operation, including but not limited to services provided by any third parties. A written report of the findings must be delivered to DCH within 15 Calendar Days of the date that the test is conducted, unless the DCH Program Manager provides written approval of a later date. Contractor must develop a written corrective action plan for any deficiencies noted in the test and must thoroughly re-test until satisfactory results are achieved and maintained.
4. DCH, federal auditors, or the State Department of Audits and Accounts, reserves the right to conduct a site visit of Contractor's disaster recovery location with one (1) day prior notice.
5. This Section shall survive termination of this Contract for any reason, so long as Contractor maintains any information required under this Contract to be maintained by the Contractor after termination.

H. Discharge of Liens.

Contractor shall immediately discharge or cause to be discharged any lien or right in lien of any kind, other than in favor of DCH, which at any time exists or arises in connection with work done or equipment or other instrumentality furnished under this Contract. If any such lien or right in lien is not immediately discharged, DCH may discharge or cause to be discharged such lien or right at the expense of Contractor.

16. **CONTRACTOR STAFFING**

A. Staffing Assignments and Credentials.

1. Contractor warrants and represents that all persons, including employees, independent contractors and consultants assigned by it to the performance of this Contract, shall be employees or formal agents of Contractor and shall have the credentials necessary (i.e., licensed, and bonded, as required) to perform the Administrative Services and/or deliver the Deliverables. Contractor shall include a similar provision in any contract with a Subcontractor that performs Administrative Services.

2. In addition, Contractor warrants that all persons assigned by it to perform work under this Contract shall be employees or formal agents of Contractor or authorized Subcontractors and shall be fully qualified to perform the Administrative Services and/or deliver the Deliverables required herein. Personnel commitments made in Contractor's Approach shall not be changed unless approved by DCH in writing.
3. Contractor shall provide and maintain sufficient qualified personnel and staffing to enable the Deliverables to be provided in accordance with this Contract and the Implementation Plan. Contractor's Approach. Contractor warrants that it will comply with all staffing/personnel obligations set out in Contractor's Approach.
4. Contractor warrants that all staff performing Administrative Services shall be located entirely within the boundaries of the United States.
5. Contractor shall provide the DCH Program Manager with a staff roster every ninety (90) Calendar Days during the term of the Contract. This roster shall set forth the names of all members of Contractor's staff performing Administrative Services (including staff of Subcontractors), their areas of assignment and the number of hours they are required to work.

B. Staffing Changes.

1. DCH may reject any proposed changes in Key Staff, or require the removal or reassignment of any Key Staff that DCH deems to be unacceptable. DCH's decision on this matter shall be final, subject to the provisions of Section 32, ***Conflict Resolution***.
2. Notwithstanding the above provisions, the Parties acknowledge and agree that Contractor may terminate any of the Key Staff or workers designated to perform the Administrative Services, as permitted by applicable law.
3. In the event Contractor terminates an employee who performs Administrative Services under this Contract, Contractor will provide DCH with immediate notice of the termination, the reason(s) for the termination, and an action Plan for replacing the discharged employee with a person of equivalent training, experience, and talent within ten (10) Calendar Days of the termination, unless the DCH Program Manager provides written approval of a later date.
4. Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff shall not be changed during the Contract from the people who were described in the

Approach without the prior written approval of DCH until completion of their assigned tasks. During the term of the Contract, DCH reserves the right to approve Contractor's and any Subcontractor's Key Staff assigned to this Contract. Contractor shall notify DCH prior to any changes to Key Staff. Contractor shall replace any of the Key Staff with a person of equivalent experience, knowledge and talent. Within ten (10) Calendar Days of termination of a Key Staff member, or by a later date if approved in writing by the DCH Program Manager, Contractor shall provide DCH Program Manager with the resume of the proposed replacement and offer DCH Program Manager, and/or his or her authorized representatives, the opportunity to interview that person. If the DCH Program Manager is not reasonably satisfied with the apparent skill and qualifications of the proposed replacement, he or she shall notify Contractor within ten (10) Calendar Days after receiving the resume or conducting the interview (whichever occurs last). Once that has occurred, Contractor shall propose another replacement and the DCH Program Manager shall have the same right of approval. Such process shall be repeated until a proposed replacement is approved by DCH Program Manager. If, after thirty (30) Calendar Days from the notice termination, a qualified replacement is not approved, damages may be imposed.

C. Specific Staffing Requirements.

1. Contractor must submit its staffing plan within fifteen (15) Calendar Days of the Effective Date. The staffing plan must be approved by DCH, and Contractor may not increase or decrease the number of staff approved by DCH without DCH written approval. Such approval shall not be unreasonably withheld.
2. Contractor shall assign a Dedicated Account Director and the service representatives described in Paragraph 4.3.1 of the RFA ("account management team") for purposes of working directly with DCH.
3. The account management team members shall be either Dedicated or Designated to DCH's State Health Benefit Plan account in accordance with Paragraph 4.3.1 of the RFA. These account management team members shall be individuals with specialized knowledge of Contractor's corporate operations, claims and eligibility systems, systems reporting capabilities, and claims adjudication policies and procedures and all other requirements necessary to fulfill Contractor's responsibilities.
4. The account management team shall be available during regular DCH business hours and during emergencies including being available for frequent telephone and on-site consultation with DCH in Atlanta, Georgia. At a minimum, Contractor shall meet with DCH on a weekly basis during the transition period and after the go-live date will meet at a frequency to

be determined by DCH on a weekly, monthly and/or quarterly basis (depending on the meeting) as the program matures to discuss service activities, review program results, and re-evaluate strategy. The account management team shall respond to all DCH inquiries within one (1) Business Day.

5. Contractor's staff who are managed by the account management team ("account management staff") shall be thoroughly familiar with all Contractor's services that relate directly and indirectly to DCH and shall act on behalf of DCH in minimizing administrative delay.
6. The account management staff shall be available to Members during the hours of 8:00 am through 6:00 pm Eastern Standard Time, Monday through Friday, excluding holidays specified by DCH.
7. Appropriate representative(s) from each account management team or members of their staff shall attend all benefit fairs that occur across the State prior to the annual enrollment period for Employees who are actively working for an Employing Entity. Appropriate representative(s) also will attend the retiree meetings that are conducted across the State prior to the annual enrollment period for Employees who are not actively working for an Employing Entity.
8. Contractor agrees that DCH has the right to accept or decline the account management teams' staff, as well as Key Staff Designated or Dedicated to work on behalf of DCH.

**17. CRIMINAL BACKGROUND, EXCLUSIONS, AND DEBARMENT**

- A. Contractor shall, upon request, provide DCH with a resume or written confirmation that Contractor has conducted a satisfactory criminal background check or both of any employees, contractors, formal agents, Workers or Subcontractor's Workers assigned to or proposed to be assigned to any aspect of the performance of this Contract.
- B. Contractor agrees to abide by 42 USCS § 1320a-7 and all other related provisions or laws. To that end, Contractor shall not employ or use any company, entity, or individual that is on the Federal Exclusions List or any company, entity, or individual subject to 42 USCS § 1320a-7.
- C. By signing or executing this Contract, Contractor states and certifies that it is in compliance with and that it will continue to comply with the Anti-Kickback Act of 1986, 41 USCS § 51-58 and Federal Acquisition Regulation 52.203-7.
- D. Additionally, Contractor states and certifies that neither it nor any of its principals are presently debarred, suspended, proposed for debarment, declared

ineligible, or voluntarily excluded from participation in this transaction by any State or Federal department or agency.

- E. Contractor agrees to sign and comply with Attachment C, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

**18. SUBCONTRACTS**

A. Use of Subcontractors.

1. Contractor will not subcontract or permit anyone other than Contractor employees and DCH authorized Subcontractors as of the Effective Date to perform any Administrative Services without the prior written consent of DCH. Prior to hiring or entering into an agreement with any Subcontractor to perform Administrative Services, any and all Subcontractors shall be approved in advance and in writing by DCH. DCH must also approve any replacement Subcontractors in the same manner. Contractor shall, in writing, provide to DCH the names of all proposed or actual Subcontractors, the scope of Administrative Services they each will perform, and the percentage of work to be performed by each Subcontractor relative to the total scope of the Contract. Contractor is solely responsible for all work required by this Contract, whether Contractor performs the work directly or through a Subcontractor. DCH reserves the right to request the removal or replacement of any Subcontractor. In addition, DCH reserves the right to terminate this Contract, in whole or in part, or exercise any remedies available at law or equity if Contractor fails to notify DCH of its intent to subcontract any Service or replace any Subcontractor in accordance with the terms of this paragraph.
2. All contracts with Subcontractors must ensure that Contractor evaluates the prospective Subcontractor's ability to perform the activities to be delegated; monitors the Subcontractor's performance on an ongoing basis and subjects it to formal review according to a periodic schedule established by DCH and consistent with industry standards and applicable laws and regulations; and identifies deficiencies or areas for improvement by the Subcontractor and requires that corrective action is taken by the Subcontractor.
3. Contractor shall give DCH immediate notice in writing by registered mail or certified mail of any action or suit filed by any Subcontractor and prompt notice of any claim made against Contractor by any Subcontractor or vendor that in the opinion of Contractor may result in litigation related in any way to this Contract.
4. Contractor shall make its Subcontractor agreements available to DCH upon request. For any subcontract, there must be a designated project manager who is a member of the Subcontractor's staff and who is directly accessible by

DCH. This individual's name and contact information must be provided by Contractor to DCH when the subcontract is executed or the Effective Date, if earlier. The subcontract agreement must contain a provision which requires Contractor and its Subcontractors to seek binding arbitration to resolve any dispute between those parties and to provide DCH with written notice of the dispute. DCH also reserves the right to oversee, manage, coordinate, change, or disagree on any terms of the subcontract during the term of this Contract or the subcontract agreement.

**B. Cost or Pricing by Subcontractors.**

1. Contractor shall submit, or shall require any Subcontractors hereunder to submit, cost or pricing data for any subcontract to this Contract prior to the Effective Date. Contractor also shall certify that the information submitted by Subcontractors is to the best of their knowledge and belief, accurate, complete and current as of the date of agreement, or the date of the negotiated price of the subcontract to the Contract or Amendment to the Contract. Contractor shall insert the substance of this section in each subcontract hereunder.
2. If DCH determines that any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract was increased by any significant sum because of the inaccurate cost or pricing data, then such price and cost shall be reduced accordingly and this Contract and the subcontract shall be modified in writing to reflect such reduction.

**19. TRAVEL EXPENSES AND USE OF STATE VEHICLES**

- A. Contractor is solely responsible for all travel costs arising from Contractor's performance under this Contract.
- B. State vehicles shall not be used by Contractor in the performance of this Contract.

**20. LICENSE, CERTIFICATE, AND PERMIT REQUIREMENTS**

- A. Contractor shall have, obtain, and maintain in good standing any licenses, certificates and permits, whether State or federal, that are required prior to and during the performance of work under this Contract. Contractor agrees to provide DCH with certified copies of all licenses, certificates and permits that may be necessary for the performance of its obligations, upon DCH's request.
- B. Contractor warrants that it is qualified to do business in the State of Georgia and is not prohibited by its articles of incorporation, bylaws, any document

establishing Contractor's entity, or any law of the State under which it is incorporated or was formed from performing the services under this Contract.

- C. Loss of the licenses, certificates, or permits shall be cause for termination of the Contract pursuant to Section 26, *Termination of Contract*. If any such license, certificate, or permit is cancelled, revoked, suspended or expires during the term of this Contract, Contractor shall inform the State immediately and cease all activities under this Contract, until further instruction from DCH.
- D. Contractor agrees to provide DCH with certified copies of all licenses, certificates and permits necessary upon request.
- E. Contractor represents that there is as of the effective date no claim, legal action, counterclaim, suit, arbitration, governmental investigation or other legal, administrative, or tax proceeding, or any order, decree or judgment of any court, governmental agency, or arbitration tribunal that is in progress, pending, or threatened against or relating to Contractor or the assets of Contractor that would individually or in the aggregate have a material adverse effect on Contractor's ability to perform the obligations contemplated by this Contract. Without limiting the generality of the representation of the immediately preceding sentence, Contractor is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not presently contemplate filing any such voluntary petition, and is not aware of any intention on the part of any other person, or entity, to file such an involuntary petition against it.
- F. Contractor further agrees that it will not permit any of its employees or its subcontractor's employees, contractors or formal agents, including but not limited to temporary or replacement employees, to perform the services under this Contract unless and until they pass Contractor's own background screening requirements and any additional background test or check requested by the Department.

**21. RISK OF LOSS AND REPRESENTATIONS**

- A. DCH takes no title to any of Contractor's goods used in providing the Administrative Services and/or Deliverables hereunder and Contractor shall bear all risk of loss for any goods used in performing work pursuant to this Contract.
- B. The Parties agree that DCH may reasonably rely upon the representations and certifications made by Contractor, including but not limited to those made by Contractor in Contractor's Approach and this Contract, without first making an independent investigation or verification.
- C. The Parties also agree that DCH may reasonably rely upon any representation made by Contractor for any audit report, summary, analysis, certification, review,

or Work Product that Contractor produces in accordance with its duties under this Contract, without first making an independent investigation or verification.

- D. By submitting a Deliverable, Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner, which will, in concert with other tasks, meet the objectives stated or referred to in the Contract.
- E. By unconditionally approving a Deliverable, DCH represents only that it has reviewed the Deliverable and detected no errors or omissions of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding or denial of payment for the work completed. DCH's approval of a Deliverable does not discharge any of Contractor's contractual obligations with respect to that Deliverable or Contractor's meeting of the requirements of the RFA and the Approach.

**22. PROHIBITION OF GRATUITIES AND LOBBYIST DISCLOSURES**

- A. Contractor, in the performance of this Contract, shall not offer or give, directly or indirectly, to any employee or agent of the State of Georgia, any gift, money or anything of value, or any promise, obligation, or contract for future reward or compensation at any time during the Term, and shall comply with the disclosure requirements set forth in O.C.G.A. § 45-1-6.
- B. Contractor states and represents that it has complied and shall comply with all disclosure and registration requirements for vendor lobbyists as set forth in O.C.G.A. § 21-5-1, et seq. and all other Applicable Law, including but not limited to registering with the Georgia Government Transparency and Campaign Finance Commission. For the purposes of this Contract, vendor lobbyists are those who lobby state officials on behalf of businesses that seek a contract to sell goods or services to the State or oppose such Contract.
- C. As required by applicable Federal law, Contractor represents and warrants that no federal money has been used or shall be used for any lobbying of State officials.
- D. Contractor agrees to sign and comply with Attachment F, Vendor Lobbyist Disclosure and Registration Certification Form and Attachment H, DCH Ethics in Procurement Policy.

**23. RECORDS REQUIREMENTS**

Contractor agrees to maintain books, records, documents, invoices and other evidence pertaining to the costs and expenses of this Contract and/or any document that is a part of this Contract by reference or inclusion. This includes, but is not limited to, Contractor's balance sheets, income statements and invoices from Subcontractors or other vendors. Contractor's accounting procedures and practices shall conform to generally accepted accounting principles and the costs properly applicable to this Contract shall be readily

ascertainable therefrom. This includes, but is not limited to, payment (with respect to salary), overhead and Subcontractors.

A. Records Retention Requirements.

Contractor shall preserve and make available all of its records pertaining to the performance under this Contract for a period of seven (7) years from the date of final payment under this Contract, and for such period, if any, as is required by applicable statute, regulation, or by any other section of this Contract. If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for period of seven (7) years from the date of termination or of any resulting final settlement, whichever is later. In addition to this seven year (or later, if applicable) period, records that relate to appeals, litigation, or the settlement of claims arising out of the performance of this Contract, or costs and expenses of any such agreements as to which exception has been taken by the State Contractor, or any of his duly authorized representatives shall be retained by Contractor until such appeals, litigation, claims or exceptions have been disposed of.

B. Access to Records.

Contractor shall make all of its and its Subcontractors' books, documents, papers, Provider records, Member records, medical records, case management records, encounter records, financial records, data, surveys, audio recordings, video recordings, pictures, images and computer databases available for examination and audit by DCH, State Attorney General, State Health Care Fraud Control Unit, the State Department of Audits and Accounts, or other authorized state or federal personnel. Any records requested hereunder shall be produced immediately (within one (1) Business Day, or by such later date as is approved in writing by the requestor and the DCH Program Manager)) for on-site review or sent to the requesting authority by mail within fourteen (14) Calendar Days following a request, or by a later date approved in writing by the requestor and the DCH Program Manager. All records shall be provided at the sole cost and expense of Contractor. DCH shall have unlimited rights to use, disclose, and duplicate all information and data received in accordance with applicable State and federal laws and regulations. The "Access to Records" requirements apply to items directly or indirectly related to this Contract or to the Administrative Services provided under this Contract.

C. Financial Records.

During the entire life of the Contract, Contractor and all Subcontractors shall provide DCH with copies of its annual report and all disclosure or reporting statements or forms filed with the State of Georgia and/or the Securities and Exchange Commission (SEC) within ten (10) Calendar Days of the date they are prepared in final form and are otherwise available for distribution or filing, or

such later date as the DCH Program Manager may approve in writing. In the event that Contractor is not required to or does not prepare either an annual report or SEC disclosure or reporting statements or forms by virtue of being a subsidiary or other affiliate (as defined by the Securities and Exchange Commission of the United States) of another corporation or business entity, it shall fulfill the requirements of this section, with respect to all such documents for any parent corporation, which reflect, report or include any of its operations on any basis. In addition, upon the written request of the DCH Program Manager, Contractor and all Subcontractors shall furnish DCH with the most recent un-audited and audited copies of its then current balance sheet within fourteen (14) Calendar Days of its receipt of such request. Contractor agrees to maintain books, records, documents, invoices and other evidence pertaining to the costs and expenses of this Contract and/or any document that is a part of this Contract by reference or inclusion. This includes, but is not limited to, Contractor's balance sheets, income statements and invoices from subcontractors, Contractor's affiliates or other vendors, as well as claims records the confirm Contractor's compliance with claims processing, operational services and performance standards provided by Contractor under this Contract. Contractor's accounting procedures and practices shall conform to generally accepted accounting principles and the costs properly applicable to this Contract shall be readily ascertainable therefrom. This includes, but is not limited to, payment (with respect to salary), overhead and Subcontractors.

## **24. AUDIT OF CONTRACTOR AND NETWORK PHARMACIES**

- A. Contractor shall make all of its and its Subcontractors' books, documents, papers, policies, procedures, contracts, reports to management, manufacturer agreements, Provider records, Member records, medical records, case management records, encounter records, financial records, data, surveys, audio recordings, video recordings, pictures, images and computer databases which relate directly or indirectly to this Contract or the services provided hereunder available for examination and audit by DCH, its authorized designee, the State Attorney General, the State Health Care Fraud Control Unit, the State Department of Audits and Accounts, or other authorized state or federal personnel. Any records requested hereunder shall be produced immediately (within one (1) Business Day, or by such later date as is approved in writing by the requestor and the DCH Program Manager) for on-site review or sent to the requesting authority by mail within fourteen (14) Calendar Days following a request, or by a later date approved in writing by the requestor and the DCH Program Manager. All records shall be provided at the sole cost and expense of Contractor. DCH shall have unlimited rights to use, disclose, and duplicate all information and data received in accordance with applicable State and federal laws and regulations. DCH and other authorized state and/or federal personnel, and their authorized designees, shall have the right to enter into the premises of Contractor and all Subcontractors, or such other places where duties under this Contract are being performed or records are being held for DCH in order to inspect, monitor or otherwise evaluate the services or any work performed pursuant to this Contract.

DCH shall not be restricted in the number of times it may audit, visit, inspect, review or otherwise monitor Contractor and any Subcontractors during the term of this Contract. DCH will only conduct audits as determined reasonably necessary by DCH.

- B. Contractor agrees that DCH's right to audit any aspect of this Contract shall include but not be limited to audits of Contractor's Rebate contracts and contracts with Network Pharmacies, as well as programmatic audits to determine whether Contractor is fulfilling the terms of this Contract or to analyze the quality, effectiveness, and/or efficiency of Contractor's services, or for any other reasonable purpose identified by DCH.
- C. DCH will not be responsible for time or miscellaneous costs incurred by Contractor in association with any audit process including, but not limited to, all costs associated with provision of data, audit finding response reports, or systems access, provided to DCH or its designee by Contractor during the term of the Contract.
- D. Response to Audit. Contractor will provide its response to claims audit findings within sixty (60) Calendar Days of receipt of a findings report. If DCH determines based on any audit that Contractor (and/or its mail service pharmacy or specialty pharmacy) owes money to DCH, DCH will so advise Contractor in writing and shall supply Contractor with a copy of the auditor's final report (the "Audit Report"). Contractor shall have thirty (30) Calendar Days from the date of the notification from DCH to make payment to DCH with respect to any undisputed finding and/or to dispute any of the findings. Any response other than full payment will constitute a challenge to the Audit Report and must include documentary and/or verifiable statistical evidence, if applicable, supporting the challenge to the Audit Report. If applicable, the statistical evidence presented must include the underlying data that will allow auditor to duplicate the disputed analysis.
- E. Supplemental Rights. DCH's audit rights in this section supplement any additional rights, including rights to data and discovery, that DCH may have under this Contract and applicable law, and do not replace such rights.
- F. Designated Audit Team. Contractor shall provide a Designated audit team upon initiation of and throughout any audits including a primary contact person assigned by Contractor from its audit department. The audit team shall be comprised of designated individuals who are knowledgeable in the business operations associated with individual areas of the audit (e.g., COB procedures, Performance Guarantees, determination of claims, etc.) and individuals from Contractor's finance department. During the course of the audit, Contractor shall not change the personnel assigned to the audit except for illness, leave of absence or termination of employment.

- G. Form of Data. Contractor shall provide data securely and in a medium that is mutually acceptable to Contractor and DCH (e.g., encrypted CD ROM, secure FTP site, or encrypted tapes). Contractor shall provide such data in a format that is fully disclosed to the DCH or its designee(s); and Contractor shall provide DCH with a data dictionary. All data elements (data fields) that are requested by an auditor authorized under this Contract shall be populated by Contractor with the relevant data, provided that the data elements are components of the NCPDP pharmacy claims transmission format. Any drug classifications or other information that is developed by and unique to Contractor shall be fully disclosed to the auditor as it pertains to claims processed on behalf of the Plan.
- H. EDP System Audits. Contractor shall establish ongoing, remote view-only access to EDP Systems for authorized designated representatives of DCH, including, but not limited to, DCH employees in the Division of SHBP and Office of Inspector General, and individuals designated by the State Department of Audits, and shall also provide such individuals access to detailed EDP system documentation and all subsystems relevant to Administrative Services provided under this Contract, as well as such other documentation related to the EDP System that is responsive to DCH's request. Contractor shall grant such access within fourteen (14) Calendar Days of DCH's request. Documentation must include, but not be limited to file structures, program libraries, program logic, program edits, establishment of fee schedules, and interface programs or subsystems.
- I. External Audit of Contractor. Upon request of DCH, but no more frequently than annually, Contractor shall provide DCH with the findings of an independent external audit of Contractor's business practices.
- J. Data Feed Supporting Claims Funding. Contractor shall allow DCH and/or its designee to review all funding requests and all information pertaining to the SHBP pharmacy claims underlying such funding requests. Such review shall, at DCH's option, be performed before payment to Network Providers for paid claims. Contractor shall provide to DCH and/or DCH's designee, with every funding request, the complete and unadulterated information pertaining to DCH pharmacy claims underlying such funding request ("Plan Data"), which shall include but not be limited to: i) electronic files in plain text format, containing unabridged data records for each claim for which payment is sought by Contractor, in an NCCPDP format; ii) a data dictionary describing the contents of the NCPDP claims data format provided; iii) electronic files in plain text format, containing any updates to the full and complete price lists, including NDCs or GPIs/GCNs as applicable and price effective dates, each of which is used in pricing the claims submitted to DCH for payment; this shall include, but not be limited to, maximum allowable cost (MAC) lists, specialty drug price lists, fixed cost for frozen cost drug lists, and/or any other price list applicable to and in force during the invoice period; and iv) electronic files in plain text format, containing updates, if any, to the list of drugs excluded from guarantees or pricing terms (e.g. new to market generics). Beginning within thirty (30) Calendar Days of any

written request to Contractor by DCH, and continuing until DCH delivers written notice changing this directive, Contractor shall deliver the requested Plan Data without fee and contemporaneously with the delivery of each funding request. In the event that DCH determines that there are errors or inaccuracies in the funding request or underlying Plan Data, DCH shall pay the full amount, according to the banking terms described in Section 3.12 of this Contract, of the funding request less any disputed amount or amounts being withheld pursuant to DCH's exercise of its remedies. DCH will notify Contractor, in writing, of the source and amounts in dispute or subject to its remedies, and DCH will submit to Contractor sufficient detail, back-up and/or data to support its dispute or exercise of its remedies, Contractor and DCH shall work in good faith to reconcile any disputes. Withholding disputed amounts or otherwise exercising its remedies shall not constitute default by DCH and shall not entitle Contractor to suspend or delay its performance of services.

## **25. CONFIDENTIALITY REQUIREMENTS**

### **A. General Confidentiality Requirements.**

1. Due to information received by DCH normally being subject to the Open Records Act of Georgia (O.C.G.A. §50-18-70 et. seq.) and open to public inspection, if Contractor claims that any portion of its material submitted to DCH is a proprietary trade secret, Contractor must clearly identify at the time of submission those portions of the material. In addition, Contractor is required to submit an affidavit which meets the requirements of O.C.G.A. § 50-18-72(a)(34) setting forth any and all trade secret claims. Material submitted to DCH that is not designated as a trade secret(s) is subject to disclosure under the Open Records Act of Georgia. Information that is designated as a trade secret will not be disclosed under the Open Records Act without 1) a determination by DCH's Office of General Counsel that the information is not a trade secret and 2) prior notification of Contractor that DCH intends to disclose the information, which notification will enable Contractor to seek legal protection of the information. If DCH determines that information submitted by Contractor is a trade secret and must not be disclosed by DCH as required herein, DCH shall use commercially reasonable efforts to hold such information in confidence. Contractor shall hold in confidence any State or third party information, which is provided by DCH or obtained by Contractor under this Contract and which is not required to be disclosed pursuant to applicable law or regulation.
2. All individually identifiable health information that is obtained or viewed by employees, contractors and formal agents of Contractor and Subcontractors in the performance of this Contract shall be treated as confidential information and Contractor and Subcontractors shall not use

any such information so obtained in any manner, except as may be necessary for the proper discharge of obligations under this Contract.

3. Upon DCH's request, Contractor shall remove any person from performance of Administrative Services hereunder upon notice that DCH reasonably believes that such person has failed to comply with the confidentiality obligations of this Contract or the terms of the Business Associate Agreement. In such cases, Contractor shall replace such removed personnel in accordance with the staffing requirements of this Contract set forth in Section 16, ***Contractor Staffing***.
4. DCH, the Georgia Attorney General, federal officials as authorized by federal law or regulations, and the authorized representatives of these parties shall have access to all confidential information in accordance with the requirements of State and federal laws and regulations.

B. Business Associate Agreement.

Contractor shall sign and comply with Attachment E, ***Business Associate Agreement***, and shall sign and comply with amendments to the Business Associate Agreement necessary or deemed appropriate by DCH for compliance with HIPAA and HITECH and implementing regulations and guidance.

C. Information Security.

Contractor shall sign and comply with Attachment D, ***Confidentiality Statement for Safeguarding Information***. Contractor warrants that it shall comply with the information security requirements attached as Exhibit 8, ***System Security***, and shall implement the information security measures described in its Approach.

**26. TERMINATION OF CONTRACT**

- A. This Contract may be terminated by DCH, in whole or in part, for any or all of the following reasons:
  1. Default by Contractor, upon thirty (30) Calendar Days' notice;
  2. Convenience of DCH, upon thirty (30) Calendar Days' notice;
  3. Immediately in the event of Contractor's insolvency or declaration of bankruptcy;
  4. Determination by DCH that the instability of the Contractor's financial condition threatens delivery of services and continued performance of Contractor's responsibilities, upon five (5) Calendar Days' notice;

5. Immediately, when sufficient appropriated funds no longer exist for the payment of DCH's obligation under this Contract.

B. In the event of termination, Contractor shall:

1. Stop work under the Contract on the date and to the extent specified in the notice of termination;
2. Place no further orders or subcontract for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
4. Assign to DCH, in the manner and to the extent directed by the DCH Director of Contracts Administration, all of the right, title, and interest of Contractor under the orders or subcontracts so terminated, in which case DCH shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. With the approval of the DCH Director of Contracts Administration, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the Contract;
6. Complete the performance of such part of the work as shall not have been terminated by the notice of termination; and,
7. Take such action as may be necessary, or as the DCH Director of Contracts Administration may direct, for the protection and preservation of any and all property or information related to the Contract that is in the possession of Contractor and in which DCH has or may acquire an interest.

C. Termination Claims.

After receipt of a notice of termination, Contractor shall submit to the DCH Director of Contracts Administration any termination claim in the form and with the certification prescribed by the DCH Director of Contracts Administration. Such claim shall be submitted promptly but in no event later than forty-five (45) Calendar Days from the effective date of termination. Upon failure of Contractor to submit its termination claim within the time allowed, the DCH Director of Contracts Administration may, subject to any review required by the state procedures in effect as of the date of execution of the Contract, determine, on the basis of information available, the amount, if any, due to Contractor by reason of

the termination and shall thereupon cause to be paid to Contractor the amount so determined.

Upon receipt of notice of termination, Contractor shall have no entitlement to receive any amount for lost revenues or anticipated profits or for expenditures associated with this or any other contract. Upon termination, DCH in its discretion may pay Contractor in accordance with the following:

1. At the contract price(s) for completed Deliverables and Administrative Services delivered to and accepted by DCH; and/or
2. At a price mutually agreed upon by Contractor and DCH for partially completed Deliverables.

In the event of the failure of Contractor and DCH to agree in whole or in part as to the amounts with respect to costs to be paid to Contractor in connection with the total or partial termination of work pursuant to this article, DCH shall determine, on the basis of information available, the amount, if any, due to Contractor by reason of termination.

D. Funding.

Notwithstanding any other provision of this Contract, the Parties acknowledge that institutions of the State are prohibited from pledging the credit of the State. At the sole discretion of DCH, this Contract shall terminate without further obligation of the State if the source of payment for DCH's obligation no longer exists or is insufficient. The certification by DCH of the events stated above shall be conclusive and not subject to appeal.

**27. UNSATISFACTORY PERFORMANCE AND DAMAGES**

A. Unsatisfactory Performance.

1. If DCH, in its sole discretion, determines that the Administrative Services and/or Deliverables are noncompliant, unacceptable, or unsatisfactory, or Contractor otherwise is in breach of this Contract, Contractor, after notice from DCH, agrees that it will make every attempt to remedy the deficiency or breach, as further described in Section 9, *Payment of Services*, and Section 35.V., *Miscellaneous, Corrective Action Plan*.
2. Contractor acknowledges that its failure to meet those Deliverables identified as Performance Standards in Exhibit 4, *Performance Guarantees*, will cause DCH substantial damage of types and in amounts which are difficult or impossible to ascertain exactly. The Parties further acknowledge and agree that the liquidated damages described as performance guarantees or performance guarantee assessments in Exhibit

4 are the result of a good faith effort by DCH to estimate the actual harm caused by Contractor's failure to meet the Performance Standards and are not intended to be in the nature of a penalty. Accordingly, Contractor agrees that DCH may assess the liquidated damages against Contractor for failure to meet the Performance Standards. DCH may deduct the amounts due to DCH for performance guarantee assessments from any fees or other compensation payable to Contractor or DCH may require Contractor to remit such amounts within thirty (30) Calendar Days following DCH's written notice of the assessment. At DCH's sole discretion, DCH may also elect to obtain payment of such amounts through the irrevocable letter of credit furnished by Contractor.

3. For Deliverables set forth in this instrument or in the RFA or Approach that are not listed as Performance Standards in Exhibit 4, DCH may delay payment of a percentage of Administrative Fees or a flat dollar amount per day or per month until the Deliverable is accepted.
4. Cooperation among the SHBP Vendors is a requirement of the Contract, and another SHBP Vendor's failure to cooperate with Contractor will not excuse Contractor's failure to meet a Deliverable, and will not impact DCH's delay of payments. To promote swift resolution of the problem, if DCH agrees that another SHBP Vendor's failure to cooperate or perform a task prevents Contractor from meeting a Deliverable, DCH will delay payment of a percentage of Administrative Fees or a flat dollar amount per day from the other SHBP Vendor until that SHBP Vendor's task is complete.
5. Contractor's cooperation with other SHBP Vendors is a requirement of the Contract. If Contractor fails to cooperate with another SHBP Vendor, and this failure to cooperate contributes to that SHBP Vendor's failure to meet a Deliverable, DCH will delay payment of a percentage of Administrative Fees or a flat dollar amount per day until Contractor's task is complete.
6. In addition to the performance guarantee assessments, payment offsets and payment delays described above, should Contractor at any time: (1) fail to provide the Administrative Services and/or Deliverables in accordance with the timeframes, schedule or dates set forth in this Contract; (2) fail in the performance of any term or condition contained in this Contract; or (3) knowingly or unknowingly accept payment from DCH of an amount in excess of what it is owed at the time of the payment under the terms of this Contract, then DCH may (in addition to any other contractual, legal or equitable remedies) proceed to take any one or more of the following actions after five (5) Calendar Days' written notice to Contractor, in its sole discretion:
  - a. delay payment of any monies due to Contractor;

- b. obtain the Administrative Services and/or Deliverables or their equivalent from a third party, pay the third party for same, and offset the amount so paid to third party from any money then or thereafter due to Contractor;
- c. direct Contractor to pay DCH within thirty (30) Calendar Days the amount of any overpayment previously made to Contractor as Administrative Fees, in which case Contractor shall make such payments within such thirty (30) Calendar Days;
- d. direct Contractor to pay DCH within thirty (30) Calendar Days the amount Contractor paid to any provider or that Contractor authorized the TPA Vendor to pay any provider that exceeded the amount payable under the terms of the Plan Documents, in which case Contractor shall make such payments within such thirty (30) Calendar Days;
- e. direct Contractor to pay DCH within thirty (30) Calendar Days the amount of DCH's reasonable estimate of the damage caused by any deficiency or delay in the Administrative Services and/or Deliverables, in which case Contractor shall make such payments within such thirty (30) Calendar Days;
- f. direct Contractor to pay DCH within thirty (30) Calendar Days the amount of any fees or penalties assessed against DCH as a result of Contractor's acts or omissions, in which case Contractor shall make such payments within such thirty (30) Calendar Days;
- g. obtain payments described in (c) through (f) above through Contractor's Irrevocable Letter of Credit;
- h. offset any payments due Contractor by an amount described in (c) through (f) above; and
- i. withhold from any payments due Contractor an amount described in (c) through (f) above.

7. In addition to the consequences and remedies indicated above, if DCH determines that Contractor knowingly submitted any false statement, invoice or other document to DCH, Contractor shall also be subject to the sanctions imposed by O.C.G.A. §16-10-20.

B. Contractor acknowledges, affirms, ratifies, and agrees that all damages provisions set forth herein meet the criteria for enforceable damages that are reasonable, appropriate, and necessary.

- C. DCH reserves the right to seek all other reasonable and appropriate remedies available at law and in equity with respect to this Contract, including but not limited to special, consequential, punitive, equitable and other similar damages and relief.
- D. The Parties agree that disputes arising under this Section shall be handled through negotiations with DCH Vendor Management. If such dispute cannot be resolved, the parties will follow the Conflict Resolution Process in Section 32. Pending final determination of any dispute, Contractor shall proceed diligently with performance of this Contract and in accordance with the direction of DCH.

**28. INDEMNIFICATION**

- A. Contractor hereby releases and shall indemnify, defend and hold harmless DCH, the State, its departments, agencies and instrumentalities (including but not limited to the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, The State Employee Broad Form Liability Funds, the State Insurance and Hazard Reserve Fund, and other self-insured funds, (together, the “Funds”) and their respective affiliates and agents and each of their current or former officers, directors, and employees (collectively the “Indemnified Parties”), in individual and official capacities from and against any and all claims, demands, liabilities, losses, costs or expenses, and attorneys’ fees, caused by, growing out of, or arising from this Contract, due to any act or omission on the part of Contractor or its Subcontractors, or any of their agents, employees, contract workers, customers, invitees, licensees or others working at any of their direction or on any of their behalf, or due to any breach of this Contract by Contractor, its Subcontractors or any of their agents, employees, contract workers, customers, invitees, licensees or others working at any of their direction or on any of their behalf, or due to the application or violation of any pertinent federal, State or local law, rule or regulation.
- B. DCH shall promptly give Contractor notice of any such claim; provided, however, DCH’s failure to provide Contractor prompt notice of such claim shall not relieve Contractor of its indemnification, defense, release and hold harmless obligations except to the extent Contractor is prejudiced thereby. Subject to the prerogatives of the Office of the Attorney General of Georgia, Contractor may be granted sole control of the defense and all related settlement negotiations. No settlement shall be binding against the State without the State’s written consent.
- C. These indemnification, defense, release and hold harmless obligations extend to the successors and assigns of Contractor, and survive the termination or expiration of this Contract and the dissolution or, to the extent allowed by law, the bankruptcy of Contractor.

29. INSURANCE

Contractor shall, at a minimum, prior to the commencement of work, procure the insurance policies identified herein at Contractor's own cost and expense and shall furnish DCH with proof of coverage at least in the amounts indicated. It shall be the responsibility of Contractor to require any subcontractor to secure the same insurance coverage as prescribed herein for Contractor, and to obtain a certificate evidencing that such insurance is in effect. In addition, Contractor shall indemnify and hold harmless DCH and the State from any liability arising out of Contractor's or subcontractor's untimely failure in securing adequate insurance coverage as prescribed herein:

- A. Professional Liability Insurance \$3,000,000.00 per occurrence
- B. Workers' Compensation Insurance, the policies to insure the statutory limits established by the General Assembly of the State of Georgia. The Workers' Compensation Policy must include Coverage B – Employer's Liability Limits of:

Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 each employee \$1,000,000 policy limits

Contractor shall require all subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Worker's Compensation Coverage.

- C. Commercial General Liability Policy(ies) as follows:

Combined Single Limits:	\$ 1,000,000 per occurrence
	\$ 3,000,000 aggregate

The Commercial General Liability Policy must be on an "occurrence" basis.

- D. Liability for property damage in the amount of \$3,000,000 including contents coverage for all records maintained pursuant to this Contract.
- E. Errors & Omissions coverage in the amount of \$10,000,000.
- F. Cyber Security Coverage with coverage of not less than \$5,000,000 per loss, which shall at a minimum cover occurrences falling in the following categories: Cyber-liability and Data Breach Coverage.
- G. Crime Coverage with coverage of not less than \$5,000,000 per loss, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

**30. IRREVOCABLE LETTER OF CREDIT**

- A. Contractor shall obtain at Contractor's own expense, an Irrevocable Letter of Credit, issued by an FDIC insured financial institution authorized to do business in the State of Georgia in the amount of one year's worth of projected Administrative Fees, based on Employees enrolled in SHBP Plan Options on the Effective Date.
- B. Contractor shall adjust the Irrevocable Letter of Credit after the annual enrollment period to reflect one year's worth of projected Administrative Fees, based on the actual enrollment in Contractor's Plan Options.
- C. Contractor shall deliver the Irrevocable Letter of Credit to DCH within forty-five (45) Calendar Days of the Effective Date, and shall deliver replacement Irrevocable Letters of Credit to DCH as required in Section 29.B within forty-five (45) Calendar Days after the end of each annual enrollment period.
- D. The Irrevocable Letter of Credit shall list DCH as beneficiary and shall be subject to approval and acceptance by DCH. The Irrevocable Letter of Credit shall be in the form indicated in Exhibit 6.
- E. The Irrevocable Letter of Credit must cover the period beginning with the Effective Date of the Contract through the life of the Contract and resolution of all claims and litigation related to the Contract, including but not limited to any and all amendments, renewals and extensions. The amount of the Letter of Credit must be adjusted annually as required above to reflect projected Administrative Fees for the following year.

**31. COMPLIANCE WITH ALL LAWS**

A. Non-Discrimination.

Contractor agrees to comply with applicable federal and state laws, rules and regulations, and the State's policy relative to nondiscrimination in employment practices because of political affiliation, religion, race, color, sex, physical handicap, age, or national origin. Nondiscrimination in employment practices is applicable to employees for employment, promotions, dismissal and other elements affecting employment.

B. Delivery of Service and Other Federal Laws.

- 1. Contractor agrees that all work performed pursuant to this Contract shall comply fully with all applicable laws, statutes, case law, codes, rules, regulations, and procedures (whether administrative or otherwise) whether federal or State. Specifically, the Contractor agrees to comply with laws,

regulations, and guidelines, including but not limited to §1902(a)(7) of the Social Security Act, DCH Policies and Procedures, HIPAA and the Health Insurance Title XIII of the American Recovery and Reinvestment Act of 2009 (the Health Information Technology for Economic and Clinical Health Act, or “HITECH”), and in the implementing regulations of HIPAA and HITECH. Implementing regulations are published as the Standards for Privacy and Security of Individually Identifiable Health Information in 45 C.F.R. Parts 160 and 164. Together, HIPAA, HITECH, and their implementing regulations are referred to in this Contract as the “Privacy Rule and Security Rule.” Contractor assumes responsibility for full compliance with all such applicable laws, regulations, and guidelines, and agrees to fully reimburse DCH for any loss of funds or resources or overpayment resulting from non-compliance by Contractor, its staff, agents or subcontractors, as revealed in subsequent audits.

2. The provisions of the Fair Labor Standards Act of 1938 (29 USC § 201 *et seq.*) and the rules and regulations as promulgated by the United States Department of Labor in Title XXIX of the Code of Federal Regulations are applicable to this Contract. Contractor shall agree to conform with such federal laws as they affect the delivery of services under this Contract including but not limited to Titles VI, VII, XIX of the Social Security Act, the Federal Rehabilitation Act of 1973, the Davis Bacon Act (40 USC § 276a *et seq.*), the Copeland Anti-Kickback Act (40 USC § 276c), and the Americans with Disability Act of 1990 (including but not limited to 28 C.F.R. § 35.100 *et seq.*). Contractor will agree to conform to such requirements or regulations as the United States Department of Health and Human Services may issue from time to time.

C. Cost of Compliance with Applicable Laws.

The Contractor agrees that it will bear any and all costs (including but not limited to attorneys’ fees, accounting fees, research costs, or consultant costs) related to, arising from, or caused by compliance with any and all laws, such as but not limited to federal and state statutes, case law, precedent, regulations, policies, and procedures which exist at the time of the execution of this Contract. The Contractor further agrees that it will bear any and all costs (including but not limited to attorneys’ fees, accounting fees, research costs, or consultant costs) related to, arising from, or caused by compliance with any and all laws, such as but not limited to federal and state statutes, case law, precedent, regulations, policies, and procedures which become effective or are amended throughout the life of the Contract. In the event of a disagreement on this matter, the Department’s determination on this matter shall be conclusive and not subject to appeal.

D. General Compliance.

Additionally, the Contractor agrees to comply and abide by all laws, rules, regulations, statutes, policies, or procedures that may govern the Contract, the Deliverables, or either Party's responsibilities. To the extent that applicable laws, rules, regulations, statutes, policies, or procedures – either those in effect at the time of the execution of this Contract, or those which become effective or are amended during the life of the Contract – require the Contractor to take action or inaction, any costs, expenses, or fees associated with that action or inaction shall be borne and paid by the Contractor solely.

**32. CONFLICT RESOLUTION**

A. Good Faith Efforts.

Except for the right of either Party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Contract, including but not limited to payment disputes, through negotiations between senior management of the parties.

B. Resolution.

If the dispute cannot be resolved within thirty (30) Calendar Days of initiating such negotiations, the dispute shall be decided by DCH Director of Contract Administration, who shall reduce his or her decision to writing and mail or otherwise furnish a copy to Contractor.

C. Appeal.

The written decision of DCH Director of Contracts Administration shall be final and conclusive, unless Contractor mails or otherwise furnishes a written appeal to the Commissioner of DCH within ten (10) Calendar Days from the date of receipt of such decision. The decision of the Commissioner or his duly authorized representative for the determination of such appeal shall be final and conclusive.

D. Other Remedies.

If either Party is dissatisfied, after exhausting the administrative process described above, that Party may pursue its available legal and equitable remedies, subject to the terms and conditions of this Contract.

E. Continuation of Work.

Contractor and DCH agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract and retain the right to exercise their available remedies.

**33. CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE**

- A. No official or employee of the State of Georgia or the Federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the responsibilities set forth in this Contract shall, prior to the termination of this Contract, voluntarily acquire any personal interest, direct or indirect, in this Contract.
- B. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any material manner or degree with, or have a material adverse effect on the performance of the Services . Contractor further covenants that in the performance of the Contract no person having any such interest shall be employed.
- C. All of the Parties hereby certify that the provisions of O.C.G.A. §45-10-20 through §45-10-28, which prohibit and regulate certain transactions between state officials and employees and the State of Georgia, have not been violated and will not be violated in any respect throughout the duration of this Contract.
- D. In addition, it shall be the responsibility of Contractor to maintain independence and to establish necessary policies and procedures to assist Contractor in determining if the actual Contractors performing work under this Contract have any impairment to their independence. To that end, Contractor shall submit a written plan to DCH within five (5) Business Days of the execution of this Contract in which it outlines Contractor's policies and procedures relating to how it monitors and enforces Contractor impartiality and independence. Contractor further agrees to take all necessary actions to eliminate threats to impartiality and independence, including but not limited to reassigning, removing or terminating Contractors.

**34. NOTICE**

- A. All notices under this Contract shall be deemed duly given upon delivery, if delivered by hand, or three (3) Calendar Days after posting, if sent by registered or certified mail, return receipt requested, to a Party hereto at the addresses set forth below or to such other address as a Party may designate by notice pursuant hereto. In addition, all notices delivered by email and personally acknowledged by the recipient as received in a reply email (not to include an auto-generated reply email) are deemed delivered at the time of the recipient's reply email.

**DCH Director of Contracts Administration:**

Director of Contracts Administration  
Georgia Department of Community Health  
2 Peachtree Street, NW - 40<sup>th</sup> Floor  
Atlanta, GA 30303-3159

**Program Manager:**

Chief, State Health Benefit Plan  
Two Peachtree Street NW  
35<sup>th</sup> Floor  
Atlanta, GA 30303  
ATTN: Trudie Nacin

[INSERT]

**For Contractor:**

[INSERT]

- B. It shall be the responsibility of Contractor to inform the Program Manager and the DCH Director of Contracts Administration of any change in address in writing no later than five (5) Business Days after the change.
- C. Within two (2) Business Days of receipt of notice, Contractor shall inform DCH of any legal action, whether the action is formal, informal, administrative, mediation, arbitration, actual litigation, or proposed litigation, which is instituted against Contractor by a Subcontractor, vendor, supplier, or manufacturer.
- D. Contractor shall inform DCH within twenty-four (24) hours of any legal action, whether the action is formal, informal, administrative, mediation, arbitration, actual litigation, or proposed litigation, that it knows, knew, or should have known would be instituted or brought against Contractor for work based on, arising from, or related to this Contract.

**35. MISCELLANEOUS**

A. Governing Law, Venue, Jurisdiction, Process.

This Contract shall be governed by, construed under and enforced in accordance with the laws of the State of Georgia, without regard to its conflicts of laws rules. Any lawsuit or other action brought against DCH or the State based upon or arising from this Contract must be brought in a court or other forum of competent jurisdiction in Fulton County in the State of Georgia and the Parties hereto consent, and waive any objection, to personal jurisdiction and venue in any federal and state courts located in the State of Georgia.

B. Attorneys' Fees.

In the event that either Party deems it necessary to take legal action to enforce any provision of the Contract, and in the event DCH prevails, Contractor shall pay all expenses of such action including reasonable attorney's fees and costs at all stages of litigation as awarded by the court, a lawful tribunal, hearing officer or administrative law judge. The term "legal action" shall be deemed to include administrative proceedings of all kinds, as well as all actions at law or equity.

C. Survivability.

The terms, provisions, representations and warranties contained in this Contract shall survive the delivery or provision of all Administrative Services or Deliverables hereunder.

D. Drug-Free Workplace.

Contractor must certify to DCH that a drug-free workplace will be provided by it and its Subcontractors during the performance of this Contract as required by the "Drug-Free Workplace Act", O.C.G.A. § 50-24-1, et seq. and certify compliance with applicable federal law as set forth in Attachment G, ***Drug Free Workplace Certificate***. Contractor shall sign and comply with Attachment G. Any false certification by Contractor or violation of such certification, or failure to carry out the requirements set forth in State of Georgia or federal statutes, rules, regulations, policies, or guidelines relating to a drug free workplace may result in Contractor being suspended, terminated or debarred from the performance of this Contract.

E. Certification Regarding Debarment, Suspension, Proposed Debarment and Other Matters.

Contractor certifies that it is not presently debarred, suspended, proposed for debarment or declared ineligible for award of contracts by any federal or State agency or department. Contractor certifies that none of its Workers nor any Subcontractor or Subcontractor's Workers are presently debarred, suspended, proposed for debarment or declared ineligible for award of contracts by any federal or State agency or department.

F. Waiver.

No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the Parties. Forbearance or indulgence in any form or manner by either Party, in any regard whatsoever, shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply. Notwithstanding any such forbearance or indulgence, until complete performance or satisfaction of all such covenants, conditions,

duties, obligations, and undertakings, the other Party shall have the right to invoke any remedy available under the Contract.

G. Force Majeure.

Neither party to this Contract shall be responsible for delays or failures in performance resulting from acts beyond the reasonable control of such Party. Such acts shall include, but not be limited to, acts of God, strikes, riots, lockouts, acts of war, epidemics, fire, earthquakes, or other disasters.

H. Binding.

This Contract and all of its terms, conditions, requirements, and amendments shall be binding on DCH and Contractor and their respective successors and permitted assigns.

I. Time is of the Essence.

Time is of the essence in connection with Contractor's performance of its obligations under this Contract. Any reference to "days" shall be deemed Calendar Days unless otherwise specifically stated.

J. Authority.

The individuals acting on behalf of and signing for DCH and Contractor have full power and authority to enter into this Contract. The person acting on behalf of and signing for Contractor has been properly authorized and empowered to enter into this Contract on behalf of Contractor and to bind Contractor to the terms of this Contract.

K. Ethics in Public Contracting.

1. Contractor understands, states, and certifies that it made its proposal without collusion or fraud and that it did not offer or receive any kickbacks or other inducements from any other contractor, supplier, manufacturer, or Subcontractor in connection with its proposal.
2. Contractor shall sign and comply with all Attachments to this Contract.

L. Contract Language Interpretation.

Contractor and DCH agree that in the event of a disagreement regarding, arising out of, or related to contract language interpretation, DCH's interpretation of the contract language in dispute shall control and govern. DCH's interpretation of the contract language in dispute shall not be subject to appeal under any circumstance.

M. Cooperation with Other Contractors.

1. DCH may undertake or award supplemental contracts for work related to this Contract, or any portion thereof. Contractor shall cooperate with such other contractors and DCH in all such cases. Contractor shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.
2. Contractor shall cooperate fully with any other entity that DCH has engaged to perform services related to the SHBP, and shall share information related to this Contract with such entities upon written request of DCH, and in accordance with information sharing requirements of the Implementation Plan. Contractor shall ensure that all Subcontractors shall abide by this provision. This cooperation includes but is not limited to ongoing, prompt and efficient communications for purposes of timely processing and payment of Claims, and ensuring that the Demand Management, Disease State Management, Case Management and other wellness and preventive services are made available to Members on an ongoing and timely basis.
3. During Implementation, if requested by DCH, Contractor shall execute cooperation, confidentiality and data sharing agreements with other entities providing services related to the SHBP in order to ensure that all entities providing services related to the SHBP are able to satisfy their Deliverables. Contractor shall ensure that all Subcontractors shall abide by this provision.
4. Contractor shall provide DCH, SHBP Vendors and the decision support system vendor described in the RFA access to data required to properly perform their required services and to support the SHBP programs' operations.
5. Contractor shall utilize information and data provided by other SHBP Vendors and DCH correctly and in a timely fashion. Contractor shall use this information and data in accordance with the RFA, Performance Guarantees set forth in Exhibit 4 and the Contractor's Approach. In the event there is a performance issue:
  - a) Contractor will be held accountable for the accuracy and timeliness of Contractor's utilization and handling of the data provided to the Contractor.

- b) Contractor will be held accountable for the accuracy and timeliness of the data and information provided by Contractor to DCH, the other SHBP Vendors and the decision support system vendor.
- c) The Contractor will not be held accountable for the accuracy and timeliness of other parties' utilization and handling of the data provided by Contractor.
- d) The Contractor will not be held accountable for the accuracy and timeliness of the data and information provided to Contractor by DCH and the other SHBP Vendor(s).

N. Section Titles not Controlling.

The section titles used in this Contract are for reference purposes only and shall not be deemed a part of this Contract.

O. Cooperation with Audits.

- 1. The State and federal standards for audits of DCH agents, contractors, and programs are applicable to this section and are incorporated by reference into this Contract as though fully set out herein.
- 2. Contractor shall assist and cooperate with DCH in any and all matters and activities related to or arising out of any audit or review, whether federal, private, or internal in nature, at no cost to DCH.
- 3. Contractor shall be solely responsible for any costs it incurs for any audit or review related inquiries or matters specific to this Contract. Moreover, Contractor may not charge or collect any fees or compensation from DCH for any matter, activity, or inquiry related to, arising out of, or based on an audit or review.

P. Homeland Security Considerations.

- 1. Contractor shall perform the Services entirely within the boundaries of the United States. Also, Contractor will not hire any individual to perform any of the Services if that individual is required to have a work visa approved by the U.S. Department of Homeland Security and such individual has not met this requirement.
- 2. If Contractor performs the Services or uses services in violation of the foregoing paragraph, Contractor shall be in material breach of this Contract and shall be liable to DCH for any costs, fees, damages, claims, or expenses it may incur. Additionally, Contractor shall be required to

hold harmless and indemnify DCH pursuant to the indemnification provisions of this Contract.

3. The prohibitions in this section shall also apply to any and all Workers and Subcontractors used by Contractor to perform any of the Services.

Q. Ownership and Financial Disclosures.

1. Contractor shall disclose financial statements for each person, corporation, or entity with an ownership or control interest of five percent (5%) or more in Contractor's entity for the prior twelve (12) consecutive calendar month period. For the purposes of this section, a person, corporation, or entity with an ownership or control interest shall mean a person, corporation, or entity that:
  - a. owns directly or indirectly five percent (5%) or more of Contractor's capital or stock or received five percent (5%) or more of its profits;
  - b. has an interest in any mortgage, deed of trust, note, or other obligation secured in whole or in part by Contractor or by its property or assets, and that interest is equal to or exceeds five percent (5%) of the total property and assets of Contractor; and,
  - c. is an officer or director of Contractor (if its is organized as a corporation) or is a partner in Contractor's organization (if it is organized as a partnership).
2. All ownership and financial disclosures shall occur when Contractor's Proposal is submitted and updated or amended at least once every quarter, unless otherwise requested by DCH.

R. Enforceability.

If, for any reason, a court of competent jurisdiction finds any provision of this Contract, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Contract shall continue in full force and effect.

S. Legal Considerations.

Contractor acknowledges that nothing contained in this Contract, shall be construed as a waiver of the immunity from liability, which would otherwise be available to the State under the principles of sovereign immunity. In particular, Contractor agrees that the sole and exclusive means for the presentation of any claim against the State arising out of this Contract, shall be in accordance with all

applicable Georgia statutes and Contractor further covenants not to initiate legal proceedings in any state or Federal court in addition to, or in lieu of, any proceedings available under State statutes.

T. Contract Drafting.

Each Party agrees that it has had an opportunity to have the legal counsel of its choice review, revise, edit, negotiate, and modify this Contract as needed or desired.

U. Limitation of Liability.

Nothing in this Contract shall limit Contractor's liability arising from, based on, or related to claims brought by DCH or any third party or any claims brought against the DCH or the State by a third party or Contractor or Contractor's other acts or omissions.

V. Corrective Action Plan.

1. In the event of Contractor's failure to perform timely or correctly a task, obligation, or responsibility required by this Contract, the provisions of Section 27, ***Unsatisfactory Performance and Damages***, will apply. DCH, in its sole discretion, may allow Contractor to submit a detailed written Corrective Action Plan. Any Corrective Action Plan must provide: (1) a detailed explanation of the reasons for the cited deficiency; (2) Contractor's assessment or diagnosis of the deficiency's cause; and (3) a specified proposal to cure or resolve the deficiency.
2. Contractor agrees that any Corrective Action Plan permitted by DCH must be submitted within five (5) Calendar Days following DCH's grant of permission for such plan, or such later date as approved in writing by the DCH Program Manager.
3. Contractor agrees that DCH's acceptance of the Corrective Action Plan will not: (1) excuse Contractor's prior substandard performance; (2) delay or eliminate payment offsets, payment delays or damage assessments, (3) relieve Contractor of its duty to comply with Performance Standards; or (4) prohibit DCH from assessing additional tailored remedies or pursuing other appropriate remedies for continued substandard performance.
4. If approved in writing by the DCH Program Manager, DCH may provide credits for amounts previously offset, or damages previously assessed, upon Contractor's successful implementation of the Corrective Action Plan.

- W. Quality of the Administrative Services. Contractor represents and warrants that the Administrative Services shall be performed in a professional manner. Contractor shall immediately re-perform Administrative Services which are not in compliance with such representations and warranties at no cost to DCH.
- X. Truth and Correctness. No representation or warranty by Contractor herein, nor any written statement or certificate or other instrument furnished to DCH by Contractor pursuant to this Agreement or in connection with the transactions contemplated by this Agreement, (i) contains, or will contain, any untrue statement of a material fact or (ii) omits, or will omit, to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which such statements are made, not misleading.

**36. AMENDMENT IN WRITING**

- A. No amendment, waiver, termination or discharge of this Contract, or any of the terms or provisions hereof, shall be binding upon either Party unless confirmed in writing. Nothing may be modified or amended, except by writing executed by both Parties.
- B. If Contractor desires an amendment or modification to any provision, condition, or obligation contained in this Contract, it must deliver a timely and written change order request to DCH that includes a detailed explanation of the proposed change, justification, and any and all potential cost implications, if any, for the proposed change.
- C. If the change order request described in 35.B above does not have any potential cost implication, the DCH Program Manager may approve the change order in writing. However, the change shall not be implemented until any necessary changes to the Plan Documents or Member communications are approved by the Parties.
- D. Any agreement of the Parties to amend, modify, eliminate or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect as set out herein.

**37. CONTRACT ASSIGNMENT**

- A. The rights of DCH under this Contract may be assigned to any other agency of the State of Georgia, with ten (10) Calendar Days prior notice to Contractor.
- B. Contractor shall not assign this Contract, in whole or in part, without the prior written consent of DCH, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect. Any assignment or transfer of any interest under the Contract, by Contractor, shall be made explicitly subject to all rights, defenses, set-offs, or counterclaims, which would have been available to DCH against Contractor in the absence of such assignment or transfer of interest. This provision includes but is not limited to reassignment of Contract due to change of ownership of Contractor's company.

**38. SEVERABILITY**

Any section, subsection, paragraph, term, condition, provision, or other part of this Contract that is judged, held, found or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect as set out herein. The Contract shall not be interpreted for or against any Party on the basis that such Party or its legal representatives caused part or all of the Contract to be drafted.

**39. PROHIBITION OF CERTAIN CONTRACT PROVISIONS**

Contractor acknowledges that pursuant to Georgia Constitution Article 3, Section 6, Paragraph 6, the Department is prohibited from entering into any contract that grants any donation or gratuity or forgives any debt or obligation owing to the public.

**40. COUNTERPARTS**

This Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument. Any signature below that is transmitted by facsimile or other electronic means shall be binding and effective as the original.

**41. ENTIRE CONTRACT**

This Contract, including all incorporated documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or contracts. No written or oral agreements, representatives, statements, negotiations, understandings, or discussions that are not set out, referenced, or specifically incorporated in this Contract shall in any way be binding or of effect between the Parties.

*(Signatures on following page)*

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties state and affirm that they are duly authorized to bind the respective entities designated below as of the day and year indicated.

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH**

\_\_\_\_\_  
David A. Cook  
Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Trudie Nacin, Chief – State Health Benefit Plan

\_\_\_\_\_  
Date

**<INSERT CONTRACTOR>**

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**AFFIX CORPORATE SEAL HERE**  
(Corporations without a

seal should attach a copy of the Certificate of Corporate Resolution)

ATTEST: \_\_\_\_\_  
\*\*SIGNATURE

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\* Must be President, Vice President, CEO or other authorized officer  
\*\*Must be Corporate Secretary

**REQUEST FOR APPROACH**

**CONTRACTOR'S APPROACH**

**ADMINISTRATIVE FEES AND SERVICES**

**PERFORMANCE GUARANTEES**

**DISASTER RECOVERY PLAN**

**IRREVOCABLE LETTER OF CREDIT**

**LETTER OF CREDIT DRAFT IN LIEU OF RETENTION SAMPLE**

ISSUING BANK: [BANK'S NAME]  
[BANK'S ADDRESS]

BENEFICIARY: THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH  
2 PEACHTREE STREET, NW-40<sup>th</sup> Floor  
ATLANTA, GA 30303-3159  
ATTN: CONTACT NAME

AT THE REQUEST AND FOR THE ACCOUNT OF [CONTRACTOR'S NAME], WE HEREBY ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT IN THE AMOUNT OF (\$\_\_\_\_\_), WHICH IS AVAILABLE AGAINST SIGHT DRAFT(S) OF THE BENEFICIARY BEARING THE CLAUSE "DRAWN UNDER IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER \_\_\_\_\_" AND ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. A CERTIFICATE DATED AND SIGNED BY A PURPORTED AUTHORIZED OFFICER OF THE BENEFICIARY STATING: "WE CERTIFY THAT THE AMOUNT OF OUR DRAWING UNDER LETTER OF CREDIT NUMBER IS DUE US AS [CONTRACTOR'S NAME] IS IN DEFAULT OF ITS OBLIGATIONS WITH US UNDER CONTRACT NO. \_\_\_\_\_ DATED \_\_\_\_\_."
2. A CERTIFICATE DATED AND SIGNED BY A PURPORTED AUTHORIZED OFFICER OF THE BENEFICIARY STATING: "WE CERTIFY THAT THE AMOUNT OF THE DRAFT PRESENTED DOES NOT EXCEED THE GREATER OF THE AMOUNT ALLOWED PURSUANT TO EXHIBIT 1 OF SAID CONTRACT OR THE AMOUNT IN DISPUTE LESS ANY AMOUNTS PREVIOUSLY DRAWN UNDER THIS LETTER OF CREDIT.
3. A COPY OF THE LETTER DATED AT LEAST SEVENTY-TWO (72) HOURS PRIOR TO THE DRAWING UNDER THIS LETTER OF CREDIT ADDRESSED TO [CONTRACTOR'S NAME] READING AS FOLLOWS: "WE HEREBY INDICATE OUR INTENTION TO DRAW UNDER \_\_\_\_\_ BANK LETTER OF CREDIT NO. \_\_\_\_\_."

WE ENGAGE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON

DELIVERY OF DOCUMENTS AS SPECIFIED IF PRESENTED AT THIS OFFICE ON  
OR BEFORE \_\_\_\_\_, 200\_\_.

PARTIAL DRAWINGS ARE PERMITTED.

ALL AMOUNTS DRAWN IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF  
THIS LETTER OF CREDIT WILL BE TRANSFERRED BY WIRE TRANSFER INTO  
THE BENEFICIARY'S ACCOUNT NUMBER \_\_\_\_\_ IN  
\_\_\_\_\_(BANK). ABA  
NO. \_\_\_\_\_(CITY), \_\_\_\_\_  
\_\_\_\_\_(STATE).

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND  
PRACTICES FOR DOCUMENTARY CREDITS (1983 REVISION). INTERNATIONAL  
CHAMBER OF COMMERCE PUBLICATION 500.

**INTENTIONALLY RESERVED**

**INFORMATION SECURITY**

SR.1	Contractor shall comply with the HIPAA Final Security Rule, 45 CFR PART 164 – Security and Privacy, and all implementing regulations
SR.2	Contractor’s security policies and procedures and implementation of the same shall align with the most current version of the following Federal Computer Security Standards as published by the National Institute of Standards and Technology (NIST) 800-53 controls: <ul style="list-style-type: none"> <li>• NIST, FIPS 197 Advanced Encryption Standard (AES).</li> <li>• NIST, FIPS 140-2, Security Requirements for Cryptographic Modules, Level 1 (or Higher).</li> <li>• NIST Special Publication SP800-53, Recommended Security Controls For Federal Information Systems and Organizations, Moderate-Impact Baseline</li> </ul>
SR.3	Contractor’s security policies and procedures and implementation of the same shall align with applicable State Enterprise Information Security Policies and Standards including Standards for Media Sanitization and Destruction that are based on NIST and ISO/IEC 27701 standards. State Security Policies can be found at the following Web Page Link: <a href="http://gta.georgia.gov/security-psgs-homepage">http://gta.georgia.gov/security-psgs-homepage</a> .
SR4	All DCH data containing electronic Protected Health Information (ePHI) shall be encrypted during transmission, while stored in portable media devices, and preferably while “at rest.” If encryption of ePHI at rest is not feasible, Contractor shall implement comparable safeguards acceptable to the DCH Information Security Officer.
SR.5	Contractor shall include the same safeguards and procedures for protecting DCH data, including but not limited to DCH ePHI, during emergency operations as are utilized during normal business operations.
SR.6	Contractor’s information systems that contain DCH data shall alert appropriate staff authorities of potential violations of security safeguards, such as inappropriate access to confidential information, and shall contain mechanisms to monitor transaction based event and activity Logging.
SR.7	All system users must be authenticated when establishing a connection to any information system that contains DCH System. Authentication must be based on unique user IDs/passwords.
SR.8	Contractor shall provide standard, secure, and configurable interfaces between all interfacing information sharing entities.
SR.9	Contractor shall comply with its own internal Incident Response policies and procedures.
SR.10	Contractor shall implement the appropriate infrastructure protection measures to protect sensitive system and application data including Network/Host Intrusion Prevention and Detection Devices, Firewalls, Virus Protection, etc.
SR.11	Contractor shall ensure that all system software and hardware changes follow Contractor’s formal change management procedures, including security impact analysis. Contractor shall ensure that DCH data is logically separated from non DCH data
SR.12	Contractor’s solution shall include the appropriate controls and safeguards for preventing, monitoring, and detecting malware (e.g., viruses, worms, trojans, or other malicious program code).

## ATTACHMENT A

### DRUG-FREE WORKPLACE CERTIFICATE

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988 and O.C.G.A. § 50-24-1 *et seq.* The certification set out below is a material representation of fact upon which DCH relied when entering into Contract # [insert contract number] with [insert vendor name] (hereinafter referred to as the “Contractor”). False certification or violation of the certification shall be grounds for suspension of payments, termination of the contract, or government-wide suspension or debarment.

By signing this Drug-Free Workplace Certificate, Contractor certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession or use of a controlled substance or marijuana is prohibited in Contractor’s workplace and specifying the actions that will be taken against employees for violations of such policy;
2. Establishing a drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in the workplace;
  - b. Contractor’s policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that may be imposed upon employees for drug abuse violations;
3. Providing each employee with a copy of the statement provided for in paragraph (1) of this certification;
4. Notifying each employee in the statement provided for in paragraph (1) that, as a condition of employment, the employee shall:
  - a. Abide by the terms of the statement; and
  - b. Notify Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five calendar days after such conviction;
5. Notifying DCH within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction;
6. Taking one of the following actions, within 30 days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted;
  - a. Taking appropriate personnel action against such an employee, up to and including termination; or
  - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.

Further, Contractor certifies that it will include in any agreement or contract with a subcontractor a provision that such subcontractor will provide a drug-free workplace for his employees by complying with the provisions of paragraphs (1), (2), (3), (4), and (6) of this subsection and by notifying Contractor of any criminal drug statute conviction for a violation occurring in the workplace involving the subcontractor or its employees within five calendar days of receiving notice of the conviction. Contractor will notify the contracting principal representative pursuant to paragraph (5) of this subsection.

**CONTRACTOR**

BY: \_\_\_\_\_  
SIGNATURE DATE  
\_\_\_\_\_  
\_\_\_\_\_  
TITLE

ATTEST: \_\_\_\_\_  
SIGNATURE DATE  
\_\_\_\_\_  
TITLE

---

\* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

**ATTACHMENT B**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**



**Federal Acquisition Regulation (FAR) 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (April 2010)**

(A) Contractor certifies, to the best of its knowledge and belief, that:

(1) Contractor and/or any of its Principals:

- A. Are  are not  presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any Federal agency;
- B. Have  have not  within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws or receiving stolen property;
- C. Are  are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in subdivision (A)(1) of this provision; and
- D. Have  have not  within the three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000.00 for which the liability remains unsatisfied (per FAR 52-209-5(a)(1)(i)(D)(1)).

(2) Contractor has  has not  within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(3) "Principals," for purposes of this certification, means officers, directors, owners, partners, and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment; and similar positions).

(B) This certification concerns a matter within the jurisdiction of an Agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. § 1001.

- (C) Contractor shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (D) A certification that if any of the items in paragraph (A) of this provision exist will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Contractor's responsibility. Failure of the Contractor to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Contractor non-responsible.
- (E) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (A) of this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (F) The certification in paragraph (A) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

**CONTRACTOR**

By:

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Print Name and Title\*

---

\* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

**ATTACHMENT C**

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH  
NON-PROFIT ORGANIZATION DISCLOSURE FORM**

**Notice to all DCH Contractors:** Pursuant to Georgia law, non-profit organizations that receive funds from a state organization must comply with audit requirements as specified in O.C.G.A. § 50-20-1 *et seq.* (hereinafter “the Act”) to ensure appropriate use of public funds. “Non-profit Organization” means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve or expand its operations. The term non-profit organization includes non-profit institutions of higher education and hospitals. For financial reporting purposes, guidelines issued by the American Institute of Certified Public Accountants should be followed in determining non-profit status.

The Department of Community Health (DCH) must report contracts with non-profit organizations to the Department of Audits and must ensure compliance with the other requirements of the Act. Prior to execution of any contract, the potential contractor must complete this form disclosing its corporate status to DCH. This form must be returned, along with proof of corporate status, to: Director, Contract Administration, Georgia Department of Community Health, 40<sup>th</sup> Floor, 2 Peachtree Street, N.W., Atlanta, Georgia 30303-3159.

Acceptable proof of corporate status includes, but is not limited to, the following documentation:

- Financial statements for the previous year;
- Employee list;
- Employee salaries;
- Employees’ reimbursable expenses; and
- Corrective action plans.

Entities that meet the definition of non-profit organization provided above and are subject to the requirements of the Act will be contacted by DCH for further information.

**COMPANY NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**CORPORATE STATUS:** (check one) For Profit \_\_\_\_\_ Non-Profit \_\_\_\_\_

*I, the undersigned duly authorized representative of \_\_\_\_\_ do hereby attest that the above information is true and correct to the best of my knowledge.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT D**

**CONFIDENTIALITY STATEMENT**

**STATE OF GEORGIA  
THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH  
2 PEACHTREE STREET, N.W.  
ATLANTA, GEORGIA 30303-3159**

**FOR SAFEGUARDING INFORMATION**

I, the undersigned, understand and, by my signature, agree to comply with Federal and State requirements regarding the safeguarding of the Department of Community Health/State Health Benefit Plan information in my possession, including but not limited to information that is obtained electronically from the Fiscal Agent, vendors, or any other entity or individual while performing contractual services with or for the Department of Community Health, its agents or contractors.

Individual's Name: (typed or printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Company or Agency Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ATTACHMENT E

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (hereinafter referred to as “Agreement”), effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (hereinafter the “Effective Date”) is made and entered into by and between the Georgia Department of Community Health (hereinafter referred to as “DCH”) and [INSERT CONTRACTOR NAME] (hereinafter referred to as “Contractor”) as **EXHIBIT XX** to **Contract No. XXXX** between DCH and Contractor dated \_\_\_\_\_ (hereinafter referred to as the “Contract”).

**WHEREAS**, DCH is required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), to enter into a Business Associate Agreement with certain entities that provide functions, activities, or services involving the use of Protected Health Information, as defined by HIPAA (“PHI”);

**WHEREAS**, Contractor, under the Contract provides functions, activities, or services involving the use of PHI;

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCH and Contractor (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms have in HIPAA and in Title XIII of the American Recovery and Reinvestment Act of 2009 (the Health Information Technology for Economic and Clinical Health Act, or “HITECH”), and in the implementing regulations of HIPAA and HITECH. Implementing regulations are published as the Standards for Privacy and Security of Individually Identifiable Health Information in 45 C.F.R. Parts 160 and 164. Together, HIPAA, HITECH, and their implementing regulations are referred to in this Agreement as the “Privacy Rule and Security Rule.” If the meaning of any defined term is changed by law or regulation, then this Agreement will be automatically modified to conform to such change. The term “NIST Baseline Controls” means the baseline controls set forth in National Institute of Standards and Technology (NIST) SP 800-53 established for “moderate impact” information.

1. Except as limited in this Agreement, Contractor may use or disclose PHI only to the extent necessary to meet its responsibilities as set forth in the Contract provided that such use or disclosure would not violate the Privacy Rule or the Security Rule, if done by DCH. Furthermore, except as otherwise limited in this Agreement, Contractor may:
  - A. Use PHI for internal quality control and auditing purposes.
  - B. Use or disclose PHI as Required by Law.



[hipaa@dch.ga.gov](mailto:hipaa@dch.ga.gov)  
[aearles@dch.ga.gov](mailto:aearles@dch.ga.gov)  
404-656-0412

Sherman Harris  
Agency Information Security Officer  
[sheharris@dch.ga.gov](mailto:sheharris@dch.ga.gov)  
404-656-9653

**B.** At Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. Contractor agrees that it will:**

- A.** Not request, create, receive, use or disclose PHI other than as permitted or required by this Agreement, the Contract, or as required by law.
- B.** Establish, maintain and use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or the Contract.
- C.** Implement and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of DCH.
- D.** In addition to the safeguards described above, Contractor shall include access controls that restrict access to PHI to the individuals described or identified on E-1 and E-2, as amended from time to time, shall implement encryption of all electronic PHI during transmission and shall encrypt all electronic PHI during storage on portable media devices (such as backup storage tapes).
- E.** Upon DCH's reasonable request, but no more frequently than annually, provide the results of privacy and security assessments to DCH, and ensure that corrective actions identified during the assessments are implemented.
- F.** Mitigate, to the extent practicable, any harmful effect that may be known to Contractor from a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement, the Contract or applicable regulations. Contractor shall bear the costs of mitigation, which shall include the reasonable costs of credit monitoring or credit restoration when the use or disclosure results in exposure of information commonly used in identity theft.

- G.** Ensure that its agents or subcontractors to whom it provides PHI are contractually obligated to comply with at least the same obligations that apply to Contractor under this Agreement, and ensure that its agents or subcontractors comply with the conditions, restrictions, prohibitions and other limitations regarding the request for, creation, receipt, use or disclosure of PHI, that are applicable to Contractor under this Agreement and the Contract.
- H.** Except for “Non-Reportable Incidents,” report to DCH any use or disclosure of PHI that is not provided for by this Agreement or the Contract of which it becomes aware. Non-Reportable Incidents are limited to the following:
1. the unintentional acquisition, access, or use of PHI by a workforce member of Contractor acting under the authority of Contractor, so long as the PHI is not further acquired, accessed, used or disclosed in an impermissible manner;
  2. the inadvertent disclosure of PHI from a person designated in E-1 or E-2 as authorized to access DCH PHI to a workforce member of Contractor who is not designated in E-1 or E-2, but is authorized to access other Protected Health Information maintained by Contractor, so long as the information is not further acquired, accessed, used or disclosed in an impermissible manner.
- I.** Make an initial report to the DCH in writing in such form as DCH may require within three (3) business days after Contractor (or any subcontractor) becomes aware of the unauthorized use or disclosure. This report will require Contractor to identify the following:
- i. The nature of the impermissible use or disclosure (the “incident”), which will include a brief description of what happened, including the date it occurred and the date Contractor discovered the incident;
  - ii. The Protected Health Information involved in the impermissible use or disclosure, such as whether the full name, social security number, date of birth, home address, account number or other information were involved);
  - iii. Who (by title, access permission level and employer) made the impermissible use or disclosure and who received the Protected Health Information as a result;
  - iv. What corrective or investigational action Contractor took or will take to prevent further impermissible uses or disclosures, to mitigate harmful effects, and to prevent against any further incidents;
  - v. What steps individuals who may have been harmed by the incident might take to protect themselves; and

- vi. Whether Contractor believes that the impermissible use or disclosure constitutes a Breach of Unsecured Protected Health Information.

Upon request by the DCH HIPAA Privacy and Security Officer or the DCH Information Security Officer, Contractor agrees to make a complete report to the DCH in writing within two weeks of the initial report that includes a root cause analysis and a proposed corrective action plan. Upon approval of a corrective action plan by the DCH, Contractor agrees to implement the corrective action plan and provide proof of implementation to the DCH within five (5) business days of DCH's request for proof of implementation.

- J.** Report to the DCH HIPAA Privacy and Security Officer and the DCH Agency Information Security Officer any successful unauthorized access, modification, or destruction of PHI or interference with system operations in Contractor's information systems as soon as practicable but in no event later than three (3) business days of discovery. If such a security incident resulted in a use or disclosure of PHI not permitted by this Agreement, Contractor shall also make a report of the impermissible use or disclosure as described above. Contractor agrees to make a complete report to the DCH in writing within two weeks of the initial report that includes a root cause analysis and, if appropriate, a proposed corrective action plan designed to protect PHI from similar security incidents in the future. Upon DCH's approval of Contractor's corrective action plan, Contractor agrees to implement the corrective action plan and provide proof of implementation to the DCH.
- K.** Upon DCH's reasonable request and not more frequently than once per quarter, report to the DCH Agency Information Security Officer any (A) attempted (but unsuccessful) unauthorized access, use, disclosure, modification, or destruction of PHI or (B) attempted (but unsuccessful) interference with system operations in Contractor's information systems. Contractor does not need to report trivial incidents that occur on a daily basis, such as scans, "pings," or other routine attempts that do not penetrate computer networks or servers or result in interference with system operations.
- L.** Cooperate with DCH and provide assistance necessary for DCH to determine whether a Breach of Unsecured Protected Health Information has occurred, and whether notification of the Breach is legally required or otherwise appropriate. Contractor agrees to assist DCH in its efforts to comply with the HIPAA Privacy and Security Rules, as amended from time to time. To that end, the Contractor will abide by any requirements mandated by the HIPAA Privacy and Security Rules or any other applicable laws in the course of this Contract. Contractor warrants that it will cooperate with DCH, including cooperation with DCH privacy officials and other compliance officers required by the HIPAA Privacy and Security Rules and all implementing regulations, in the course of performance of this Contract so that both parties will be in compliance with HIPAA.

- M.** If DCH determines that a Breach of Unsecured Protected Health Information has occurred as a result of Contractor's impermissible use or disclosure of PHI or failure to comply with obligations set forth in this Agreement or in the Privacy or Security Rules, provide all notifications to Individuals, HHS and/or the media, on behalf of DCH, after the notifications are approved by the DCH. Contractor shall provide these notifications in accordance with the security breach notification requirements set forth in 42 U.S.C. §17932 and 45 C.F.R. Parts 160 & 164 subparts A, D & E as of their respective Compliance Dates, and shall pay for the reasonable and actual costs associated with such notifications.

In the event that DCH determines a Breach has occurred, without unreasonable delay, and in any event no later than thirty (30) calendar days after Discovery, Contractor shall provide the DCH HIPAA Privacy and Security Officer a list of Individuals and a copy of the template notification letter to be sent to Individuals. Contractor shall begin the notification process only after obtaining DCH's approval of the notification letter.

- N.** Make any amendment(s) to PHI in a Designated Record Set that DCH directs or agrees to pursuant to 45 CFR 164.526 within five (5) business days after request of DCH. Contractor also agrees to provide DCH with written confirmation of the amendment in such format and within such time as DCH may require.
- O.** In order to meet the requirements under 45 CFR 164.524, regarding an individual's right of access, Contractor shall, within five (5) business days following DCH's request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the DCH, provide DCH access to the PHI in an individual's Designated Record Set. However, if requested by DCH, Contractor shall provide access to the PHI in a Designated Record Set directly to the individual to whom such information relates.
- P.** Give the Secretary of the U.S. Department of Health and Human Services (the "Secretary") or the Secretary's designees access to Contractor's books and records and policies, practices or procedures relating to the use and disclosure of PHI for or on behalf of DCH within five (5) business days after the Secretary or the Secretary's designees request such access or otherwise as the Secretary or the Secretary's designees may require. Contractor also agrees to make such information available for review, inspection and copying by the Secretary or the Secretary's designees during normal business hours at the location or locations where such information is maintained or to otherwise provide such information to the Secretary or the Secretary's designees in such form, format or manner as the Secretary or the Secretary's designees may require.
- Q.** Document all disclosures of PHI and information related to such disclosures as would be required for DCH to respond to a request by an Individual or by the Secretary for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. By no later than five (5) business days of receipt of a written request from DCH, or as

otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the DCH HIPAA Privacy and Security Officer, Contractor shall provide an accounting of disclosures of PHI regarding an Individual to DCH. If requested by DCH, Contractor shall provide an accounting of disclosures directly to the individual. Contractor shall maintain a record of any accounting made directly to an individual at the individual's request and shall provide such record to the DCH upon request.

- R. In addition to any indemnification provisions in the Contract, indemnify the DCH from any liability resulting from any violation of the HIPAA Privacy and Security Rules or Breach that arises from the conduct or omission of Contractor or its employee(s), agent(s) or subcontractor(s). Such liability will include, but not be limited to, all actual and direct costs and/or losses, civil penalties and reasonable attorneys' fees imposed on DCH.
- S. For any requirements in this Agreement that include deadlines, pay performance guarantee payments of \$300.00 per calendar day, starting with the day after the deadline and continuing until Contractor complies with the requirement. Contractor shall ensure that its agreements with subcontractors enable Contractor to meet these deadlines.

**8. DCH agrees that it will:**

- A. Notify Contractor of any new limitation in DCH's Notice of Privacy Practices in accordance with the provisions of the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such limitation will affect Contractor's use or disclosure of PHI.
- B. Notify Contractor of any change in, or revocation of, authorization by an Individual for DCH to use or disclose PHI to the extent that DCH determines in the exercise of its sole discretion that such change or revocation will affect Contractor's use or disclosure of PHI.
- C. Notify Contractor of any restriction regarding its use or disclosure of PHI that DCH has agreed to in accordance with the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such restriction will affect Contractor's use or disclosure of PHI.
- D. Prior to agreeing to any changes in or revocation of permission by an Individual, or any restriction, to use or disclose PHI, DCH agrees to contact Contractor to determine feasibility of compliance. DCH agrees to assume all costs incurred by Contractor in compliance with such special requests.

- 9. The **Term of this Agreement** shall be effective on the Effective Date and shall terminate when all of the PHI provided by DCH to Contractor, or created or received by Contractor on behalf of DCH, is destroyed or returned to DCH, or, if it is infeasible to return or

destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.

**A. Termination for Cause.** Upon DCH's knowledge of a material breach of this Agreement by Contractor, DCH shall either:

- i. Provide an opportunity for Contractor to cure the breach of Agreement within a reasonable period of time, which shall be within thirty (30) calendar days after receiving written notification of the breach by DCH;
- ii. If Contractor fails to cure the breach of Agreement, terminate the Contract upon thirty (30) calendar days notice; or
- iii. If neither termination nor cure is feasible, DCH shall report the breach of Agreement to the Secretary of the Department of Health and Human Services.

**B. Effect of Termination.**

- i. Upon termination of this Agreement, for any reason, DCH and Contractor shall determine whether return of PHI is feasible. If return of the PHI is not feasible, Contractor agrees to continue to extend the protections of this Agreement to the PHI for so long as the Contractor maintains the PHI and shall limit the use and disclosure of the PHI to those purposes that made return or destruction of the PHI infeasible. If at any time it becomes feasible to return or destroy any such PHI maintained pursuant to this paragraph, Contractor must notify DCH and obtain instructions from DCH for either the return or destruction of the PHI.
- ii. Contractor agrees that it will limit its further use or disclosure of PHI only to those purposes DCH may, in the exercise of its sole discretion, deem to be in the public interest or necessary for the protection of such PHI, and will take such additional actions as DCH may require for the protection of patient privacy and the safeguarding, security and protection of such PHI.
- iii. This Effect of Termination section survives the termination of the Agreement.

**10. Interpretation.** Any ambiguity in this Agreement shall be resolved to permit DCH to comply with applicable laws, rules and regulations, the HIPAA Privacy Rule, the HIPAA Security Rule and any rules, regulations, requirements, rulings, interpretations, procedures or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable laws, rules and regulations and the laws of the State of Georgia shall supersede the Privacy Rule if, and to the extent that, they impose additional requirements, have requirements that are more stringent than or have been interpreted to provide greater protection of patient privacy or the security or safeguarding of PHI than those of the HIPAA Privacy Rule.

11. **No Third Party Beneficiaries.** Nothing express 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 assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.
12. **All other terms and conditions contained in the Contract and any amendment thereto, not amended by this Agreement, shall remain in full force and effect.**

*(Signatures on following page)*

**IN WITNESS WHEREOF**, Contractor, through its authorized officer and agent, has caused this Agreement to be executed on its behalf as of the date indicated.

**CONTRACTOR**

BY: \_\_\_\_\_  
SIGNATURE DATE

\_\_\_\_\_

\_\_\_\_\_

TITLE\*

---

\* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

**ATTACHMENT E-1**

**List of Individuals Permitted to Receive, Use and Disclose DCH PHI**

The following Position Titles, as employees and/or representatives of Contractor, need access to DCH Protected Health Information in order for Contractor to perform the services described in the Contract:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Transfers of PHI must comply with DCH Policy and Procedure 419: Appropriate Use of Information Technology Resources.

Approved methods of secure delivery of PHI between Contractor and DCH:

- Secure FTP file transfer (preferred)
- Encrypted email or email sent through “secure tunnel” approved by DCH Information Security Officer
- Email of encrypted document (password must be sent by telephone only)
- Encrypted portable media device and tracked delivery method

Contractor must update this list as needed and provide the updated form to DCH. Use of DCH Protected Health Information by individuals who are not described on this Attachment E-1, as amended from time to time, is impermissible and a violation of the Agreement. Contractor must update this Attachment E-1 as needed and provide the updated form to DCH.

DCH Project Leader Contact Information: **[INSERT HERE]**

**ATTACHMENT E-2**

**Part 1:**

Please initial beside the correct option. Please select only one option.

\_\_\_\_\_ Contractor DOES NOT need any user accounts to access DCH Information Systems. Do not complete Part 2 of this form.

\_\_\_\_\_ Contractor DOES need user accounts to access DCH Information Systems. Please complete Part 2 of this form.

**Part 2:**

Please complete the table below if you indicated that Contractor DOES need any user accounts to access DCH Information Systems. Please attach additional pages if needed.

**List of Individuals Authorized to Access a DCH Information System Containing PHI**

The following individuals, as employees and/or representatives of Contractor, need access to DCH Information Systems containing DCH Protected Health Information in order for Contractor to perform the services described in the Contract:

<b>Full Name</b>	<b>Employer</b>	<b>DCH Information System</b>	<b>Type of Access (Read only? Write?)</b>

The DCH Project Leader must submit a completed DCH Network Access Request Form for each individual listed above. Access will be granted and changed in accordance with DCH Policy and Procedure 435: Managing Authorization, Access and Control of Information Systems.

Contractor must notify the Project Leader identified in the Contract and the DCH Access Control Coordinator ([clewis@dch.ga.gov](mailto:clewis@dch.ga.gov) and [helpdesk@dch.ga.gov](mailto:helpdesk@dch.ga.gov)) immediately, but at least within 24 hours, after any individual on this list no longer needs the level of access described. Failure to provide this notification on time is a violation of the Agreement and will be reported as a security incident.

Contractor must update this Attachment E-2 as needed and provide the updated form to DCH. DCH Project Leader Contact Information: **[INSERT HERE]**

**ATTACHMENT F**

**VENDOR LOBBYIST DISCLOSURE AND REGISTRATION CERTIFICATION FORM**



Pursuant to Executive Order Number 10.01.03.01 (the “Order”), which was signed by Governor Sonny Perdue on October 1, 2003, Contractors with the state are required to complete this form. The Order requires “Vendor Lobbyists,” defined as those who lobby state officials on behalf of businesses that seek a contract to sell goods or services to the state or those who oppose such a contract, to certify that they have registered with the State Ethics Commission and filed the disclosures required by Article 4 of Chapter 5 of Title 21 of the Official Code of Georgia Annotated. Consequently, every vendor desiring to enter into a contract with the state must complete this certification form. False, incomplete, or untimely registration, disclosure, or certification shall be grounds for termination of the award and contract and may cause recoupment or refund actions against Contractor.

In order to be in compliance with Executive Order Number 10.01.03.01, please complete this Certification Form by designating only one of the following:

- Contractor *does not have any* lobbyist employed, retained, or affiliated with the Contractor who is seeking or opposing contracts for it or its clients. Consequently, Contractor has not registered anyone with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.
  
- Contractor *does have* lobbyist(s) employed, retained, or affiliated with the Contractor who are seeking or opposing contracts for it or its clients. The lobbyists are:

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Contractor states, represents, warrants, and certifies that it has registered the above named lobbyists with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.

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**CONTRACTOR**

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Date

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Signature

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Title of Signatory

## **ATTACHMENT G**

### **STATEMENT OF ETHICS**

#### **Preamble**

The Department of Community Health has embraced a mission to improve the health of all Georgians through health benefits, systems development, and education. In accomplishing this mission, DCH employees must work diligently and conscientiously to support the goals of improving health care delivery and health outcomes of the people we serve, empowering health care consumers to make the best decisions about their health and health care coverage, and ensuring the stability and continued availability of health care programs for the future. Ultimately, the mission and goals of the organization hinge on each employee's commitment to strong business and personal ethics. This Statement of Ethics requires that each employee:

- Promote fairness, equality, and impartiality in providing services to clients
- Safeguard and protect the privacy and confidentiality of clients' health information, in keeping with the public trust and mandates of law
- Treat clients and co-workers with respect, compassion, and dignity
- Demonstrate diligence, competence, and integrity in the performance of assigned duties
- Commit to the fulfillment of the organizational mission, goals, and objectives
- Be responsible for employee conduct and report ethics violations to the DCH Inspector General and to the DCH Ethics Officer
- Engage in carrying out DCH's mission in a professional manner
- Foster an environment that motivates DCH employees and vendors to comply with the Statement of Ethics
- Comply with the Code of Ethics set forth in O.C.G.A. Section 45-10-1 et seq.

Not only should DCH employees comply with this Statement of Ethics, but DCH expects that each vendor, contractor, and subcontractor will abide by the same requirements and guidelines delineated. Moreover, it is important that employees and members of any advisory committee or commission of DCH acknowledge the Statement of Ethics.

#### **Ethical Guidelines**

##### **1. Code of Conduct**

All employees of DCH are expected to maintain and exercise at all times the highest moral and ethical standards in carrying out their responsibilities and functions. Employees must conduct themselves in a manner that prevents all forms of impropriety, including placement of self-interest above public interest, partiality, prejudice, threats, favoritism and undue influence. There will be no reprisal or retaliation against any employee for questioning or reporting possible ethical issues.

## **2. Equal Employment**

The Department is committed to maintaining a diverse workforce and embraces a personnel management program which affords equal opportunities for employment and advancement based on objective criteria. DCH will provide recruitment, hiring, training, promotion, and other conditions of employment without regard to race, color, age, sex, religion, disability, nationality, origin, pregnancy, or other protected bases. The Department expects employees to support its commitment to equal employment. The failure of any employee to comply with the equal employment requirements provided in DCH Policy #21 may result in disciplinary action, up to and including termination.

## **3. Harassment**

DCH will foster a work environment free of harassment and will not tolerate harassment based on sex (with or without sexual conduct), race, color, religion, national origin, age, disability, protected activity (*i.e.*, opposition to prohibited discrimination or participation in a complaint process) or other protected bases from *anyone* in the workplace: supervisors, co-workers, or vendors. The Department strongly urges employees to report to the Human Resources Section any incident in which he or she is subject to harassment. Additionally, any employee who witnesses another employee being subjected to harassment should report the incident to the Human Resources Section. If DCH determines that an employee has engaged in harassment, the employee shall be subject to disciplinary action, up to and including termination, depending on the severity of the offense.

## **4. Appropriate Use of DCH Property**

Employees should only use DCH property and facilities for DCH business and not for any type of personal gain. The use of DCH property and facilities, other than that prescribed by departmental policy, is not allowed. Furthermore, the use of DCH property and facilities for any purpose which is unlawful under the laws of the United States, or any state thereof, is strictly prohibited. Employees who divert state property or resources for personal gain will be required to reimburse the Department and will be subject to the appropriate disciplinary action, up to and including, termination.

## **5. Secure Workplace**

DCH is committed to maintaining a safe, healthy work environment for its employees. Accordingly, it is DCH's expectation that employees refrain from being under the influence of

alcohol or drugs in the workplace because such conduct poses a threat to the employee, as well as others present in the workplace. Additionally, DCH has a zero tolerance policy regarding violence in the workplace. Specifically, DCH will not condone the threat of, or actual assault or attack upon, a client, vendor, or other employee. If an employee engages in violent behavior which results in an assault of another person, he or she will be immediately terminated.

## **6. Political Activities**

Although the DCH recognizes that employees may have an interest in participating in political activities and desires to preserve employees' rights in participating in the political process, employees must be aware of certain allowances and prohibitions associated with particular political activities. DCH encourages employees to familiarize themselves with DCH Policy #416 to gain understanding about those instances when a political activity is disallowed and/or approval of such activity is warranted.

## **7. Confidentiality**

DCH has a dual mandate in terms of confidentiality and privacy. Foremost, as a state agency, DCH must comply with the Georgia Open Records Act and Open Meetings Act. The general rule that is captured by those laws is that all business of the agency is open to the public view upon request. The exceptions to the general rule are found in various federal and state laws. In order to protect the individuals' health information that is vital to the delivery of and payment for health care services, DCH sets high standards of staff conduct related to confidentiality and privacy. Those standards are reinforced through continuous workforce training, vendor contract provisions, policies and procedures, and web-based resources.

## **8. Conflicts of Interest**

Employees should always strive to avoid situations which constitute a conflict of interest or lend to the perception that a conflict of interest exists. Specifically, employees must avoid engaging in any business with the DCH which results in personal financial gain. Similarly, employees must encourage family members to avoid similar transactions since they are subject to the same restrictions as employees. DCH encourages its employees to seek guidance from the Office of General Counsel regarding questions on conflicts of interest.

## **9. Gifts**

Employees are strictly prohibited from individually accepting gifts from any person with whom the employee interacts on official state business. Gifts include, but are not limited to, money, services, loans, travel, meals, charitable donations, refreshments, hospitality, promises, discounts or forbearance that are not generally available to members of the public. Any such item received must be returned to the sender with an explanation of DCH's Ethics Policy.

## **10. Relationships with Vendors and Lobbyists**

DCH values vendors who possess high business ethics and a strong commitment to quality and value. Business success can only be achieved when those involved behave honestly and responsibly. Therefore, it is critical that employees ensure that vendors contracting with DCH are fully informed of DCH policies concerning their relationships with DCH employees and that these policies be uniformly applied to all vendors. Among other requirements, DCH expects that each vendor will honor the terms and conditions of its contracts and agreements. If DCH determines that a vendor has violated the terms and conditions of a contract or agreement, the vendor shall be held responsible for its actions.

Employees must ensure that fair and open competition exists in all procurement activities and contracting relationships in order to avoid the appearance of and prevent the opportunity for favoritism. DCH strives to inspire public confidence that contracts are awarded equitably and economically. DCH will apply the state procurement rules, guidelines, and policies. Open and competitive bidding and contracting will be the rule.

DCH recognizes that lobbyists, both regulatory and legislative, may from time to time seek to meet with DCH employees to advance a particular interest. DCH recognizes that employees may have personal opinions, even those that may be contrary to a position that DCH has adopted. DCH employees, however, must recognize that the public, including legislators and lobbyists, may have difficulty differentiating between the official DCH position and a personal opinion. Accordingly, employees should always work directly with the Director of Legislative Affairs in preparing any responses to requests or questions from elected officials and their staff or lobbyists.

## **11. Mandatory Reporting**

If I have knowledge of any ethics violation, I am aware that I am responsible for reporting such violation to the DCH Inspector General and the DCH Ethics Officer. My good faith reports will be free from retaliation. If I am a supervisor, I am aware that I am responsible for reporting such violation and for forwarding any such report from a member of my staff to the DCH Inspector General and the DCH Ethics Officer. As a supervisor, I am additionally responsible for ensuring that the employees who report to me are aware of and comply with the ethical standards and policies that are applicable to their positions.

**ACKNOWLEDGEMENT**

I, the undersigned, hereby acknowledge that:

A. I have received, read, and understand the Georgia Department of Community Health *Statement of Ethics*;

B. I agree to comply with each provision of the Georgia Department of Community Health *Statement of Ethics*;

C. I am a:

Member of the Board of the Department of Community Health

Member/employee of advisory committee or commission

Department Employee

Vendor/Contractor/Subcontractor

**CONTRACTOR**

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

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\* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

**ATTACHMENT H**

**ETHICS IN PROCUREMENT POLICY**

**Georgia Department of Community Health**

<b>DCH Ethics In Procurement Policy</b>	<b>Policy No. 402</b>
<b>Effective Date:</b> April 10 , 2006 <b>Revision Date:</b> March 25, 2008	<b>Page 1 of 8</b>

**I. THE COMMITMENT**

The Department is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards, is fully compliant with all instruments of governance and has the complete confidence and trust of the public it serves. To achieve these important public purposes, it is critical that potential and current vendors, as well as employees, have a clear understanding of and an appreciation for, the DCH Ethics in Procurement Policy (the “Policy”).

**II. SCOPE**

This Policy is applicable to all Vendors and Employees, as those terms are defined below.

**III. CONSIDERATIONS**

Procurement ethics must include, but is not limited to, the following considerations:

**A. Legitimate Business Needs**

The procurement of goods and services will be limited to those necessary to accomplish the mission, goals, and objectives of the Department.

**B. Conflicts of Interest**

A “conflict of interest” exists when personal interest interferes in any way with the interests of the Department. A conflict situation can arise when an individual takes actions or has interests that may make it difficult to perform his or her work objectively and effectively. Conflicts of interest also arise when an individual, or a member of his or her Family Member, receives improper personal benefits as a result of his or her action, decision, or disclosure of Confidential Information in a Procurement.

**C. Appearance of Impropriety**

Employees must take care to avoid any appearance of impropriety and must disclose to their supervisors any material transaction or relationship that reasonably could be expected to give rise to a conflict of interest. Similarly, anyone engaged in a business relationship with the Department should avoid any appearances of impropriety.

**D. Influence**

An impartial, arms' length relationship will be maintained with anyone seeking to influence the outcome of a Procurement.

**E. Gifts**

DCH Employees are prohibited from soliciting, demanding, accepting, or agreeing to accept Gifts from a Vendor.

**F. Misrepresentations**

Employees and Vendors may not knowingly falsify, conceal or misrepresent material facts concerning a Procurement.

**G. Insufficient Authorization**

Employees may not obligate the Department without having received prior authorization from an approved official. Engaging in such activity is a misrepresentation of authority.

An Employee's failure to adhere to these considerations, as well as the guidelines set forth herein shall be grounds for disciplinary action, up to and including, termination. Similarly, a Vendor's failure to comply with this Policy will result in appropriate action as determined by governing state and/or federal law, rules and regulations, and other applicable Department policies and procedures.

**IV. DEFINITIONS**

For purposes of this policy:

“Affiliate Vendor Team” shall mean employees, directors, officers, contractors, and consultants of a Vendor that directly or indirectly assist the Vendor in the preparation of response to a Procurement.

“Confidential Information” shall mean all information not subject to disclosure pursuant to the Open Records Act, O.C.G.A. §50-18-70 et seq. that a current Vendor or potential Vendor might utilize for the purpose of responding to Procurement or that which is

deemed disadvantageous or harmful to the Department and to the citizens of the State of Georgia in that such disclosure might lead to an unfair advantage of one Vendor over another in a Procurement.

“Contracting Officer” shall mean the Department Employee maintaining oversight of the Procurement process that may also be designated as the Point of Contact as described below.

“Department” shall mean the Georgia Department of Community Health.

“Employee” shall mean any person who is employed by the Department.

“Evaluation Team” shall mean a designated group of Department Employees who review, assess, and score documents submitted to the Department in response to a Procurement solicitation.

“Family Member” means a spouse, parent, grandparent, child, brother, sister, uncle, aunt, nephew, niece, first cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister.

“Financial Interest” shall mean, for purposes of this Policy, an ownership interest in assets or stocks equaling 0%.

“Gifts” shall mean, for purposes of this Policy, money, advances, personal services, gratuities, loans, extensions of credit, forgiveness of debts, memberships, subscriptions, travel, meals, charitable donations, refreshments, hospitality, promises, discounts or forbearance that are not generally available to members of the public. A Gift need not be intended to influence or reward an Employee.

“Kickback” shall mean compensation of any kind directly or indirectly accepted by an Employee from a Vendor competing for or doing business with the Department, for the purpose of influencing the award of a contract or the manner in which the Department conducts its business. Kickbacks include, but are not limited to, money, fees, commissions or credits.

“Procurement” shall mean buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. The term also includes all activities that pertain to obtaining any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, as well as the disposition of any Protest.

“Protest” shall mean a written objection by an interested party to an RFQ or RFP solicitation, or to a proposed award or award of a contract, with the intention of receiving a remedial result.

“Protestor” shall mean an actual bidder/offeror who is aggrieved in connection with a contract award and who files a Protest.

“Point of Contact” shall mean the individual designated to be a Vendor’s only contact with the DCH following the public advertisement of a solicitation or the issuance of a request for a bid, proposal, or quote, until the award of a resulting contract and resolution of a Protest, if applicable.

“Prohibited Contact” shall mean contact with any officer, member of the Board or other Employee of the DCH, other than the Point of Contact, whereby it could be reasonably inferred that such contact was intended to influence, or could reasonably be expected to influence, the outcome of a Procurement. This prohibition includes, without limitation, personal meetings, meals, entertainment functions, telephonic communications, letters, faxes and e-mails, as well as any other activity that exposes the Employee to direct contact with a Vendor. This prohibition does not include contacts with Employees solely for the purpose of discussing existing on-going Department work which is unrelated to the subject of the Procurement. Inquiries regarding the status of a Procurement should also be directed to the Point of Contact.

“Vendor” shall mean any individual or entity seeking to or doing business with the Department within the scope of this Policy, including, without limitation, contractors, consultants, suppliers, manufacturers seeking to act as the primary contracting party, officers and Employees of the foregoing, any subcontractors, sub consultants and sub suppliers at all lower tiers, as well as any person or entity engaged by the Department to provide a good or service.

“DOAS Vendor Manual” shall mean the Georgia of Department of Administrative Services’ vendor manual.

## **V. EMPLOYEE RESPONSIBILITIES**

### **A. Evaluation Team Members**

1. The Contracting Officer must ensure that employees participating in any Procurement activities have sufficient understanding of the Procurement and evaluation process and the applicable DCH and DOAS rules and regulations and policies associated with the processes.
2. Evaluation team members are tasked with conducting objective, impartial evaluations, and therefore, must place aside any personal and/or professional biases or prejudices that may exist. Additionally, Employees serving on an Evaluation Team must not allow personal relationships (i.e. friendships, dating) with Employees, principals, directors, officers, etc. of a Vendor or individuals on the Affiliate Vendor Team to interfere with the ability to render objective and fair determinations. Such interference may constitute the appearance of, and/or an actual conflict of interest and should be immediately disclosed to the

Contracting Officer prior to the Employee's participation on the evaluation team. The Contracting Officer shall consult with the Ethics Officer to make a determination as to whether the Employee should participate on the evaluation team.

3. In the event that the Department determines that a conflict of interest does exist and the Employee failed to make the appropriate disclosure, the Department will disqualify the Employee from further participation on the evaluation team. Furthermore, in the event that the Department determines that the conflict of interest did impact the outcome of a Procurement; such Employee may be subject to disciplinary action, up to and including termination.
4. In the event that the Department identifies that the employee maintains a relationship of any sort that lends to an appearance of a conflict of interest with respect to a Procurement, the Department may, in its discretion, take appropriate action to eliminate such an appearance, up to and including the disallowance of the Employee's participation in any Procurement activities. In such instances, the employee most likely will not be subject to disciplinary action.
5. Prior to participating on an evaluation team, each DCH Employee must execute a statement attesting and acknowledging that:
  - a. The Employee shall not participate in a decision or investigation, or render an approval, disapproval, or recommendation with respect to any aspect of a Procurement, knowing that the Employee, or member of their Family Member has an actual or potential Financial Interest in the Procurement, including prospective employment;
  - b. The Employee shall not solicit or accept Gifts, regardless of whether the intent is to influence purchasing decisions;
  - c. Neither the Employee nor a Family Member of an Employee shall be employed by, or agree to work for, a Vendor or potential Vendor or Affiliate Vendor Team during any phase of a Procurement;
  - d. The Employee shall not knowingly disclose Confidential Information;
  - e. The Employee is precluded from engaging in Prohibited Contact upon the release of a Procurement solicitation, during the Evaluation Process, and throughout a Protest period, period of stay or court injunction related to procurement with which Employee was associated or at any time prior to the final adjudication of the Protest;
  - f. The Employee is responsible for reporting any violations of this Policy in accordance with this Policy;

- g. The Employee will be responsible for complying with all DOAS rules and regulations, as well as Georgia law pertaining to procurements and conflicts of interest; and
- h. The Employee shall not assist a potential Vendor in the Procurement process in evaluating the solicitation, preparing a bid in response to the evaluation, or negotiating a contract with the Department. This prohibition shall not prohibit the Contracting Officer from carrying out his or her prescribed duties as allowed by DCH policy and procedures or the DOAS Vendor Manual.

**B. Responsibilities of Non-Evaluation Team Members**

All Employees should be mindful of the importance of confidentiality during any Procurement. Even if an Employee is not serving in the capacity of a member on the Evaluation Team, the Employee must refrain from engaging in conduct with a Vendor that could result in a conflict of interest or be considered a Prohibited Contact.

**VI. VENDOR RESPONSIBILITIES**

**A. Gifts and Kick-Backs**

Vendors may neither offer nor give any Gift or Kick-backs, directly or indirectly, to an Employee. Similarly, no Vendor may offer or give any Gift or Kick-backs, directly or indirectly, to any member of an Employee's Family Member. Such prohibited activity may result in the termination of the contract, in those cases where the Vendor has executed a contract with the Department. In the event that a potential Vendor who has submitted a response to a Procurement solicitation engages in such activity, the Department shall act in accordance with DOAS protocol.

**B. Family Relationships with Department Employees**

If a Vendor has a family or personal relationship with the Employee, a Gift that is unconnected with the Employee's duties at the DCH is not necessarily prohibited. In determining whether the giving of an item was motivated by personal rather than business concerns, the history of the relationship between the Vendor and Employee shall be considered. However, regardless of the family or personal relationship between a Vendor and an Employee, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the Employee in the performance of his or her official duties.

**C. Vendor Submittals**

The Department expects all potential Vendors and current Vendors to be forthcoming, always submitting true and accurate information in response to a Procurement or with regard to an existing business relationship. If the Department determines that the Vendor has intentionally omitted or failed to provide pertinent information and/or falsified or misrepresented material information submitted to the Department, the Department shall act in accordance with applicable state law and DOAS procurement policies and procedures.

Vendors must calculate the price(s) contained in any bid in accordance with Section 5.11 of the DOAS Vendor Manual.

#### **D. Business Relations**

A Vendor may not be allowed to conduct business with the Department for the following reasons:

1. Falsifying or misrepresenting any material information to the Department as set forth hereinabove;
2. Conferring or offering to confer upon an Employee participating in a Procurement (which the entity has bid or intends to submit a bid) any Gift, gratuity, favor, or advantage, present or future; and
3. Any other reasons not explicitly set forth herein that are contained in the DOAS Vendor Manual.

### **VII. USE OF CONFIDENTIAL INFORMATION**

Employees will not use Confidential Information for their own advantage or profit, nor will they disclose Confidential Information during a Procurement to any potential Vendor or to any other unauthorized recipient outside DCH.

### **VIII. ADDRESSING VIOLATIONS**

#### **A. The Process**

Adherence to this policy makes all DCH staff responsible for bringing violations to the attention of the Contracting Officer under Procurement protocols or to a supervisor/manager if the affected Employee is not a part of the Procurement. If for any reason it is not appropriate to report a violation to the Contracting Officer or the Employee's immediate supervisor, Employees will report such violations or concerns to the DCH Inspector General and the DCH Ethics Officer. The Contracting Officer and managers are required to report suspected ethics violations to the Inspector General, who has specific responsibility to investigate all reported violations.

Reporting suspected policy violations by others shall not jeopardize an Employee's tenure with the Department. Confirmed violations will result in appropriate

disciplinary action, up to and including termination from employment. In some circumstances, criminal and civil penalties may be applicable.

The Inspector General will notify the employee making the report of the suspected violation of receipt of such report within five (5) business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

#### **B. Good Faith Filings**

Anyone filing a complaint concerning a violation of this policy must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

#### **C. Confidentiality**

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation. Additionally, all Employees are expected to cooperate in the investigation of such violations. Failure to cooperate in an investigation may result in disciplinary action, up to and including termination from employment.

### **IX. MANDATORY REPORTING**

Any and every employee who has knowledge of any ethics violation is responsible for reporting such violation to the DCH Inspector General and the Ethics Officer. Good faith reports will be free from retaliation. Supervisors are responsible for reporting such violation and for forwarding any such report from any member of the supervisor's staff to the DCH Inspector General and the Ethics Officer. Reports of violations made to the Ethics Officer will be forwarded to the DCH Inspector General. Supervisors are additionally responsible for ensuring that the employees under his or her supervision are aware of and comply with the DCH ethical standards and policies.

Employees and Board members are encouraged to contact the DCH Inspector General about any concerns regarding standards of conduct, ethics and conflicts of interest.

**ACKNOWLEDGEMENT**

I, the undersigned, hereby acknowledge that:

- A. I have received, read, and understand the Georgia Department of Community Health’s *Ethics In Procurement Policy*;
- B. I agree to comply with each provision of the Georgia Department of Community Health’s *Ethics In Procurement Policy*;
- C. I am a (please check which applies):
  - Vendor/Contractor
  - Subcontractor

**CONTRACTOR**

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
\*TITLE

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\* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

# ATTACHMENT I

## Code of Ethics and Conflict of Interest Policy

<b>Code of Ethics and Conflict of Interest Policy</b>	<b>Policy No. 401</b>
<b>Effective Date:</b> November 1, 2006 <b>Revision Date:</b> January 26, 2011	<b>Page 1 of 10</b>

- References:**
1. O.C.G.A. §45-10-1 et seq.;
  2. O.C.G.A. § 21-5-1, et seq.;
  3. Governor’s Executive Order Establishing a Code of Ethics for Executive Branch Officers and Employees, January 10, 2011;
  4. DCH Ethics Statement
  5. DCH Ethics in Procurement Policy

### I. Purpose

The purposes of this policy are to assist DCH Employees and Board members in maintaining the highest standards of ethics and to provide guidelines that DCH Employees and Board members should follow in order to avoid a conflict of interest or the appearance of conflict.

### II. Definitions

For the purposes of this policy, the following terms shall have the following meanings:

- A. “Agency” shall mean any agency, authority, department, board, bureau, commission, corporation, committee, office, or instrumentality of the State of Georgia.
- B. “Board member” shall refer to all members of the Board of Community Health established under O.C.G.A. § 31-2-3.
- C. “Commissioner” shall mean the Commissioner of the Department of Community Health.
- D. “Department” shall refer to the Department of Community Health established under O.C.G.A. § 31-2-4.
- E. “Employee” shall mean any person who is employed by the Department.
- F. “Expenses” shall mean the provision of food, beverages, travel, lodging, and registration fees that are attendant to an Employee’s participation in a public

meeting related to official or professional duties. Expenses are limited to those items that are directly associated with the business or professional duties and are not attributable to personal, social or recreational activities.

- G. “Family Member” means a spouse, parent, grandparent, child, brother, sister, uncle, aunt, nephew, niece, first cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister.
- H. “Gifts” shall mean, for the purposes of this Policy, money, advances, personal services, gratuities, loans, extensions of credit, forgiveness of debts, memberships, subscriptions, travel, meals, charitable donations, refreshments, hospitality, promises, discounts or forbearance that are not generally available to members of the public. A Gift need not be intended to influence or reward an Employee.
- I. “Honorarium” shall mean payment to a professional person for services for which no fee is required. Honorarium excludes such things as a certificate or other token of appreciation, which has nominal value and may be accepted as a ceremonial courtesy.
- J. “Indirectly” is intended to cover, but not be limited to, any scheme, device or plan which circumvents the literal language of this Policy but provides material financial benefits to a Board member or an Employee or such person’s Family Member. “Limited powers” shall mean those powers exercised by Public Officials, which affect and influence a specific agency. “Lobbyist” shall have the meaning set forth in O.C.G.A. Section 21-5-70(5).
- K. “Nepotism” shall mean demonstrating favor on the basis of Family Member relationship in employment decisions such as hiring, promotions, transfers, or terminations.
- L. “Part time” shall mean employed for less than thirty (30) hours per week for a continuous period of fewer than twenty-six (26) weeks.
- M. “Public Official” shall mean any person elected or appointed to a state office wherein the person has administrative and discretionary authority to receive and expend public funds and perform certain duties that impact the public.
- N. “State-wide powers” shall mean those powers exercised by Public Officials which affect and influence all of state government.
- O. “State” shall mean the State of Georgia.
- P. “Substantial interest” shall mean the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

- Q. “Transacting business” shall mean to sell or lease any personal or real property, surplus personal or real property, or services on one’s behalf or on behalf of any third party as an agent, broker, dealer, or representative.
- R. “Vendor” shall mean the definition set forth in O.C.G.A. Section 45-1-6(a)(5), as well as any person seeking or opposing a certificate of need.
- S. “Value” shall mean actual retail price or cost attributable to a gift minus taxes and/or gratuities or a reasonable estimate based upon customary charges for like goods or services.

### **III. Code of Ethics**

In fulfilling designated duties and responsibilities, Employees and Board members should be mindful of the following principles:

- A. Uphold the Constitution, laws, and legal regulations of the United States and the State.
- B. Give a full day’s labor for a full day’s pay and perform duties with earnest effort and best thought.
- C. Never discriminate unfairly by extending special favors or privileges, whether for remuneration or not, and never accept, for personal gain or for a Family Member, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.
- D. Make no private promises of any kind binding upon the duties of office, since a government Employee has no private word, which can be binding on public duty.
- E. Refrain from engaging in business with the government, either direct or indirectly, which is inconsistent with the conscientious performance of governmental duties.
- F. Never use confidential information in the performance of governmental duties as a means of making a profit.
- G. Expose corruption.
- H. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- I. Uphold these principles, ever conscious that public office is a public trust.

### **IV. Transacting Business**

**A. DCH Board members and Employees**

1. DCH Board members and Employees must refrain from transacting business with the Department for personal gain or on behalf of another party. However, it is allowable for DCH Board members and Employees to conduct business with other Agencies as long as the business transaction does not result in a benefit for the Department.
2. Part-time Employees, however, are allowed to transact business with the Department under the following circumstances:
  - a. the transaction resulted from a sealed competitive bid; or
  - b. the transaction does not exceed \$250.00 in benefit to the Employee, or transactions in a given calendar year do not, in the aggregate, exceed \$9,000.
3. A business in which DCH Board members or Employees maintain a substantial interest may not transact business with the Department.

**B. Family Members**

If a Family Member of a Public Official or Employee maintains a substantial interest in a business, that business may not engage in a business relationship with the Department. Because Family Members are subject to the same ethical constraints as Public Officials and/or Employees, Family Members may conduct business with other Agencies only as long as the business transaction does not result in a benefit for the Department. This prohibition stems from the presumption that the Public Official or Employee, by virtue of his or her Family Member's relationship, has benefited from the business transaction.

**C. Exceptions**

The following transactions are permitted:

1. A transaction by a full-time or part-time Public Official or part-time Employee that does not exceed \$250.00, or in the alternative, transactions, which in the aggregate in any given year, do not exceed \$9000 in value.
2. A transaction involving the sale of real property through eminent domain.
3. A transaction involving the purchase of health, life, disability, retirement or pension benefits as a part of compensation.
4. A transaction involving a Public Official or Employee and the sale of property or services, where State funds pay for the transaction, and the property or

service remains with a third party who is restricted from selling the property or services to an Agency.

5. A transaction between a DCH Board member or Employee and a public contractor.
6. Any transaction involving an emergency purchase by the Department which must be made to protect the health, safety, or welfare of the citizens or property of Georgia; provided, however, that such emergency shall be attested to in writing by the DCH Division Chief under whose scope of responsibility the purchase is made.
7. A transaction wherein a Public Official or DCH Board member is the only source of supply within the State; provided, however, that the limitation to such exclusive, sole source shall be attested to in writing by the DCH Division Chief under whose scope of responsibility the transaction is made.
8. A transaction occurring before March 1, 1983.
9. A transaction involving the provision of Medicaid or Medicare related services and benefits to an Employee or his Family Member; provided, however, in the case of an Employee, he or she shall have no decision-making authority or influence over the determination of eligibility for or amount of such services or benefits.
10. Any transaction between a DCH board member or Employee and an entity within the University System wherein the transaction has been approved by the unit of the University System.
11. Any transaction occurring prior to a Public Official's qualification to run for office or acceptance of an appointment to a public office if the transaction predates the qualifying or acceptance date.
12. Any transaction, wherein the course of business, a DCH Board member or Employee collects sales tax, license fees, excise taxes, or commission as compensation for the performance of a service or good.

#### **D. Disciplinary Actions and Other Remedial Actions**

In the event that a DCH Board member or Employee participates in impermissible transactions and/or fails to comply with the reporting requirements in Paragraph V, the following consequences may result:

1. Removal from the Board by the Governor;
2. Termination from employment;

3. Civil fines not to exceed \$10,000; and
4. Restitution to the State for any financial benefit received as a result of the business transaction.

Similarly, if any business in which the DCH Board member's or Employee's Family Member has a substantial interest participates in an impermissible transaction, the business may be subject to the following consequences:

1. Civil fines not to exceed \$10,000; and
2. Restitution to the State for any financial benefit received a result of the business transaction.

## **V. Other Conflicts of Interest**

### **A. Procurement**

The Department is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards, and enjoys the complete confidence of the public. To achieve these important public purposes, it is critical that Employees and Board members have a clear understanding of, and an appreciation for, the ethics in procurement. See DCH Policy No. 402, "Ethics in Procurement" for further guidance.

### **B. Gifts**

Employees are prohibited from accepting gifts from any person with whom the Employee interacts on official state business. To the extent that gifts of nominal value are offered, (i.e., gifts with value of less than \$25.00), they may be shared with other members of the DCH. Exceptions shall include perishable items, such as a basket of fruit, which may be accepted and promptly placed in a common area of state property for sharing among a group.

Employees are allowed, however, to accept a gift on behalf of any Agency or the Office of the Governor or when ceremonial courtesies require such an acceptance. Upon acceptance, the Employee should transfer the gift to DCH, the Office of the Governor, or in the alternative, to a charitable organization on behalf of DCH or the Office of the Governor.

If a Vendor has a personal relationship with the Employee, a Gift that is unconnected with the Employee's duties at the DCH is not necessarily prohibited. In determining whether the giving of an item was motivated by personal rather than business concerns, the history of the relationship between the Vendor and

Employee shall be considered. However, regardless of the personal relationship between a Vendor and an Employee, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the Employee in the performance of his or her official duties.

**C. Honoraria**

Honoraria are payments to a professional person for services for which no fee is required. Honorarium excludes such things as a certificate or other token of appreciation, which has nominal value and may be accepted as a ceremonial courtesy. Employees are not allowed to accept honoraria.

**D. Service on Boards**

In general, Employees are restricted from serving as a corporate officer or director of for-profit or publicly held organizations. Notwithstanding the foregoing, each circumstance may be assessed on a case-by-case basis to determine if an actual conflict of interest exists, which would determine whether the Employee could provide such service.

Employees may provide pro bono services to non-profit organizations as long as such services do not negatively impact the Employee's ability to perform his or her duties effectively and with objectivity.

**E. Dual Employment**

See DCH Policy No. 411 for guidance regarding secondary employment.

**F. Political Activities**

See DCH Policy No. 416 for guidance regarding political activities.

**G. Nepotism**

The manner in which Family Members are employed in any organization may lend to an appearance of conflict of interest. The Governor's Executive Order Establishing a Code of Ethics for Executive Branch Officers and Employees prohibits an Employee from advocating for or causing the advancement, appointment, employment, promotion, or transfer of a Family Member to a position within the Department. Additionally, Georgia law restricts the Commissioner and Board members from engaging in that same activity wherein the salary of the Employee is \$10,000 annually or more.

In that the Department desires to assist supervisors in making equitable decisions regarding work assignments, promotions, performance evaluations, disciplinary

actions, and all other actions which have a direct impact on an individual's employment, the Department reserves the right to impose the following restrictions:

1. Family Members of individuals currently employed by the Department may be hired only if they will not be working directly for or supervising a Family Member.
2. If Family Members are currently employed, they cannot be transferred into a direct reporting relationship.
3. If the Family Member relationship is established after employment and there is a direct reporting relationship, the manager shall make the determination as to which Employee shall be subject to transfer, if such transfer does not adversely affect the business needs of the Department.

This policy shall in no means violate state and federal laws regarding discrimination on the basis of marital status.

## **VI. Lobbyists**

Employees must ensure that any vendor who submits bids and/or responses to request for proposals, submits an application for a certificate of need, or seeks confirmation of status, letter of non-reviewability, or opposition has certified on forms prescribed by the Department that any lobbyist employed or retained by the vendor has registered with the Government Transparency and Campaign Finance Commission and made the appropriate disclosures.

## **VII. Reporting Requirements**

### **Annual Filing by All Board Members**

Each Board member is required to file an annual affidavit relating to the impact of official actions on the member's private, financial and business interests. This affidavit must be filed with the Government Transparency and Campaign Finance Commission by January 31 of each year.

### **B. Annual Filing by Board Members and Employees Who Engaged in Certain Business Transactions**

DCH Board members and Employees must report, on a form prescribed by the Government Transparency and Campaign Finance Commission, an itemized list of business transactions with the State of Georgia or any state agency. This disclosure statement, containing the previous year's business transactions, must be submitted to the Government Transparency and Campaign Finance Commission no later than January 31 of each year. A copy of this report should be submitted to the General Counsel.

Board members and Employees are not required to submit such disclosure statements if they have not transacted business or if such transactions include only those set forth in Paragraph IV(C)(1).

**C. Annual Personal Financial Disclosure Filing by Commissioner**

The Commissioner shall be required to file, on an annual basis, a financial disclosure statement, including all information contained in O.C.G.A. Section 21-5-50.

**D. Report of Expenses and Fees**

As a rule, all expenses for an Employee to participate in conferences, meetings and other activities on behalf of DCH shall be paid by DCH. Expenses include food, beverages, travel and lodging. In limited exceptions, a person or entity, on behalf of an Employee, may offer to pay or waive registration fees when such fees are attendant to the Employee's participation in a public meeting related to official or professional duties; provided, however, that in no event may such fees be paid or waived by a contractor, vendor, potential bidder or lobbyist. Fees are limited to those items that are directly associated with the business or professional duties and are not attributable to personal, social or recreational activities.

A report of such fees must be filed with DCH's Ethics Officer no later than thirty (30) days after the fees have been paid or waived. The report should include:

1. Name and address of the person paying the registration fees; and
2. The description and value of each registration fee.

**E. Report of Gifts**

If an Employee receives a gift on behalf of DCH or the Office of the Governor, the Employee must file a report with DCH's Ethics Officer no later than thirty (30) days after the receipt of the gift. The report should include:

1. Name and address of the person giving the gift
2. The date the gift was given
3. The monetary value of the gift
4. An explanation of the disposition of the gift

## **VIII. Guidance**

In the event that a DCH Board member or Employee has reason to believe that a conflict of interest might exist in a particular circumstance, the Board member or Employee should seek guidance from the DCH Inspector General.

In those situations where a DCH Board member has in fact identified a conflict involving a matter before the DCH Board, the Board member should immediately recuse himself or herself from any discussion or voting on the matter. The withdrawal of the Board member from consideration of the matter should be entered in the minutes of the meeting of the Board and made a part of the permanent records of the Department.

## **IX. Mandatory Reporting**

Any and every employee who has knowledge of any ethics violation is responsible for reporting such violation to the DCH Inspector General and the DCH Ethics Officer. Good faith reports will be free from retaliation. Supervisors are responsible for reporting such violation and for forwarding any such report from any member of the supervisor's staff to the DCH Inspector General and the DCH Ethics Officer. Supervisors are additionally responsible for ensuring that the employees under his or her supervision are aware of and comply with the DCH ethical standards and policies.

Reporting suspected policy violations by others shall not jeopardize an Employee's tenure with the Department. Anyone reporting a possible violation of this policy must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation.

Any Department employee may report information, in good faith, concerning the possible violations of this policy in any Department programs or operations. No DCH employee will take action against, direct others to take action against, recommend personnel action against, approve personnel action against, or threaten another Department employee for questioning or reporting in good faith possible violations of this policy.

## **X. Acknowledgement of Policy**

Each Board member and Employee shall sign an acknowledgement that he or she:

- A. Has received a copy of the policy;
- B. Has read and understands the policy or, at least, is aware of the policy and is accountable for compliance with it;
- C. Agrees to comply with the policy;
- D. Agrees to submit the Financial Disclosure Statement as required by this policy, if required.
- E. Agrees to the disclosure of business transactions with the State

**ACKNOWLEDGEMENT**

I, the undersigned, hereby acknowledge that:

A. I have received, read, and understand the Georgia Department of Community Health,  
*Code of Ethics and Conflict of Interest Policy*;

B. I agree to comply with each provision of the Georgia Department of Community Health,  
*Code of Ethics and Conflict of Interest Policy*;

C. I am a Contractor.

**CONTRACTOR**

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
\*TITLE

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\* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract