**Draft Contract**

**for Medical Loss Ratio Audit Services**

**Between Florida Healthy Kids Corporation**

 **and [Vendor]**

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**Contract**

This Contract is entered into between the Florida Healthy Kids Corporation (“FHKC”), a Florida not-for-profit corporation established pursuant to chapter 617 and section 624.91, Florida Statutes, with offices at 1203 Governors Square Boulevard, Suite 400, Tallahassee, Florida 32301, and [insert Vendor] (“Vendor”), with offices at [insert address], (each, a “Party” and collectively, the “Parties”) to conduct medical loss ratio (MLR) audits of Florida Healthy Kids health plan MCOs. All attachments and the recitals to this Contract are hereby incorporated into the Contract by reference. Vendor responded to FHKC’s Request for Proposal 2023-300-02 Medical Loss Ratio Audit Services. FHKC has accepted Vendor’s proposal and enters into this Contract in accordance with the terms and conditions of the solicitation.

**Recitals**

Whereas, FHKC requires medical loss ratio audit services;

Whereas, Vendor agrees to provide medical loss ratio audit services;

Now therefore, in consideration of the premises and mutual covenants set forth herein, the Parties agree as follows:

1. Contract, Definitions, and Contract Interpretation Instructions

# Entire Agreement

This Contract and any amendments thereto contain all terms and conditions agreed upon by the Parties relating to the subject matter of this Contract and supersedes all other agreements, negotiations, understandings, or representations, written or verbal, between the Parties relative to the subject matter hereof. Each Party acknowledges that it is entering into the Contract solely on the basis of the representations contained herein, and for its own purposes and not for the benefit of any third party. This Contract shall not apply to any events or transactions occurring prior to the execution of the Contract by both Parties.

# Definitions

Capitalized terms used in this Contract without accompanying definitions shall have the following meanings:

**Access**: to review, inspect, approach, instruct, communicate with, store Data in, retrieve Data from, or otherwise make use of any Data, regardless of type, form, or nature of storage. Access to a computer, network, or other peripherals includes local and remote access.

**Business Day**: any day of the week excluding weekends and holidays approved by FHKC. A Business Day ends at 11:59 p.m., ET.

**Calendar Day**: any day in a month, including weekends and holidays. A Calendar Day ends at 11:59 p.m., ET.

**Confidential Information**: all information or material which (a) gives that Party some competitive business advantage, actual or potential, or the disclosure of which could be detrimental to the interests of that Party, regardless of whether marked with a legend; or (b) is marked "Confidential," "Restricted," or "Proprietary" or similar marking, or otherwise not subject to disclosure pursuant to chapter 119, Florida Statutes, the Florida Constitution, or other authority.

**Contract**: this Medical Loss Ratio Audit Services agreement, including appendices and all addenda, between FHKC and Vendor resulting from Request for Proposal 2023-300-02.

**Data**: any representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions related to or arising from this Contract. Data may be in any form, including storage media, computer memory, in transit, presented on a display device, or in physical media such as paper, film, microfilm, or microfiche. Data includes the original form of the Data and all metadata associated with the Data.

**Effective Date**: the date this Contract is fully executed; the date on which Vendor begins providing Services.

**Enrollee**: a child who is receiving health benefits under the Program.

**Event of Default**: an action or failure that renders the Contract terminable as set forth in Section 7.

**Financial Consequences**: the amount Vendor shall be assessed for failure to perform as specified in this Contract. Financial Consequences are not liquidated damages.

**Florida Healthy Kids**: the Florida CHIP and Full-Pay health benefits plans established by sections 624.91 and 409.813, Florida Statutes, administered by FHKC, and offered to children aged five through the end of age 18 or as otherwise required by law.

**Full-Pay Plan**: the non-CHIP health and dental insurance coverage available to children who are ineligible for CHIP but are otherwise eligible for health benefits through the Program.

**HIPAA**: the (a) Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, including its Omnibus Rule; (b) applicable provisions of the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009; and (c) their accompanying regulations, including the Privacy Rule (as defined herein) and the Security Rule (as defined herein). “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R., part 160 and part 164, subparts A and E, providing for federal privacy protections for an individual’s PHI held by entities subject to HIPAA requirements (each, a “Covered Entity”) and describing patient rights with respect to their PHI. “Security Rule” means the HIPAA Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, providing for federal security protections for individuals’ electronic personal health information.

**Managed Care Organization (MCO)**: a health insurance company or dental insurance company contracted with FHKC to provide medical and dental services to Enrollees.

**Notice**: formal written notification in accordance with Section 9.28 from one Party to the other Party under the Contract.

**Personally Identifiable Information (PII)**: information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

**Program**: the CHIP and Full-Pay Plans offered under the Florida Healthy Kids brand for which Vendor provides the Services required in this Contract.

**Protected Health Information (PHI)**: individually identifiable health information received or created by Vendor or its Subcontractors or agents pursuant to performance of the Services that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI does not include individually identifiable health information:

1. In education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g;
2. In records described at 20 U.S.C. § 1232g(a)(4)(B)(iv);
3. In employment records held by a covered entity (under HIPAA) in its role as employer; and
4. Regarding a person who has been deceased for more than 50 years.

**Region**: any of the 11 geographical areas designated by FHKC and encompassing specified Florida counties pursuant to Section 409.966, Florida Statutes.

**Services**: any service, activity, deliverable, or any other work provided by Vendor directly or indirectly under this Contract unless otherwise mutually agreed upon in writing pursuant to this Contract.

**Service Area**: the designated Region(s) for which an MCO is authorized to provide services to those Enrollees whose home addresses are located in such Region(s).

# Acronyms

Acronyms commonly used in this Contract shall have the meanings ascribed in this Section unless otherwise expressly stated:

**BA**: business associate

**C.F.R.**: Code of Federal Regulations

**CHIP**: Children’s Health Insurance Program

**COI**: certificate of insurance

**COOP**: continuity of operations plan

**EPHI**: electronic Protected Health Information

**ET**: Eastern Time

**FHKC**: Florida Healthy Kids Corporation

**HHS**: U.S. Department of Health and Human Services

**PHI**: Protected Health Information

**PII**: Personally Identifiable Information

**RFP**: Request for Proposal 2023-300-02

# Hierarchy of Documents

In the event of conflict among the Contract documents, the order of precedence is as follows:

1. This Contract document;
2. The attachments to this Contract document except Attachment B: Letter of Agreement;
3. RFP 2023-300-02 including all addenda, in reverse order of posting by date on the Florida Healthy Kids website, which are incorporated by reference;
4. Vendor’s response to RFP 2023-300-02, which is incorporated by reference; and
5. Vendor’s Letter of Agreement, attached to this Contract as Attachment B (if submitted).

In the event the terms of the Contract conflict with federal or state laws or regulations, the federal or state laws or regulations prevail.

# Rules of Interpretation

This Contract is and shall be deemed jointly drafted and written by all Parties to it and shall not be construed or interpreted against the Party originating or preparing it.

Unless otherwise indicated or required by context, the following rules of interpretation apply:

1. All references to an attachment, unless otherwise indicated, are to an attachment of this Contract;
2. The term “Section” refers to sections, subsections, sub-subsections, etc., of this Contract, as indicated by the text;
3. The table of contents and Section headings are for reference purposes only and do not limit or affect the meaning or interpretation of the text;
4. All singular terms include the plural and all plural terms include the singular;
5. Masculine, feminine, and neutral gender terms include all genders;
6. The word “include” and its derivatives are deemed to be followed by the phrase “but not limited to”;
7. Numbers 1-9 are spelled and numbers above 9 are designated by their numerals;
8. Reference to a governmental entity or person includes the authorized successors and assigns of the governmental entity or person; and
9. Reference to a law or regulation (federal or state) or a publication includes the law, regulation, or publication, as such may be amended or repealed after execution of the Contract.

# Attachments

The following attachment[s] to this Contract are hereby incorporated into the Contract by reference:

Attachment A: Business Associate Agreement

[Attachment B: Vendor Letter of Agreement]

1. Term and Compensation

# Contract Term

The term of this Contract begins on upon execution by both Parties and ends on the later of June 30, 2024 or upon final acceptance of all audit reports, unless otherwise terminated or extended.

# Amendments to the Contract

This Contract may be amended by the mutual written consent of the Parties at any time.

The provisions of this Contract shall be automatically modified without a written agreement to the extent necessary to comply with federal, state, and local laws, ordinances, rules, and/or regulations.

Upon FHKC’s Notice to Vendor, the provisions of this Contract shall be automatically modified without a written agreement to the extent necessary to comply with the requirements of FHKC’s contract with AHCA.

FHKC may unilaterally require changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. FHKC may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of Vendor, which shall not be unreasonably withheld.

The Contract contains all the terms and conditions agreed upon by the Parties, and terms and conditions shall govern all transactions between FHKC and Vendor. The Contract may only be modified or amended as set forth in this Section of the Contract. No oral agreements or representations shall be valid or binding upon FHKC or Vendor. No alteration or modification of the Contract terms, including substitution of Services, shall be valid or binding against FHKC. Vendor may not unilaterally modify the terms of the Contract by affixing additional terms to Services, by incorporating such terms onto Vendor’s order or fiscal forms or other documents forwarded by Vendor for payment, or by other means. FHKC’s acceptance of Services or processing of documentation on forms furnished by Vendor for approval or payment shall not constitute acceptance of the proposed modification to the Contract.

# Compensation

Vendor agrees to perform the Services for the compensation proposed by Vendor in its response to RFP 2023-300-02, as further specified in Sections 2.8, as applicable. Vendor bears the risk of any assumptions Vendor utilized in the development of its response and, as a result, also bears the risk of the compensation due to Vendor under this Contract. No additional compensation shall be allowed unless specifically agreed upon in writing by the Parties.

# Invoices

Invoices shall be submitted to FHKC in the format prescribed in advance by FHKC and shall contain sufficient documentation and detail (a) for a proper pre-audit and post-audit thereof and (b) to enable FHKC to confirm whether the amounts set forth on each invoice accurately reflect the amounts due and payable under this Contract (“Proper Invoice”).

Vendor shall submit a Proper Invoice after the final audit reports are accepted by FHKC in accordance with section 2 and no later than July 20, 2024. Excluding only “Disputed Amounts” (as defined in Section 2.6), FHKC shall pay the entire amount of such Proper Invoice within 30 Calendar Days after receipt of a Proper Invoice (the “Payment Date”) via electronic funds transfer to Vendor’s account. If FHKC requests additional information regarding an invoice, Vendor shall provide detail or clarification within five Business Days to FHKC for review.

Within 30 Calendar Days of receipt of such detail or clarification, FHKC shall remit payment for any amount that is not a Disputed Amount. If FHKC fails to provide payment as prescribed by this paragraph by the Payment Date, or if any Disputed Amount is resolved to be owed to Vendor by FHKC and is not paid within 30 Calendar Days after the date of such resolution, an interest payment shall be due at a rate as established pursuant to Section 55.03(1), Florida Statutes, on the unpaid balance from the time such amount was due until such time as Vendor receives payment for the unpaid balance. Invoice payment requirements do not start until a Proper Invoice is provided to FHKC.

FHKC may delay payment without change in any of Vendor’s obligations under this Contract when such payment delay is the result of any act described in Sections 7.1 or 9.18, changes to Florida’s Title XXI Children’s Health Insurance Program, lack of legislative funding, or other temporary shortfalls resulting from mitigating actions for an emergency or urgent situation. In the event of such delay, FHKC shall act in good faith to resolve and make the delayed payments to Vendor.

# Disputed Invoices

In the event FHKC disagrees with or questions any amount due under an invoice provided by Vendor (“Disputed Amount”), FHKC shall notify Vendor of any Disputed Amount and the basis for the dispute within 30 Calendar Days after receipt of the invoice. The Parties agree to work in good faith to resolve the Disputed Amount within 30 Calendar Days of the notification. In the event an invoice dispute is not resolved, the Parties shall resolve the dispute in accordance with Section 8 of this Contract.

# Overpayments

Vendor shall return to FHKC any overpayments that were paid under this Contract within 30 Calendar Days of identification by either Party.

If FHKC overpays Vendor, Vendor shall refund to FHKC such overpayment together with interest calculated from the date of the overpayment at the rate set forth in Section 55.03(1), Florida Statutes, in a manner specified by FHKC. Each Party shall notify the other timely of the nature of any error or inaccuracy relating to an invoice or a payment as soon as such Party becomes aware of the error or inaccuracy.

# Appropriations

As a subrecipient of public funds, FHKC’s ability and obligation to make full payment for any provision of this Contract or the performance of any Services is contingent upon receipt of pass-through funding from AHCA, as appropriated by the Florida Legislature. FHKC shall diligently seek funding from AHCA and/or the Florida Legislature to fund the Contract. FHKC may, but is not required to, use monies from other sources to fund this Contract, in whole or in part.

The foregoing does not in any way limit, abrogate, or otherwise modify Vendor’s rights or remedies under applicable law, including Vendor’s rights to seek a legislative claims bill.

# Pricing

Total compensation for Services: [TBD]

# Payment upon Expiration or Termination

By the later date of 60 Calendar Days after expiration or termination of this Contract or July 20, 2024, Vendor must submit an invoice (as defined in Section 2.5) for final payment or the invoice shall not be honored and shall be returned unpaid. Invoices and payments under this Section are subject to the procedures set forth in Sections 2.5 and 2.6.

1. Scope of Services

Vendor shall conduct an MLR audit for each of FHKC’s three health plan MCOs for [one health plan MCO contract year; two health plan MCO contract years] following generally accepted accounting principles. The MLR audit must include review of all relevant information provided in 42 C.F.R. 438.8, including health care quality improvement activities.

Vendor and FHKC will work together to determine a schedule of work based on the draft schedule of work Vendor provided as part of the RFP. The draft scope of work is due within 10 Business Days of the Contract effective date. Dates included in the schedule of work may be moved or waived by FHKC, as needed. Changes or waiver of these dates does not require formal notice under the Contract and may be provided through email.

Vendor shall provide an individual audit report for each of the three health plan MCOs. [If multiple contract years are selected: Vendor may choose to submit a separate audit report for each year audited for each plan for a total of 6 audit reports or Vendor may choose to include both audited years in one report so long as the audit report clearly distinguishes between the two years. Nothing from either contract year may be used to or considered to offset any item from the other contract year.] Vendor must provide the health plan MCOs a reasonable opportunity to respond to the audit findings. Any plan responses, and Vendor’s response back, if any, will be included in the MLR audit reports. Draft MLR audit reports are due to FHKC by June 1, 2024. Final audit reports are due to FHKC by June 30, 2024.

Vendor acknowledges and agrees that the MLR audit reports will be publicly posted on FHKC’s website. Vendor shall follow the requirements of section 8.10 for posting Confidential Information, including any Confidential Information identified as such to Vendor by FHKC’s health plan MCOs.

# Reports and Deliverables

Vendor agrees FHKC shall have the right to use, duplicate, and disclose information and Data developed or derived from Vendor’s reports and deliverables except as otherwise stated herein.

Vendor shall comply with all reporting requirements under this Contract in the manner and timeframes required by FHKC. For this section, the term “reports” encompasses reports, documents, deliverables, and other information provided to FHKC.

Vendor shall provide reports to FHKC electronically in a manner provided by FHKC.

Reports must have logical progression and consistent layouts, be free of grammatical and formatting errors, include a table of contents with working links, and use plain language when possible.

Vendor shall be liable for Financial Consequences in the amount of $500 per report for failure to adhere to any reporting requirement.

FHKC shall not assess both Business Day and per incident Financial Consequences for the same instance of noncompliance nor shall FHKC assess such Financial Consequences when FHKC has assessed other Financial Consequences for an equivalent reason for the instance of noncompliance.

# Activities Reports

By the 5th Calendar Day of each month, Vendor shall provide a monthly report briefly listing the activities performed in the prior month and any major issues that occurred, including issue status.

# Warranty of Ability to Perform

Vendor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Vendor’s ability to satisfy its Contract obligations. Vendor warrants that neither it nor any affiliate is currently on the convicted Vendor list maintained pursuant to Section 287.133, Florida Statutes; is not listed as provided in section 287.135, Florida Statutes, on any of the Scrutinized Companies Lists created pursuant to sections 215.4725 or 215.473, Florida Statutes, or engaged in business operations in Cuba or Syria; or on any similar list maintained by any other state or the federal government. Vendor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

1. Contract Administration

# Organizational Roles and Responsibilities

The Parties agree that, for efficient and effective communication to occur, clear lines of authority and areas of responsibility need to be identified for each Party.

## Key Personnel

Vendor shall provide a key personnel contact matrix that denotes the key personnel related to this Contract. The key personnel contact matrix shall include the name; email address; direct office telephone number; work cell phone number, if any; respective duties; and organizational reporting relationship for each individual.

Vendor shall provide its key personnel contact matrix at the time of Contract execution and when changes occur. Vendor shall provide written notice to FHKC of any changes to the key personnel designations or contact information no later than one Business Day for the executive sponsor and contract manager and five Business Days for any other individual.

Vendor’s key personnel shall include the following positions at a minimum:

1. An executive sponsor;
	1. The executive sponsor must have decision-making authority for Vendor; and
	2. The executive sponsor shall not be the same individual as the contract manager.
2. A contract manager;

The list of key personnel positions is intended to be descriptive of the role of each person. Job titles are not required to match the list of key personnel positions.

Each member of the key personnel shall:

1. Be knowledgeable about Vendor’s operations relating, directly or indirectly, to Vendor’s obligations under this Contract, insofar as such operations relate to his or her job duties;
2. Be knowledgeable about and able to coordinate with other Vendor contacts for work that falls outside of his or her responsibilities or scope of expertise; and
3. Dedicate the time and resources necessary to manage FHKC’s account, including reasonable availability for and responsiveness to telephonic and email communication and meetings.

At a minimum, Vendor’s contract manager shall provide a secondary contact and the secondary contact’s information, including name, email address, and phone number, when the aforementioned primary contact is out of the office or unavailable for extended periods of time.

This section is intended to provide FHKC with primary contacts for key contract functions and shall not limit either Party from working with directly, or indirectly, additional individuals.

# Major Organizational Changes

No change in Vendor’s ownership structure or controlling interest releases Vendor from its obligations under this Contract. For purposes of this Section, a change in ownership structure or controlling interest results when a person or entity acquires, due to an ownership interest, control over any aspect of Vendor’s business operations, including through an asset or stock purchase.

Vendor shall provide Notice to FHKC within one Business Day after the filing of an application for merger, acquisition, or any other legal or regulatory request to change Vendor’s ownership structure or controlling interest, and provide a minimum of 60 Business Days Notice to FHKC prior to the transfer or sale to a wholly owned subsidiary. Further, Vendor shall give FHKC Notice of regulatory agency approval, if applicable, prior to any transfer or change in ownership structure or controlling interest.

FHKC has the right to elect to continue or terminate this Contract, at its sole discretion, in the event of a change in Vendor’s ownership structure or controlling interest. In such event, FHKC shall provide at least 30 Calendar Days Notice to Vendor of the decision to terminate the Contract.

# Meetings

Meetings are expected to be held virtually through conference call software or via telephone. Vendor shall be available to attend meetings or present requested information to other stakeholders, as directed by FHKC.

Upon FHKC request, Vendor shall provide to FHKC for approval a proposed agenda in advance of scheduled meeting dates. Vendor shall publish and distribute the approved agenda and related documents and/or handouts within the timeframe specified by FHKC. Vendor shall provide detailed and well-documented minutes of meetings as required by FHKC.

# Employees and Agents

All Vendor employees and agents performing work under the Contract shall be properly trained and meet or exceed any specified training qualifications. Upon request, Vendor shall furnish a copy of technical certification or other proof of qualification. All employees or agents performing work under the Contract must comply with all security and administrative requirements of FHKC and shall comply with all controlling laws and regulations relevant to the Services. FHKC may refuse Access to, or require replacement of, any employee or agent for cause, including technical or training qualifications, quality of work, change in security status, or non-compliance with FHKC’s security or other requirements. Such refusal shall not relieve Vendor of its obligation to perform all Services in compliance with the Contract. FHKC may reject and bar from any facility for cause any of Vendor’s employees or agents.

# Subcontractors

Vendor may not delegate performance of work required under this Contract to Subcontractors.

# Audit, Investigation, Inspection, and Review Rights

FHKC, AHCA, AHCA’s Office of Inspector General, U.S. Centers for Medicare and Medicaid Services, HHS, HHS’ Office of Inspector General, the Comptroller General of the U.S. and their designees, any vendor contracted with FHKC, or any state or federal agency authorized by law have authority to perform audits, investigations, inspections, and reviews may, at any time, inspect the premises, physical facilities, and equipment where and on which work related to this Contract is conducted.

All entities shall have Access to electronic and physical records and Data in the possession of Vendor related to, or created as a result of, this Contract to fulfill their audit, investigation, inspection, and review responsibilities.

Vendor shall be responsible for the costs associated with the audits, investigations, inspections, and reviews. If practical, FHKC shall use reasonable efforts to minimize the number and duration of such audits, investigations, inspections, and reviews and to conduct such audits, investigations, inspections, and reviews in a manner that shall minimize the disruption to Vendor's or its affiliates’, or agents’ business operations.

Except as otherwise expressly set forth in the Contract, FHKC agrees to share any of its audit findings with Vendor. Vendor agrees to respond to audit findings within 20 Business Days of receipt of the audit findings. In its sole discretion, FHKC may extend the date for responding to audit findings.

Vendor shall cooperate in any audits, investigations, inspections, and reviews conducted by FHKC, FHKC’s contracted Vendors, or authorized state or federal agencies for a period of at least 10 years following termination or expiration of the Contract. These efforts may include a post-Contract audit. In the event records must be sent to FHKC, Vendor is responsible for production, delivery, and associated costs.

Under section 20.055(5), Florida Statutes, Vendor agrees to, and shall ensure it and its employees and agents shall, cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

Failure to comply with this provision may constitute an Event of Default and may render this Contract subject to unilateral cancellation by FHKC as determined by FHKC in its sole discretion.

## System Security Controls Assessment Report

Vendor shall provide a system security assessment report conducted by a qualified third party within two weeks of Contract execution. Such report shall be based on the system security plan controls set forth in Section 6.3.1. Vendor may provide proof of HITRUST certification in lieu of the system security assessment report.

# Monitoring

FHKC shall monitor, directly and indirectly, Vendor for compliance with this Contract and applicable federal and state laws and regulations.

In addition to the Data, documentation, and information specified in this Contract, Vendor must submit any other Data, documentation, or information relating to the performance of Vendor’s obligations under this Contract required by FHKC or the secretary of HHS.

Vendor shall regularly monitor its own performance under this Contract.

# Continuity of Operations Plan

Vendor shall maintain a COOP and make it available to FHKC upon request. The COOP shall describe the methodology and timelines associated with business continuity to address emergencies from an all-hazards and disasters approach or major system outage to ensure critical functions continue.

1. Insurance Coverage

Vendor shall, at no cost to FHKC, secure, continuously maintain, and provide proof (e.g., certificate of insurance) of the insurance coverage required by law and this Section. Vendor will provide proof of insurance within five Business Days of Contract execution. Performance of Services may not commence on this Contract until such time as insurance is secured by Vendor and approved by FHKC, which approval shall not unreasonably be withheld or delayed. Vendor shall be responsible for any deductible payments. In no event shall FHKC be liable for any insurance claim from Vendor or agents or employees thereof. Once obtained by Vendor, Vendor shall keep all insurance coverages in effect until the expiration or termination of the Contract. Vendor shall provide 30 Calendar Days prior written Notice to FHKC regarding the cancellation of any coverage.

# Commercial General Liability Insurance

Vendor shall secure and continuously maintain commercial general liability insurance (inclusive of any amounts provided by an umbrella or excess policy).

# Cyber Liability Insurance

Vendor must continuously maintain cyber liability insurance with limits of liability necessary to provide reasonable financial protections to Vendor and FHKC under the Contract.

# Professional Indemnity Insurance

Vendor shall secure and continuously maintain professional indemnity insurance that shall cover professional liability and error and omissions.

# Worker’s Compensation Insurance

Vendor shall secure and continuously maintain workers' compensation insurance coverage as required under all relevant workers' compensation statutes. Such coverage shall comply fully with all applicable state and federal laws governing workers' compensation. The insurance shall cover all of Vendor’s employees connected with the provision of Services. For any employee engaged in hazardous work under this Contract who is not protected or otherwise covered under applicable workers' compensation statutes, Vendor shall provide adequate insurance coverage for such employee that is satisfactory to FHKC.

Vendor may use a self-insurance program approved by the Florida Department of Financial Services, Division of Workers’ Compensation, or if a force majeure condition causes Services to be provided by Vendor’s employees located outside of the State of Florida, Vendor may use a self-insurance workers’ compensation program approved by the state in which the Services are performed and Vendor’s employees are located.

1. Security

# Security Officers

Each Party's security officer shall work with the other Party's security officer with respect to security matters and related issues concerning the Contract. This does not preclude either security officer from working on other matters unrelated to the Contract.

# Background Screening

## Background Screening Requirement

All Vendor employees and agents performing Services under the Contract must comply with all security and administrative requirements.

Prior to Access Vendor shall conduct the following background screenings (where available), or ensure that such a screening is conducted, for each employee, independent contractor, leased employee, volunteer, licensee, or any other person (hereinafter referred to as “Person” or “Persons”) who has Access to the PHI, PII, or financial information of an Enrollee or Applicant:

1. Criminal case searches:
	1. County level in county(ies) where Person has lived;
	2. State level in state(s) where Person has lived; and
	3. Federal-level databases and any other national-level databases for any other country in which Person has lived.
2. Other searches:
	1. National Criminal Database Search, which includes:
		1. National Sex Offender database for all 50 states;
		2. Office of Foreign Assets Control (international economic and trade sanctions (“Terrorist Watchlist”));
		3. Fraud Abuse Control Information System (FACIS) (sanctions from federal administrative agencies, e.g., OIG, DEA, and FDA);
		4. Global sanctions (“Sentinel Watchlist”)
	2. Social Security Number trace;
	3. Licensure verification (professional license and any administrative action); and
	4. Employment verification.

Unless an exemption is granted by FHKC in writing, Vendor shall ensure no Person has Access to PHI, PII, or financial information if:

1. The Person would be precluded from any type of employment under section 435.04(2), (3), or (4), Florida Statutes;
2. The Person violated sections 812.0195, 815.04, 815.06, or 817.568, Florida Statutes; or
3. The Person violated 42 U.S.C. § 1320d-5.

The look-back period for background screenings shall be for a minimum of 10 years when 10 years of historical information is available.

Vendor shall develop and maintain policies and procedures related to the background screening requirement, including a procedure to grant an exemption from disqualification for disqualifying offenses revealed by background screening, as described in section 435.07, Florida Statutes.

Vendor shall provide an attestation of compliance within 30 Calendar Days of Contract execution.

Vendor shall maintain documentation of all background screening records pursuant to section 9.31 Record Retention.

## Failure to Perform Background Screening Obligations

Each time Vendor fails to perform its obligations under Section 6.2.1, FHKC shall be entitled to liquidated damages of $500 for each violation (i.e., per Person (as that term is defined in Section 6.2.1) not screened timely) per month (including partial months) until the violation is remedied. Liquidated damages shall be limited to $5,000 for this section. The Parties acknowledge that these liquidated damages are exclusive of any other right to damages; are not intended to be a penalty; and are intended to compensate for unknown and unascertainable damages associated with FHKC’s internal staffing and administrative costs, as well as the diminished value of Services. Vendor’s failure to perform these obligations shall also be an Event of Default, subject to cure as provided in Section 7.2 and shall entitle FHKC to recover any other damages it incurs (including any actual out-of-pocket expenses to investigate or remediate the violation) and pursue injunctive relief.

# Vendor’s Internal Security Controls

## System Security Plan

Vendor shall maintain and implement a system security plan that describes the controls within the vendor system aligning with NIST SP 800-18 and the controls in NIST 800-83 Rev 5 moderate controls only, MARS-E, and Internal Revenue Service 1075, as applicable, as related to systems that will contain FHKC data. The system security plan shall include all applicable controls, a detailed system description including systems and services inventory related to FHKC data, detailed description of Data flows and authorization boundaries, role-based Access control model, system security monitoring activities, security clearance/staffing controls policies and procedures, and supporting documentation. The system security plan shall be a living document, which Vendor shall update as follows: (a) no less than annually, (b) when new vulnerabilities or compensating controls are identified that change the security posture or infrastructure, and (c) when additional products and controls are implemented.

Vendor shall provide an attestation attesting to the system security plan within 30 Calendar Days of Contract execution. Vendor shall provide access to the system security plan upon FHKC request to allow FHKC to monitor the Contract or conduct a Contract audit.

## Telework and Telecommuting

Vendor shall maintain policies and procedures for telework (e.g., Access by User from a facility where Data does not reside) and telecommuting (e.g., Access by User from home or travel environment). For purposes of this Section, “telework” includes “telecommuting.” Telework policies and procedures and other related documents shall meet the standards required for compliance with all laws and regulations, including HIPAA.

Vendor shall assess risk when developing, implementing, or changing its telework security policy, particularly for those aspects of the telework security policy for which various approaches may provide acceptable safeguards or for which unauthorized Access to PHI or PII is likely to occur without appropriate safeguards. Vendor shall require multifactor authentication or more stringent practices for any level of remote Access.

Upon request, Vendor shall provide FHKC with sufficient information to assure FHKC that appropriate policies, procedures, and practices are in place. Such information is not required to be so detailed that it may present a security risk.

## Encryption In-Transit and At-Rest

Vendor shall establish, maintain, and enforce (and Vendor shall ensure its affiliates and agents establish, maintain, and enforce) a policy that restricts sending email containing any Data that is customarily considered sensitive or confidential in nature. Vendor agrees to encrypt the transmission of all Data that is customarily considered sensitive or confidential in nature. Vendor shall obtain FHKC’s approval for the encryption software and procedures used by Vendor. As identified in the system security plan, Vendor shall comply with NIST recommendations for the use of leading industry standards for encryption for electronic PHI transmitted through email. Vendor shall configure Data that is customarily considered sensitive to support leading encryption industry standards.

Vendor may receive emails or other electronic transmissions from FHKC or a Covered Entity containing Data that is customarily considered sensitive or confidential in nature, subject to any appropriate security controls, including those set forth in Attachment A: Business Associate Agreement; further, in the event of such transmission, Vendor shall protect the confidentiality of such Data.

All Data that is customarily considered sensitive or confidential in nature shall be encrypted while at rest using FIPS (Federal Information Processing Standards)-compliant full disk encryption (FDE) technology, including Data on all laptop computers, tablets, other portable computers, and data storage devices used to Access Data that is customarily considered sensitive or confidential in nature.

## No Offshoring

Except as expressly authorized in this Contract, Vendor and its agents are prohibited from (a) performing any Services outside the continental U.S., except with FHKC’s prior written approval; (b) sending, transmitting, or maintaining Data outside the continental U.S.; or (c) Accessing Data from outside the continental U.S. The Parties agree that a violation of this provision shall:

1. Result in immediate and irreparable harm to FHKC, entitling FHKC to immediate injunctive relief; provided, however, this shall not constitute an admission by Vendor to any liability for damages under paragraph (c) below or any claims, liability, or damages to a third party, and is without prejudice to Vendor in defending such claims;
2. Entitle FHKC to liquidated damages of $10,000 per violation. Liquidated damages under this Section shall be capped at $100,000 per occurrence.
3. Entitle FHKC to recover damages, if any, arising from a breach of this Section above and beyond those covered under paragraph (b). Vendor expressly agrees that FHKC’s recovery of damages in this paragraph (c) is not subject to the limitations in Section 9.17; and
4. Constitute an Event of Default subject to cure under Section 7.2.

The Parties acknowledge that the liquidated damages in paragraph (b) are exclusive of any other right to damages; are not intended to be a penalty; and are intended to compensate FHKC for unknown and unascertainable damages associated with the diminished value of Services, as well as FHKC’s internal staffing and administrative costs of investigations and audits of the sending, transmitting, or Accessing of Data outside the continental U.S. For purposes of determining the amount of liquidated damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same offshore entity) shall be treated as a single violation. Liquidated damages are exclusive of any other right to damages. Violation of this Section shall entitle FHKC to recover any other damages it incurs (including any actual out-of-pocket expenses incurred by FHKC to investigate and remediate the violation) and pursue injunctive relief.

## Onsite and Telework Security

Vendor shall ensure security requirements are met for onsite and telework locations, as applicable, including the following:

Vendor shall prohibit the printing of PHI and PII without utilization of a personal identification number, passcode, or authentication device associated with the sender of the document;

Except as expressly authorized in this Contract or with FHKC’s prior written approval, configure all computers with Access to Data to prohibit the storage of information to any location (other than the network server or central server), including USB/PIN drive, compact disk (CD), DVD, or similar device or drive; to the extent any computer retains such devices, they shall be disabled;

Vendor personnel working offsite or outside Vendor’s locations may only Access PHI and PII via Vendor’s virtual private network;

Only allow the printing of PHI and PII when necessary, require the on-site shredding of all paper documents when no longer necessary to support the Services, and employ an accredited shredding company to dispose of shredded documents. Vendor shall supervise all on-site shredding activities;

Ensure all printer and computer hard drives are erased, or destroyed prior to surplus, sale, or returned to lessor;

Remind employees frequently of their responsibility to safeguard PHI and PII and require them to report to their manager any suspected instances of security violations and perceived weaknesses in security procedures;

Provide a privacy disclosure policy to its employees and require signatures denoting the employee’s understanding of the security provisions of this Contract. Upon request, Vendor shall provide a copy of the employees’ signed privacy disclosure policy;

Ensure employees receive annual training regarding information privacy and security. Upon request, Vendor shall provide a copy of the privacy and security training materials and employee training logs to FHKC; and

Immediately report any problems or concerns discovered during the course of business or as a result of an investigation or audit to FHKC.

## Liquidated Damages for Late Notice Under Business Associate Agreement

If Vendor fails to provide timely Notice as required by Sections 4.5 and 4.6 of Attachment A: Business Associate Agreement, then FHKC shall be entitled to liquidated damages equal to $500 per Calendar Day Vendor was required to provide Notice to the Customer or entity until such Notice is provided. These liquidated damages are exclusive of any other right to damages; are not intended to be a penalty; and are intended to compensate for unknown and unascertainable damages associated with FHKC’s internal staffing and administrative costs, as well as the diminished value of Services. Vendor's failure to perform these obligations shall also be an Event of Default, subject to cure upon Notice from FHKC as provided in Section 7.2 and shall entitle FHKC to recover any other damages it incurs (including any actual out-of-pocket expenses incurred by FHKC to investigate and remediate the violation) and to pursue injunctive relief.

## Data Sharing Agreements

Vendor shall enter into data sharing agreements with the health plan MCOs as required by FHKC.

1. Termination, Default, and Remedies

# Right of Termination

## Termination for Cause

FHKC has the right to terminate the Contract in the event Vendor fails to cure an Event of Default as required in Section 7.2 or upon the occurrence of any event that is not subject to cure, as expressly identified in this Contract.

## Termination for Non-Appropriation of Funds

FHKC may, in its sole discretion, terminate this Contract by providing 30 Calendar Days Notice to Vendor if the State of Florida and/or U.S. Government does not appropriate sufficient funds to AHCA, or if AHCA does not provide sufficient funding, for FHKC to perform the obligations under this Contract. The Contract shall terminate on the last day of the month in which sufficient funds were appropriated or funded, subject to the terms in this Contract.

FHKC may, in its sole discretion, extend the effective date of the termination.

## FHKC’s Right to Terminate for Convenience

FHKC may terminate for convenience the Contract, in whole or in part, upon 60 Calendar Days Notice to Vendor when FHKC determines, in its sole discretion, that it is in its best interest to do so. Vendor shall not furnish any Services after the date of termination, except as necessary to complete the continued portion of the Contract, if any. Vendor shall not be entitled to recover any cancellation charges, consequential damages, or lost profits.

In the event FHKC terminates any portion(s) of the Contract, the portions of the Contract that are not terminated shall continue, and Vendor’s sole and exclusive remedy is the recovery of the compensation set forth in Section 2.4 for any of the continued Services performed by Vendor. Any such payment shall be equitably reduced to exclude compensation for the terminated portion(s) of the Contract.

## Termination for Lack of Performance and Events of Default

This Contract is contingent upon the satisfactory continuous performance of Vendor. If Vendor commits an Event of Default or fails to adequately meet the terms of this Contract, FHKC may terminate this Contract, or any part herein, at its discretion. Such termination shall be effective on the date determined by FHKC and provided by written Notice to Vendor. Vendor shall not furnish any Services after the date of termination, except as necessary to complete the continued portion of the Contract, if any.

Each of the following constitutes an Event of Default by Vendor:

1. Breach of a material obligation under this Contract;
2. The occurrence of any one or more of the following events:
	1. Vendor fails to pay any sum of money due under the Contract;
	2. Vendor fails to provide any reports or other documents as required under the Contract;
	3. Vendor employs an unauthorized alien in the performance of any Services;
	4. Vendor fails to correct work that FHKC has rejected as unacceptable or unsuitable;
	5. Vendor discontinues the performance of Services;
	6. As specified by FHKC, Vendor fails to resume discontinued Services;
	7. Vendor abandons the project;
	8. Vendor becomes insolvent or is declared bankrupt;
	9. Vendor files for reorganization under the bankruptcy code;
	10. Vendor commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;
	11. Vendor fails to promptly pay any and all Financial Consequences or liquidated damages imposed by FHKC;
	12. Vendor makes an assignment for the benefit of creditors without the approval of FHKC;
	13. Vendor made or has made a material misrepresentation or omission in any materials provided to FHKC;
	14. Vendor fails to procure and maintain the required insurance policies and coverages required by this Contract;
	15. A change in Vendor’s ownership, structure, or control occurs in violation of the Contract;
	16. Vendor utilizes a Subcontractor that has been placed on State of Florida’s Convicted Vendors List in the performance of Services;
	17. Vendor is suspended or is removed for cause as an authorized Vendor by any state or federal agency;
	18. Vendor is convicted of a felony;
	19. Vendor refuses to allow FHKC access to all equipment, documents, papers, letters, or other material subject to the audit terms of this Contract;
	20. Vendor refuses to allow auditor or third-party monitoring advisors Access as required by the Contract;
	21. Vendor permits Data to be Accessed from, maintained, transmitted to, or viewed from outside the continental U.S., except as otherwise allowed in this Contract;
	22. Vendor engages a Subcontractor in violation of the Contract;
	23. For any other cause whatsoever that Vendor fails to perform in an acceptable manner as determined by FHKC, pay associated Financial Consequences, or pay liquidated damages;
	24. Failure to timely notify FHKC upon discovery of problems or issues impacting a system;
	25. Failure to comply with the requirements of Section 9.25; or
	26. Any other occurrence designated as an Event of Default in the Contract.
3. For any other reason identified elsewhere in the Contract as an Event of Default.

# Opportunity to Cure Event of Default

If Vendor has an Event of Default, FHKC shall provide Vendor Notice of the Event of Default and request that such default be cured (“Cure Notice”), except in those circumstances identified in this Contract for which the ability to cure is not available.

If Vendor fails to cure the specified Event of Default within 45 Calendar Days of receipt of the Cure Notice (or such other mutually agreed upon time) and the Parties have completed the dispute resolution process in Section 8 without resolution, then FHKC shall have the right to terminate the Contract for cause with Notice to Vendor. FHKC’s right to terminate this Contract shall automatically expire if Vendor has cured the Event of Default prior to Vendor’s receipt of the Termination Notice.

In the instance of a continuous performance default as set forth in Section 7.1.4, FHKC must provide a Cure Notice to Vendor within 120 Calendar Days after FHKC receives a performance standard report indicating continuous performance default. FHKC’s right to terminate the Contract under this provision shall be in addition to any other rights and remedies at law or in equity.

# Consequences of Termination

Nothing in this Section shall preclude either Party from asserting any rights to seek damages incurred (including without limitation FHKC’s costs to replace the Services to the extent those costs exceed what FHKC would have paid for the Services). The limitations of liability in Section 9.24 and all other provisions intended to survive termination shall continue in effect.

# Suspension of Work

FHKC may, in its sole discretion, suspend any or all activities under the Contract, at any time, when in the best interests of FHKC to do so. FHKC shall provide Vendor Notice outlining the particulars of suspension. Examples of the reason for suspension include budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension Notice, Vendor shall comply with the Notice and shall not perform any Services that contravene the Notice. Within 90 Calendar Days, or any longer period agreed to by Vendor, FHKC shall (a) issue a Notice authorizing resumption of work, at which time activity shall resume, (b) terminate the Contract, or (c) extend the suspension period. In the event FHKC suspends any portion(s) of the Contract, the portions of the Contract that are not suspended shall continue, and Vendor’s sole and exclusive remedy is the compensation set forth in Section 2.4, for any of the continued Services performed by Vendor. FHKC’s payment shall be equitably reduced to exclude compensation for the suspended portion(s) of the Contract.

# FHKC’s Default

Upon material breach by FHKC, Vendor shall give FHKC Notice of the breach and request that such default be cured (“Cure Notice”). If FHKC fails to cure the specified breach within 45 Calendar Days of receipt of the Cure Notice (or such other mutually agreed upon time) and the Parties have completed the dispute resolution process in Section 8 without resolution, then Vendor may pursue compensation due for deliverables as provided in Section 3. Vendor shall not, however, discontinue or terminate providing Services. Vendor is not entitled to, and shall not seek, any compensation or damages other than the compensation provided for in Section 2.4. Vendor shall not be entitled to consequential damages, lost profits, lost business opportunity, or any damages.

# Rights Cumulative, No Waiver

Except as otherwise expressly set forth in the Contract, the rights and remedies provided and available to FHKC and Vendor in this Contract are distinct, separate, and cumulative remedies, and no one of them, whether or not exercised by a Party, shall be deemed to be in exclusion of any other. The election of one remedy shall not be construed as a waiver of any other remedy or of any rights and remedies either Party may have in law or equity.

FHKC, in its sole discretion, may waive, in whole or in part, any of Vendor’s obligations under this Contract unless such waiver would result in unapproved noncompliance with any state or federal law or regulation or FHKC’s contract with AHCA.

# FHKC’s Rights Upon Uncured Vendor Default

If Vendor commits an uncured Event of Default under this Contract, FHKC may perform or engage a third party to perform the uncured Services at the reasonable expense of Vendor. Vendor shall reimburse FHKC for all costs and expenses incurred, subject to the limitations of liability contained herein, together with a rate of interest pursuant to section 55.03(1), Florida Statutes. The rate of interest shall be measured from the date Vendor receives Notice from FHKC that such payment is due until Vendor pays or credits such amount to FHKC, as determined by FHKC.

# Right to Equitable Relief

In lieu of terminating the Contract upon the occurrence of an Event of Default, FHKC may institute legal proceedings to compel performance of any obligation required to be performed by Vendor hereunder including, where appropriate, actions for specific performance and injunctive relief. Vendor agrees that it does not have any right to equitable relief against FHKC and shall not attempt to institute any proceeding for equitable relief against FHKC.

# Third-Party Satisfaction

In the event FHKC issues a termination Notice because of Vendor’s Event of Default, Vendor shall satisfy all undisputed obligations to its Subcontractors and all other third parties before FHKC shall pay Vendor for Services rendered.

1. Dispute Resolution

Any conflict or dispute between FHKC and Vendor relating to the Contract shall be resolved in accordance with the procedures specified in this Contract, which shall be the sole and exclusive procedures for the resolution of any such disputes prior to litigation. Negotiations and mediation as herein prescribed are conditions precedent to litigation; however, this Section shall not apply in the case of termination for convenience as provided in Section 7.1.3.

# Informal Negotiations/Informal Resolution

Whenever FHKC and Vendor have a dispute related to the Contract, Vendor’s account manager and FHKC’s contract manager and/or their respective supervisors shall immediately attempt to resolve the dispute, subject to the approval of the authorized signatory of the Parties or their designees.

# Informal Executive-Level Negotiations

If the dispute is not resolved pursuant to Section 8.1, Vendor and FHKC shall attempt in good faith to resolve any dispute promptly by negotiation between executives of FHKC and Vendor or their designees having authority to settle the dispute, and who are at a higher level of management than persons with direct responsibility for the administration of the Services at issue. Either Party may declare the informal negotiation process terminated by delivering Notice thereof to the other Party.

# Mediation

Within five Business Days after delivery of the Notice declaring the informal negotiation process terminated, either Party may initiate a mediation proceeding by a request in writing. The mediation is a condition precedent to filing any action by either Party.

# Mediation Procedure

All mediation proceedings shall be conducted in accordance with the Contract, the Florida Rules for Certified and Court-Appointed Mediators, and applicable Florida Statutes.

# Selection of a Mediator

If FHKC and Vendor do not agree on the selection of a mediator within 10 Calendar Days of the request for mediation, then FHKC shall unilaterally select the mediator, who must be a Florida-certified Circuit Court mediator. Both Parties shall promptly cooperate with the appointed mediator to effectuate mediation.

# Location of Mediation

Unless otherwise agreed in writing by FHKC and Vendor, mediation sessions shall occur in Tallahassee, Florida.

# Mediation Period

Mediation pursuant to this Section shall be conducted over a period of 45 Calendar Days following the appointment of a mediator, unless otherwise agreed upon by the Parties. If the dispute cannot be resolved by the mediation deadline or by the end of any mutually agreed continuation thereof, FHKC, Vendor, or the mediator may give Notice declaring the mediation process terminated.

# Obligation to Mediate

The Parties regard the obligation to mediate as an essential provision and one that is legally binding on each. Either Party may bring an action to enforce this obligation in the circuit court of Leon County, Florida.

# Performance to Continue

Subject to the termination provisions specified in Section 7, each Party shall continue to perform its obligations under this Contract pending final resolution of any dispute arising out of this Contract.

# Confidentiality

The Parties agree to maintain the confidentiality of the content of matters discussed during any mediation regarding disputes arising under this Contract, which shall be deemed as compromise and settlement negotiations.

# Notice of Decision

If the procedures outlined above do not resolve the dispute, the dispute shall be decided by FHKC’s Chief Operating Officer, who shall reduce the decision to writing and serve a copy to Vendor. The decision of FHKC’s Chief Operating Officer shall be final and conclusive unless Vendor files an action in circuit court within 21 Calendar Days from the date of receipt of the FHKC’s Chief Operating Officer’s decision. Exhaustion of administrative remedies is an absolute condition precedent to Vendor's ability to pursue any action in circuit court.

# Forum and Venue

Without limiting the dispute resolution process set forth in Sections 8.1 through 8.11, the exclusive forum and venue for any legal action that arises out of or relates to the Contract for which there is no administrative remedy shall be a state court of competent jurisdiction in Leon County, Florida, or, on appeal, the First District Court of Appeal. Florida law shall apply to any such action, without giving effect to Florida’s choice of law principles. The Parties waive any right to jury trial. Further, hearings and depositions for any legal action shall be held in Leon County, Florida. FHKC, in its sole discretion, may waive this venue for depositions.

# Payment of Fees and Costs

Except as provided by Section 9.22, FHKC and Vendor shall each bear its own attorneys’ fees, costs, and legal expenses incurred in connection with any negotiations, mediation, administrative proceeding, or legal action pursuant to this Contract. The Parties shall equally share the cost of the mediator.

1. General Requirements

# Advertising

Vendor shall submit to FHKC all press releases and other publicity matters relating to this Contract or any mention or reference to FHKC or any FHKC personnel. Vendor shall not publish or use press releases or publicity matters without obtaining FHKC’s written consent, which shall not be unreasonably withheld or delayed. This provision shall not apply to Vendor’s marketing materials that merely list FHKC as a client.

Vendor shall not use the marketing materials, logos, trade names, service marks, or other materials belonging to FHKC without FHKC’s written consent. Written authorization must be received for each individual use or activity prior to use.

Vendor shall not use any marketing materials, logos, trade names, service marks, or other materials identifying Florida KidCare without obtaining prior written authorization from the entity holding the rights to such names or marks.

# Amendments

Except as expressly specified in this Contract, any changes, modifications, or deletions to this Contract shall be in writing and must contain the signature of (a) Vendor’s president or authorized representative and (b) FHKC’s Chief Executive Officer or other authorized corporate officer.

# Americans with Disabilities Act Requirements/Unauthorized Aliens

Vendor assumes the sole responsibility for compliance with all laws, rules, and regulations stated in the Americans with Disabilities Act to the extent applicable to Vendor in its performance of Services.

Vendor acknowledges and affirms that the employment of unauthorized aliens by Vendor may be considered a violation of Section 247A of the Immigration and Nationality Act. By execution of this Contract, Vendor affirms to the best of its knowledge that it is not in violation of either law at the time of execution. The Parties agree that failure to comply with this Section may constitute an Event of Default and may be grounds for termination of this Contract in accordance with Section 7.1.1 at FHKC’s discretion.

# Assignment

Vendor shall not sell, assign, or transfer any of its rights, duties, or obligations under this Contract without the prior written consent of FHKC. No change in Vendor’s organization, if any, shall operate to release Vendor from its liability for the prompt and effective performance of its obligations under the Contract. All terms and provisions of this Contract shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

# Bankruptcy

Vendor shall notify FHKC in writing within one Business Day if Vendor files any petition for bankruptcy or for approval of a plan of reorganization or arrangement under the Bankruptcy Act or any other state or federal law. The filing of any such petition shall be an Event of Default for which FHKC may terminate the Contract upon Notice to Vendor and is not subject to cure by Vendor.

# Confidentiality and Public Records

Vendor shall treat all information obtained through its performance under this Contract as confidential to the extent such information is protected under Florida and federal law. Vendor shall not use any information except as necessary for the proper discharge of the Services.

Vendor shall not use or disclose any PHI, PII, or Confidential Information obtained through its performance under this Contract, except as allowed under this Contract and Florida and federal laws, including HIPAA; sections 624.91 and 409.821, Florida Statutes; and chapter 119, Florida Statutes. Such information shall not be disclosed without the written consent of FHKC or the Customer(s), except as otherwise required under Florida or federal law.

This Section does not prohibit the disclosure of information in summary, statistical, or other de-identified forms.

The Parties agree to maintain the integrity of the other Party’s Confidential Information to the extent provided under the law and this Contract. Neither Party shall disclose or allow others to disclose the other Party’s Confidential Information except as provided by law or this Contract. Such Confidential Information includes security procedures, business operations information, or commercial proprietary information in the possession of FHKC. A Party shall not be required to keep Confidential Information or material that is publicly available through no fault of the other Party; information or material that a Party developed independently without relying on the other Party’s Confidential Information; or information or material that is otherwise obtainable under State law as a public record. To ensure confidentiality, Vendor shall take appropriate steps as to the training of its employees and agents. This paragraph shall survive termination or expiration of the Contract.

## Marked and Redacted Copies of Confidential Information

Records produced or used in relation to the performance of this Contract may be subject to chapter 119, Florida Statutes. If Vendor considers any portion of any documents, Data, or records submitted to FHKC to be Confidential Information, Vendor must (a) clearly mark “CONFIDENTIAL INFORMATION” on every page that contains Confidential Information and (b) simultaneously provide FHKC with a separate, redacted copy of the information it claims as exempt and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Contract name and number, shall be clearly titled, and include “Redacted Copy.” The redacted copy should only redact those portions of material that Vendor claims are confidential, proprietary, trade secret, or otherwise not subject to disclosure. The following methods of redacting are not sufficient for designating information as Confidential Information:

1. Statements to the effect that the record “may” contain confidential, trade secret, proprietary, or exempt information;
2. Designations outside the body of the record such as in an electronic document title or in the body of an email providing the record; or
3. Placement or formatting that interferes with FHKC’s ability to access the information such as using an opaque watermark.

Vendor is solely responsible for ensuring the adequacy and completeness of any redactions.

If Vendor fails to submit a redacted copy of information it claims is confidential, proprietary, trade secret, or otherwise not subject to disclosure, FHKC is authorized to produce the entire documents, Data, or records in response to a public records request or other lawful request for those records.

Records in which the sole Confidential Information is PHI or PII are excluded from this redaction requirement.

## Request for Confidential Information

In the event of a public records or other disclosure request pursuant to chapter 119, Florida Statutes, the Florida Constitution or other authority, to which documents marked as “Redacted Copy” are responsive, FHKC shall provide Vendor-redacted copies to the requester. If a requester asserts a right to the Confidential Information, FHKC shall notify Vendor such an assertion has been made. It is Vendor’s responsibility to assert that the Confidential Information is not subject to disclosure under chapter 119, Florida Statutes, or other applicable law. If FHKC becomes subject to a demand for discovery or disclosure under legal process regarding the Confidential Information, FHKC shall give Vendor prompt Notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law). Vendor shall be responsible for defending its determination that the redacted portions of its records are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

## Vendor as Agent

Vendor agrees to advise FHKC prior to the release of any information in response to a request for public records and, upon FHKC’s request, provide FHKC with a copy of the requested records at no cost. All records stored electronically must be provided to FHKC in a format that is compatible with FHKC’s information technology systems.

Section 409.821, Florida Statutes, provides certain public records exemptions for Florida KidCare documents. If, under this Contract, Vendor is providing Services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes, Vendor shall:

1. Keep and maintain public records required by the public agency to perform the service;
2. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law if Vendor does not transfer the records to the public agency;
4. Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of Vendor or keep and maintain public records required by the public agency to perform the service. If Vendor transfers all public records to the public agency upon completion of the Contract, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the Contract, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency’s custodian of public records, in a format that is compatible with the information technology systems of the public agency; and
5. IF Vendor HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO Vendor’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE EMAIL ADDRESS AND MAILING ADDRESS PROVIDED FOR THE CONTRACT MANAGER.

## Access to Records

Vendor recognizes and acknowledges the requirements of chapter 119, Florida Statutes, and Article I, Section 24(a) of the Florida Constitution. Upon reasonable Notice, Vendor shall provide FHKC with reasonable access to inspect and copy all public records and information, including physical and electronic records and information, related to or created as a result of this Contract. Except as provided herein, under no circumstances whatsoever shall Vendor refuse to provide, delay, or prohibit FHKC’s access to public records in the possession of Vendor or its Subcontractors.

## Vendor’s Failure to Comply

Vendor must allow public access to all documents, papers, letters, or other material made or received by Vendor in conjunction with the Contract, unless the records are exempt from Article I, Section 24(a) of the Florida Constitution and chapter 119.07, Florida Statutes. FHKC may unilaterally terminate this Contract for Vendor’s failure to comply with any provision of Section 9.6.

# Cooperative Purchasing

Pursuant to their own governing laws, and subject to the agreement of Vendor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-FHKC purchases are independent of the agreement between FHKC and Vendor, and FHKC shall not be a party to any transaction between Vendor and any other purchaser.

State agencies wishing to make purchases from this agreement are required to follow the provisions of section 287.042(16), Florida Statutes. This statute requires the Department of Management Services to determine that the requestor's use of the Contract is cost-effective and in the best interest of the State.

This Section is applicable to the extent allowable under Florida law.

# Conflict of Interest

Vendor must disclose any real, apparent, or potential conflict of interest with FHKC. A “conflict of interest” arises when any FHKC Board member, committee member, employee, or agent; any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any such individual, has a financial or other interest in, or a tangible personal benefit from, Vendor. The conflict of interest disclosure form shall be created and maintained by FHKC on FHKC’s secure SharePoint folder accessible by Vendor. Vendor shall routinely monitor for revisions to the conflict of interest disclosure form.

FHKC shall be the sole determiner of whether a conflict of interest exists and the action needed to resolve the conflict.

# Contract Overlap

By entering into the Contract, Vendor authorizes FHKC to eliminate duplication between the Contract and any other agreements in the manner FHKC deems to be in its best interest.

# Documents and Data

In the course of Vendor’s performance of this Contract, Vendor agrees that Data is and shall remain the sole and exclusive property of FHKC, free and clear of any and all claims of Vendor. Vendor, its Subcontractors, and agents may not sell or use Data for purposes other than as contemplated by this Contract without prior written consent of FHKC.

All Data, or copies thereof, shall be immediately delivered to FHKC in the format mutually agreed upon by the Parties as requested.

# Drug Free Workplace Program

Vendor agrees to maintain a drug free workplace program as defined in section 287.087, Florida Statutes. The Parties agree that failure to comply with this Section shall constitute an Event of Default and shall be grounds for termination of this Contract in accordance with Section 7.1.1.

# Employment Eligibility Verification (E-Verify)

Vendor shall enroll and participate in the Employment Eligibility Verification Program (“E-Verify”) administered by the U.S. Department of Homeland Security (“DHS”). Vendor shall use E-Verify to verify the employment status of all new employees employed by Vendor.

Vendor shall maintain records of its participation and compliance with this Section and make such records available to FHKC upon request.

# Environmental Protection

Vendor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387), to the extent applicable to Vendor in its performance of the Services.

# Vendor Integrity

Vendor shall not offer any gifts, including any meal, service, or item of value, even if such value is de minimis, to FHKC Board members, ad hoc Board members, committee members, employees, or agents.

Vendor shall not directly or indirectly (a) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any FHKC or State of Florida officer or employee’s decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (b) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any FHKC or State of Florida officer or employee.

Upon request, Vendor shall provide FHKC with any type of information FHKC deems relevant to Vendor’s integrity or responsibility. Such information may include Vendor’s business or financial records, documents, or files of any type or form that refer to or relate to the Contract.

Vendor agrees to reimburse FHKC and/or the State of Florida for the reasonable costs of investigation incurred by FHKC and/or the State of Florida for investigations of Vendor’s compliance with the terms of this Contract that results in the suspension or debarment of Vendor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel, expenses, lodging expenses, and expert witness and documentary fees. Vendor shall not be responsible for any costs of investigations that do not result in Vendor’s suspension or debarment.

# Vendor’s Property

Except as identified as an FHKC responsibility in this Contract, Vendor, at no cost to FHKC, shall furnish, install, operate, and maintain all property required to perform the Services. FHKC and its authorized agent, provided such agent is not a competitor of Vendor, reserve the right to inspect the area in Vendor’s facilities where Services are performed at any time.

# Execution in Counterparts

The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

# Financial Consequences and Liquidated Damages

Vendor acknowledges the Financial Consequences specified in this Contract are solely for Vendor’s failure to perform the minimum level of service required by the Contract.

Vendor may dispute or request a waiver of any Financial Consequences assessed by submitting such request in writing to FHKC’s contract manager within five Business Days of receipt of the Financial Consequences assessment. Requests shall clearly identify the Financial Consequences being assessed, provide a narrative describing Vendor’s reasoning for the dispute or waiver request, and include any supporting documentation. FHKC shall review and respond to the request in writing. FHKC’s decision shall be the final determination.

FHKC may waive Financial Consequences, in whole or in part, for any reason in its sole discretion. The waiver of Financial Consequences in one instance does not provide Vendor any right or expectation to future waived Financial Consequences under the same or any other circumstances.

Vendor acknowledges the liquidated damages specified in this Contract. Vendor agrees that it shall not argue, and is estopped from arguing, that such costs are a penalty or otherwise unenforceable. FHKC may waive liquidated damages, in whole or in part, for any reason in its sole discretion. The waiver of liquidated damages in one instance does not provide Vendor any right or expectation to future waived liquidated damages under the same or any other circumstances.

In addition to any Financial Consequences or liquidated damages, FHKC shall be entitled to reimbursement of any assessment against FHKC by any state or federal agency due to Vendor’s failure and any other remedies available under the Contract.

Vendor shall compensate FHKC in the manner specified by FHKC for any such Financial Consequences or liquidated damages.

# Force Majeure and No Damages for Delay

FHKC shall not be responsible for delays or failure to perform its obligations under this Contract resulting from acts of God, wars, public enemies, strikes, fires, floods, or other similar cause beyond FHKC’s control.

Vendor shall not be responsible for interruption or delay of Services resulting from its failure to perform if (a) neither the fault nor the negligence of Vendor or its employees contributed to the delay and (b) the delay is due directly to acts of God, wars, public enemies, strikes, fires, floods, or other similar cause wholly beyond Vendor’s control.

For any such delay or potential delay by Vendor, Vendor must provide Notice to FHKC that describes the cause of the delay or potential delay within the following timeframe, whichever occurs first: (a) within five Calendar Days after the cause or event first arose that creates the delay; (b) within five Calendar Days after Vendor’s knowledge of the cause or event that shall create the delay, if Vendor could reasonably foresee that a delay could occur as a result; or (c) if delay is not reasonably foreseeable, within five Calendar Days after the date Vendor first had reason to believe that a delay could result.

If Vendor believes that any other delay or potential delay is attributable to an act or omission of FHKC, Vendor must provide Notice of the delay or potential delay to FHKC and describe the cause of the delay either (a) within five Calendar Days after the cause that creates or shall create the delay first arose, if Vendor could reasonably foresee that a delay could occur as a result, or (b) if delay is not reasonably foreseeable, within five Calendar Days after the date Vendor first had reason to believe that a delay could result.

Vendor’s provision of Notice in accordance with this Section and Section 9.28 is a condition precedent to any remedy. Vendor shall not assert any claim for damages against FHKC arising from the delay events described above. Vendor’s sole remedy for such delays shall be an extension of time, and Vendor shall not be entitled to an increase in the Contract price or payment of any kind from FHKC for direct, indirect, or consequential damages or expenses, impact costs, other costs, including costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any such delay event whatsoever.

If performance is suspended or delayed, in whole or in part, due to any of the causes described in this Section, after the causes have ceased to exist Vendor shall perform at no increased cost unless FHKC determines, in its sole discretion, that the delay shall significantly impair the value of the Contract to FHKC. In such an event, FHKC may (a) accept allocated performance from Vendor, provided that Vendor grants preferential treatment to FHKC with respect to Services subject to allocation, or (b) purchase from other sources (without recourse to and by Vendor for the related costs and expenses) to replace all or part of the Services that are the subject of the delay, which purchases may be deducted from the Contract value, or (c) terminate the Contract in whole or in part.

THE FOREGOING SHALL CONSTITUTE Vendor’S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAYS SET FORTH IN THIS SECTION.

# Further Assurances

Subsequent to the execution of this Contract by both Parties, the Parties shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Contract.

# Good Standing

Vendor must maintain good standing as a Florida or foreign profit or non-profit corporation, partnership, limited liability company, or other recognized business entity authorized to transact business pursuant to the laws of Florida.

# Governmental Restrictions

Vendor shall immediately provide Notice to FHKC if Vendor believes that any law, regulation, ordinance, or other governmental restrictions have been imposed that require alteration of the material, quality, workmanship, or performance under the Contract. FHKC may, at its sole discretion, accept any such alteration or cancel the Contract at no further expense to FHKC.

# Indemnity

Vendor shall indemnify, defend, and hold harmless FHKC and FHKC’s officers, directors, employees, and agents from and against any third-party claims, actions, suits, proceedings of any kind, demands, losses, liabilities, damages, costs, or expenses (including attorneys’ fees and court costs) relating to the following:

1. General Indemnity. Any act or omission caused or alleged to be caused by Vendor or its employees, principals, partners, and/or agents whether acting alone or in collusion with others, relating to or arising out of the performance of Vendor’s obligations this Contract.
2. Public Records Indemnity. Any assertion by a third party that Vendor’s records, documents, materials, or information are subject to disclosure pursuant to chapter 119, Florida Statutes.
3. If any Services or work product are, or in Vendor’s opinion likely to be, held to be infringing, Vendor shall at its expense and option either: (i) procure the right for FHKC to continue using it, (ii) replace it, as approved by FHKC, with a non-infringing product or service equivalent in function and capabilities, or (iii) modify it, as approved by FHKC, to make it non-infringing but equivalent in function and capabilities.
4. Business Associate Agreement Responsibilities. Any Breach of Security, Breach of Protected Health Information or Electronic Protected Health Information, or Security Incidents (as those terms are referenced or defined in the Business Associate Agreement) caused by Vendor or its employees, principals, partners, and/or agents.

FHKC agrees to provide written Notice to Vendor of any demand for defense or indemnity. If an action, suit, or proceeding is initiated for which Vendor must defend or indemnify FHKC, FHKC shall reasonably cooperate with Vendor’s defense of such action, suit, or proceeding. Vendor may settle any claim, suit, or proceeding (at Vendor’s sole expense) without FHKC’s approval provided the settlement does not include any obligation and/or admission of FHKC.

To the extent FHKC seeks to enforce this Section, FHKC shall be entitled to attorneys’ fees, including the fees for hiring outside counsel, and court costs.

This Section shall survive termination or expiration of the Contract.

# Independent Entities

In connection with this Contract, each Party is considered an independent entity and as such shall not have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, or agency relationship between the Parties for any purpose. Under no circumstance shall one Party's employees be construed to be employees of the other Party, nor shall one Party's employees be entitled to participate in the profit sharing, pension, or other plans established for the benefit of the other Party's employees. Neither Party shall be deemed a joint employer of the other’s employees; each Party being responsible for any and all claims by its employees. Neither Party’s employees shall be deemed “leased” employees of the other Party for any purpose. The agreements of the Parties set forth in this Contract are not intended for, nor shall they be for the benefit of or be enforceable by, any person not a Party.

# Liability

Except as otherwise set forth in this Contract, (a) neither FHKC nor Vendor shall be liable to the other Party or to any third party for any lost profits or any loss of business or any consequential, special losses, or damages of any kind; and (b) the sole and exclusive remedy of Vendor and FHKC for any claim, loss, or damages in any way related to, or arising out of, this Contract or any Services provided or anticipated to be provided shall be limited to such Party's actual, direct damages. None of the limitations expressed in (a) and (b) shall preclude FHKC from seeking injunctive relief.

# Lobbying

Vendor shall disclose information regarding the lobbying activities of Vendor, employees, and its agents in compliance with applicable state and federal requirements. Vendor shall ensure no funds have been or shall be used for the purpose of lobbying in accordance with section 216.347, Florida Statutes, and 31 U.S.C. § 1352.

# Non-Competition and Non-Solicitation

Upon termination or expiration of this Contract, Vendor shall not prohibit any current or former employee or agent from being directly or indirectly employed by any Vendor that is contracted to provide third-party administrative Services to FHKC.

Vendor acknowledges that FHKC recruits and trains personnel to perform work directly and indirectly related to this Contract and that this is a costly and time-consuming effort. Regarding any FHKC employee or Board of Directors member who participated personally and substantially through Contract development, decision, approval, disapproval, recommendation, rendering of advice, investigation, or administration, Vendor shall not directly or indirectly employ such person for a period of 24 months after the person vacates his or her position, unless waived by FHKC in writing.

# Non-Discrimination and Equal Opportunity

Vendor agrees to not discriminate on the basis of race, religion, sex, creed, national origin, disability, age, marital status, or veteran’s status in its employment practices. Vendor agrees to comply with the laws of Florida and of the U.S., regarding such non-discrimination and equality of opportunity, which are applicable to Vendor. Furthermore, in accordance with section 287.134, Florida Statutes, an entity or affiliate that has been placed on the discriminatory Vendor list may not submit a bid on a contract to provide goods or Services to a public entity and may not be awarded or perform work as a Vendor, supplier, or consultant under contract with any public entity, and may not transact business with any public entity. Vendor shall ensure that it is, to the best of its knowledge, not in violation of any laws referenced in this Section as of the Effective Date of Services. Failure to comply with this Section is an Event of Default and may be grounds for termination of this Contract in accordance with Section 7.1.1.

# Notices

Vendor shall prepare any Notices under this Contract on Vendor’s letterhead, signed by an executive officer, and serve such Notices upon FHKC by email attachment (read receipt requested) to FHKC’s chief operating officer and contract manager, by certified mail (return receipt requested), or personal delivery to:

Florida Healthy Kids Corporation

1203 Governors Square Boulevard

Suite 400

Tallahassee, FL 32301

All Notices under this Contract to be served upon Vendor shall be served by email attachment (read receipt requested) to Vendor’s executive officer, by certified mail (return receipt requested), or personal delivery to:

[TBD Vendor

Street Address

City, State ZIP Code]

The Parties agree that any change in the above-referenced address or name of the contact person shall be submitted in a timely manner to the other Party and that an amendment to the Contract is not required. All Notices under this Contract shall be deemed duly given: (a) when delivered in person to the recipients named above, (b) upon hand delivery to the intended recipients, (c) when delivered by certified U.S. mail, return receipt requested, postage prepaid, addressed by name and address to the Party intended, or (d) delivered by email attachment read receipt requested.

# Other Compliance Requirements

Each Party shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to such Party in its performance of this Contract, including any such federal, state, and/or local laws, ordinances, rules, and/or regulations that are effective, modified, or repealed after the execution of this Contract.

Vendor shall notify FHKC within three Calendar Days of any change to federal, state, and/or local laws, ordinances, rules, and regulations pertaining to Vendor’s performance under this Contract. AHCA, DCF, DOH, and FHKC retain sole responsibility for interpreting, establishing, and administering federal and state policies, rules, procedures, and directives. FHKC does not delegate any authority or discretion to Vendor in regards thereto.

If Vendor discovers that it is not in compliance with the Contract obligations, Vendor shall immediately take corrective action and notify FHKC.

# Public Entity Crime

Vendor certifies that during the term of this Contract that Vendor is not listed on the convicted Vendor list maintained by the State of Florida or any convicted Vendor list maintained by the federal government. Vendor agrees that it may not be awarded or perform work as a Vendor, supplier, or consultant for the state for a period of 36 months from the date of being placed on the convicted Vendor list. Failure to comply with this Section is an Event of Default and may be grounds for termination of this Contract in accordance with Section 7.1.1.

# Record Retention

Notwithstanding any other provision of this Contract, Vendor shall retain all records associated with this Contract (a) for at least 10 years from the last date of Services; (b) for 10 years following the expiration or termination of the Contract or from the date of completion of any audit, whichever is later. Such records include all Data, financial records, medical records, supporting documents, statistical records, information, and any other documents (including electronic storage media) pertinent to performance under this Contract. FHKC shall make its record retention schedule available to Vendor upon request.

Vendor shall retain the physical record for at least 90 Calendar Days for any record converted into an electronic format, which shall be retained in accordance with the retention schedule.

Vendor shall maintain billing and payment records and documentation in accordance with generally acceptable accounting principles sufficient to substantiate all expenditures under this Contract.

Vendor shall securely store such records as appropriate for the contents of the record. Vendor is responsible for all storage costs associated with record maintenance under this Contract.

At the end of the record retention period, Vendor shall consult with FHKC as necessary to assure an appropriate means of return and/or destruction of all records, including PHI and PII, and shall notify FHKC in writing when such destruction is complete. If PHI or PII is to be returned, the Parties shall document when all information has been received by FHKC.

Before Vendor returns and/or destroys records, Vendor shall provide such detail as requested by FHKC. In the event Vendor determines that returning or destroying records is not feasible, Vendor shall provide to FHKC notification of the conditions that make return or destruction not feasible, and Vendor shall:

1. Retain only those records necessary for Vendor to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to FHKC (or, if agreed to by FHKC, destroy) the remaining records that Vendor still maintains in any form;
3. Continue to use appropriate safeguards and comply with the HIPAA Security Rule with respect to PHI to prevent Access, acquisition, use, or disclosure of the PHI, other than as provided for in this Section, for as long as Vendor retains the PHI;
4. Not use or disclose PHI or PII retained by Vendor other than for the purposes for which such information was retained and subject to the same conditions set forth in Section 7 of Attachment B: Business Associate Agreement, which applied prior to termination or expiration of the Contract; and
5. Return to FHKC (or, if agreed to by FHKC, destroy) PHI or PII retained by Vendor when it is no longer needed by Vendor for its proper management and administration or to carry out its legal responsibilities.

At the end of the applicable retention period, Vendor shall return or destroy all records at FHKC’s sole discretion. Destruction of records is Vendor’s responsibility.

Failure to comply with this Section may constitute an Event of Default and may render this Contract subject to termination by FHKC as determined by FHKC in its sole discretion. This Section survives termination or expiration of the Contract.

# Representation of Ability to Perform

Vendor represents that there is no pending or threatened action, suit, proceeding, inquiry, or investigation at law or equity before or by any court, governmental agency, public board, or other body that would materially prohibit, restrain, or enjoin the execution or delivery of Vendor’s obligations, diminish Vendor’s obligations, or diminish Vendor’s financial ability to perform the terms of this Contract. Vendor shall notify FHKC in writing within one Business Day after Vendor becomes a party to any of the aforementioned actions, suits, proceedings, inquiries, or investigations, or any other legal or administrative action. Vendor shall remain adequately capitalized during the term of this Contract. Vendor’s failure to comply with this Section constitutes an Event of Default and shall be grounds for termination of this Contract in accordance with Section 7.1.1.

# Scrutinized Company List

 In executing this Contract, Vendor certifies that it is not listed as provided in section 287.135, Florida Statutes, on any of the Scrutinized Companies Lists created pursuant to sections 215.4725 or 215.473, Florida Statutes, or engaged in business operations in Cuba or Syria. Vendor agrees FHKC may immediately terminate this Contract for cause if Vendor is found to have submitted a false certification or if Vendor is placed on those lists or engages in business operations in Cuba or Syria during the Contract Term.

# Severability Clause

If any term or provision of this Contract is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of the Contract, but such term or provision shall be deemed modified to the extent necessary to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent of the Parties.

# Survival Clause

All provisions in the Contract that expressly or customarily survive the termination or expiration of the Contract shall continue in effect after the Contract is terminated or expires.

# Taxes

FHKC does not pay federal excise and sales taxes on direct purchases of tangible personal property. If applicable, FHKC shall provide Vendor a tax-exempt certificate for sales of tangible personal property to FHKC by Vendor or purchases of tangible personal property made by Vendor on behalf of FHKC in connection with this Contract, where the title vests in FHKC; however, Vendor acknowledges and agrees that FHKC is without liability to Vendor in the event the Florida Department of Revenue or other regulatory agency denies any such claimed exemption.

# Waiver

Unless otherwise agreed, the delay or failure by either Party to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of that Party’s right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

# Warranty of Authority

Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective Party to the Contract.

Whereas, this Contract is effective upon the signatures of both Parties.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their undersigned officials, who are duly authorized.

|  |  |
| --- | --- |
| **FOR****Florida Healthy Kids Corporation:**Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Ryan WestTitle: Chief Executive OfficerDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **FOR****[TBD: Vendor]:**Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |