

Attachment M. Contract

DEPARTMENT OF BUDGET AND MANAGEMENT, OFFICE OF PERSONNEL SERVICES AND BENEFITS (DBM OPSB)

“Retiree Prescription Drug Exchange Including Health Reimbursement Arrangement (HRA) Program”

F10B4600020

THIS CONTRACT (the “Contract”) is made this 25th day of July, 2024 by and between EXTEND HEALTH, LLC, a WTW Company (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND DEPARTMENT OF BUDGET AND MANAGEMENT (“DBM” or the “Department”).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is 38 East Scenic Pointe Drive, Suite 200, Draper, UT 84020 and whose principal office in Maryland is 7 St. Paul Street, Suite 820, Baltimore, MD 21202, whose Federal Employer Identification Number is [REDACTED] and whose Maryland Marketplace vendor ID number is [REDACTED]
- 1.3 “ERFP” means the Expedited Request for Proposals for Retiree Prescription Drug Exchange Including Health Reimbursement Arrangement (HRA) Program, Solicitation # F10B4600020, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.4 “Financial Proposal” means the Contractor’s Financial Proposal dated 3/25/2024.
- 1.5 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated 3/25/2024, as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the ERFP.

2. Scope of Contract

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-E, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The ERFP

Exhibit B – The Contract Affidavit, executed by the Contractor and dated 7/31/2024

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

Exhibit E – Program and HRA Administrative Services Schedule

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until December 31, 2029 ("Initial Term").
- 3.2 In its sole discretion, the Department shall have the unilateral right to extend the Contract for two, successive two-year renewal options (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).
- 3.3 The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality and data privacy; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract may not exceed [REDACTED] (the "NTE Amount"), including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.
- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor as required by ERF section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 4.5 The State and Contractor agree that if Contractor's compensation related to the Contract is detrimentally impacted, such as by Federal or State laws, regulations, enforcement actions, or insurance carrier commission amounts, Contractor will notify the State and the parties will meet in good faith to discuss a mutually agreeable reasonable adjustment to the pricing to account for such changes, which shall go into effect at: (i) the beginning of the next calendar year after the after the parties' initial discussion of such adjustment; or (ii) if there is less than 90 days to the end of the then-current calendar year, 90 days after the parties' initial discussion of such adjustment.

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data provided by the State or the State's representatives to the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract. The foregoing shall not apply to information, including Personal Data, otherwise obtained by Contractor in relation to individuals who enroll in individual products through Contractor as contemplated in the Statement of Work.

- 5.2 Subject to the terms set forth in this Contract, the Contractor agrees that at all times during the term of this Contract and thereafter, works created solely for the State as a Deliverable under this Contract (as defined in **Section 7.2**) shall be “works made for hire” as that term is interpreted under U.S. copyright law.
- 5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 Reserved.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use of Deliverables

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any Deliverables, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any Deliverable is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with the Deliverable only with the express written approval of the State. Contractor shall retain ownership rights in the skills, know-how, and methodologies used or acquired by Contractor during the course of creating or providing the Deliverables.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor specifically for the State relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

7. Patents, Copyrights, and Intellectual Property

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the Department or licensed by the Department from third parties, including all information provided by the Department to Contractor; (2) materials created by Contractor or its subcontractor(s) solely and specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For the avoidance of doubt, Contractor’s standard materials and information shall not be considered Deliverables. Such standard materials and information include but are not limited to Contractor’s: (a) methodologies, processes, know-how and other information regarding Contractor’s administrative process and business; (b) suite of standard communications including, but not limited to, welcome

letters, enrollment letters, age-in communications, balance reminders, funding guides, explanation of benefits notices, denial notices, overpayment notifications, and distribution forms; (c) documents related to Contractor's processes and operations, including configuration documents and all forms, (d) standard reports available via Contractor's self-service portal; (e) all information and responses shared pursuant to an audit; and (f) phone systems including its IVR.

7.3. Subject to the terms of **Section 10**, Contractor agrees at its expense to defend the State against (or, at Contractor's option, settle), any third-party claim to the extent such claim alleges that the services and/or Deliverables infringes or misappropriates any patent, copyright, trademark, or trade secret of such third-party, and Contractor shall pay all costs and damages finally awarded against the State by a court of competent jurisdiction as a result of any such claim. In the event that the use of the services and/or the Deliverables is, or in Contractor's sole opinion is likely to become, subject to such a claim, Contractor, at its option and expense, may reperform the applicable services and/or replace the applicable Deliverables. The foregoing indemnification obligation of Contractor will not apply for any unauthorized use of the services and/or Deliverable. This section sets forth Contractor's sole and exclusive liability and the State's sole and exclusive remedy with respect to any claims or allegations of intellectual property rights infringement by Contractor's services or Deliverables.

7.4 Reserved.

7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.

7.6 Reserved.

7.7 The Contractor shall report to the State, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.

7.8 The Contractor shall not affix (or permit any third party to affix), without the Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

7.9 The State grants Contractor a revocable, nontransferable, limited license to reasonably use the State's name and logo in conjunction with the services for purposes that are consistent with this Contract.

8. Confidential or Proprietary Information and Documentation; Personal Data

8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, subcontractors, employees, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, employee, and Contractor

Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract. For the avoidance of doubt, the State understands and agrees that Contractor is required to disclose the State's Confidential Information and Personal Data to insurance carriers and Contractor's affiliates and subcontractors in order to provide the Services, all of whom are bound by confidentiality obligations at least as restrictive as those of set forth in this Contract.

- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) subject to Sections 10.5 and 10.6, which such party is required to disclose by law.
- 8.3 In the course of providing the services, the parties acknowledge that the State may provide Contractor with information about an identifiable individual or information which relates to a natural person and allows that person to be identified, including the State's employee and retiree information, or any personal information/personal data as defined in applicable data privacy laws ("Personal Data"). The State represents that Contractor is authorized to receive and process any such Personal Data and that the State, subject to any applicable exception required by law, has provided any required notices to data subjects and obtained the necessary consents from third parties, including the individuals to whom such Personal Data relates, that may be required for Contractor to process the Personal Data for the purpose of providing the services. Contractor will take appropriate technical, physical, and organizational/administrative measures to protect Personal Data against accidental or unlawful destruction or accidental loss or unauthorized alteration, disclosure, or access. Each party shall comply with the provisions and obligations imposed on it by applicable data privacy legislation and regulations.

Where and to the extent that the State acts as the "Business" or "Data Controller" and Contractor acts as a "Service Provider" or "Data Processor," as those terms are defined by applicable privacy law, Contractor shall process Personal Data; (i) In the event no such Protocols apply, Contractor will process all such Personal Data in accordance with all applicable data protection laws; (ii) only at the direction and in accordance with the instructions of the State as Data Controller; (iii) only for the performance of this Contract and as set forth herein; and (iv) then only in accordance with Contractor's applicable Data Processing Protocols ("Protocols") available at <https://www.willistowerswatson.com/en-gb/notices/global-data-processing-protocol>.

The State represents and warrants that it shall take all reasonable steps to provide to Contractor only Personal Data which is adequate, relevant, and limited to the minimum what is necessary for the purposes of this Contract and the provision of services hereunder.

The State agrees that Contractor may maintain, process, and transfer the State's Confidential Information in order to perform the services. In addition, the State agrees that Contractor may create and use deidentified data derived from Personal Data and/or the services to provide its services, improve its operations, and enhance the features, functions, and performance of its services. Notwithstanding anything to the contrary, Contractor may not reconstruct or re identify such deidentified data.

- 8.4 Location of Services. Contractor is a global business and Contractor may transmit the State's information, including Personal Data, within its global network of offices to its affiliates and providers of IT outsourcing who will be subject to the safeguards required by the applicable laws. For the avoidance of doubt, call center, client service, and claims processing services shall be performed in the United States. All data, including Personal Data, is hosted in the United States, but may be accessed by Contractor's employees in India to perform support functions such as

reporting, implementation support, account reconciliation, payment processing and treasury operations, debit card operations, file management, system development, production support, quality management, and contribution management.

9. Loss of Data

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner agreed to by the parties. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **ERFP Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in ERFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **ERFP Section 3.7**.

10. Indemnification and Notification of Legal Requests

- 10.1. The Contractor shall indemnify the State against liability for any loss, damage, cost or expense (including reasonable fees and expenses of counsel) (collectively, "Damages") resulting from or arising out of any and all third party claims, demands, losses, actions, suits, proceedings, judgments, damages, fines, penalties, assessments, interest, costs, expenses, or liabilities (collectively, "Claims") arising from or relating to the negligence or tortious acts of the Contractor in performance of the Contractor or its subcontractors under this Contract, provided that the Procurement Officer shall immediately notify the Contractor of any such suit, action or claim, will allow the Contractor to control the defense and/or settlement of such claim and will cooperate, assist and consult with the Contractor in the defense or investigation of any such claim. Contractor's indemnity obligations under this Section shall not apply to any Damages to the extent such Damages are found to have been initiated or proximately caused by or resulting from the negligence or tortious acts of the State or the State's own representatives, vendors, or subcontractors.
- 10.2. The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.3 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.4 Notwithstanding anything to the contrary in this Contract or its exhibits, the State has no obligation to indemnify the Contractor. The State, and not Contractor, shall be responsible for any Damages and Claims to the extent they arise from the negligence or tortious acts of the State or the State's own representatives, vendors, or subcontractors.
- 10.5 Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation,

requesting State Pre-Existing Intellectual Property, or other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request.

- 10.6 Contractor acknowledges that the State may be subject to public records requests pursuant to applicable law. In the event the State receives a public records request, subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting Contractor Pre-Existing Intellectual Property, or other information considered to be the property of Contractor, or Contractor's Confidential Information, the State will make reasonable efforts to contact Contractor in sufficient time to allow Contractor to take appropriate legal steps to protect the Confidential Information from disclosure. The State shall promptly provide notice to Contractor of any such request to the State (including a public records request), including for (i) any information or material provided by or relating to Contractor (including Contractor's ERF response and related Proposals), (ii) any communications with or relating to Contractor, or (iii) any contract or agreement between the State and Contractor (collectively, "Contractor Materials"). Such notice shall indicate whether the State contemplates producing any of the Contractor Materials and, if so, shall provide Contractor at least five (5) Business Days to review the materials for the purposes of providing redactions to the materials. Such redactions will be provided by Contractor to the State within five (5) Business Days after receiving notification from the State. In the event the State contemplates producing the Contractor Materials without the requested redactions, the State shall provide notice of such intent to Contractor and provide Contractor at least five (5) Business Days before producing the material at issue in order to allow Contractor sufficient time to take appropriate legal steps to protect the material from disclosure. For the avoidance of doubt, the State shall promptly provide notice to Contractor of any subpoena, legal demand or process (including a request for the production of documents in any legal proceeding) for Contractor Materials. To the extent possible, such notice shall be provided to Contractor at least five (5) Business Days before the State produces any such material in order to allow Contractor sufficient time to take appropriate legal steps to protect the material from disclosure.

11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law Prevails

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

16. Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished Deliverables provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination. Termination hereunder, including the

termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

Regardless of if this Contract is terminated pursuant to Section 17, Section 18, or through expiration, the State acknowledges that Contractor, as the broker of record for individuals who enrolled in individual insurance products through Contractor, may be obligated to continue providing services to such individuals following the termination of the Contract.

19. Delays and Extensions of Time

19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Notwithstanding the foregoing, the State will provide Contractor, in a timely manner, with all documentation, information, access to the State's personnel, and cooperation reasonably required to provide the services. Any delay or failure to provide such documentation, information, access, or cooperation may result in: (a) a revision to any agreed timelines; and (b) if Contractor is required to perform any additional work as a result, additional fees may be charged; Contractor will disclose and receive approval from the State for those fees in advance of performing such work.

19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year

under which the business is to receive in the aggregate, \$200,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

24. Retention of Records

The Contractor and subcontractors shall retain and maintain all books and records in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, subject to Section 25. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion once annually during the term of the Contract, to perform an audit of the Contractor's performance under this Contract in a manner that does not disrupt Contractor's business operations. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract. In the event of a security incident of Contractor or other exceptional event that affects State information, the State may perform an additional audit of Contractor to the extent the additional audit relates to such security incident or other exceptional event, and such audit shall be in addition to, and not in place of, the annual audit.
- 25.2 Upon thirty (30) days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The State may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the State's election. The Contractor agrees to reasonably cooperate and assist in any audit conducted by or on

behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

- 25.3 The right to audit shall include any of the Contractor's subcontractors including engaged specifically to provide services to the State. The Contractor shall ensure the Department has the right to audit such subcontractor(s).
- 25.4 The State agrees to treat any findings or other information disclosed as a result of the review as Contractor's confidential information. The State acknowledges that the reviewer will not be given access to any logs, records and other materials that contain information related to other clients of Contractor. The State also acknowledges that Contractor may require that certain of the logs, policies, records, or other materials be reviewed on-site due to their confidential nature and that the reviewer will not be permitted to copy them.
- 25.5 The State agrees that if it uses any third party accounting or audit firm to perform an audit, such third party shall not offer services that compete with Contractor's services set forth in this Contract and any such third party shall be required to enter into an appropriate confidentiality agreement with the Contractor.

26. Compliance with Laws

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

27. Cost and Price Certification

- 27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.
- 27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

28. Subcontracting; Assignment

The Contractor may not subcontract any of its obligations to a subcontractor under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, to a subcontractor without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract to a subcontractor after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. For

avoidance of doubt, "subcontractors," for purposes of this Contract, means unaffiliated third parties engaged by Contractor specifically for purposes of assisting in a State project and does not include Contractor's affiliates or third-party service providers/suppliers that provide products or services to Contractor and its client base generally. Contractor reserves the right to employ its affiliates and such third-party service providers/suppliers to assist in providing services, and to pass to them any information and materials they need to perform their work. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

29. Limitations of Liability

- 29.1 If the services do not conform to the requirements agreed between the parties, the State shall notify Contractor promptly and, to the extent possible, Contractor shall re-perform any non-conforming services at no additional charge or, at its option, refund the portion of the fees paid with respect to such non-conforming services. The re-performance of the services or refund of the applicable fees is intended to provide an adequate remedy for any failure on Contractor's part to adhere to the requirements agreed between the parties for the performance of services. Whether or not such re-performance or refund would provide an adequate remedy for any loss or damage suffered by the State or any third party, the aggregate liability taken together of Contractor, its affiliates, joint venture companies' and Contractor's and its affiliates' and joint venture companies' respective employees, directors, officers, agents and subcontractors (the "Related Persons") arising from or in any way connected with this Contract or the services, whether in contract, tort (including, without limitation, negligence), or for breach of statutory duty or otherwise, shall not exceed in aggregate the greater of (i) \$5,000,000 or (ii) the total amount of the fees paid to Contractor for the services provided pursuant to this Contract during any 12-month period beginning with the commencement of the Contract, unless otherwise agreed in writing. Notwithstanding the above, the foregoing shall not limit the liability of Contractor or its Related Persons in the case of: (i) death or personal injury resulting from Contractor or the Related Persons' negligence; (ii) willful misconduct; (iii) fraud; or (iv) other liability to the extent that the same may not be excluded or limited as a matter of law.
- 29.2 The foregoing provisions of Section 29, Limitation of Liability shall not apply to the Performance Guarantees as outlined in Attachment T-4 to the ERF. Any terms listed therein, including liquidated damages provisions, remain in full effect and are not limited in any way by the terms of the foregoing provisions of this Section.
- 29.2 In no event shall Contractor or any of the Related Persons or affiliates be liable for any incidental, special, punitive, or consequential damages of any kind (including, without limitation, loss of income, loss of profits, or other pecuniary loss), except to the extent such liability may not be excluded as a matter of law.
- 29.3 Where Contractor or any of the Related Persons are jointly liable to the State with another party, Contractor shall, to the extent permitted by law, only be liable for those losses that correspond directly with Contractor's or the Related Persons' proportionate share of responsibility for the losses in question.
- 29.4 The State and Contractor agree that no action, regardless of form, arising out of or in connection with this Contract or the services, shall be commenced more than three years after the later of when: (1) such cause of action accrued or (2) such cause of action is first discovered during the audit process noted in this Contract. This provision applies without regard to the date upon which the act or omission constituting the alleged basis of such action occurred. Any action not brought within such three-year time period shall be barred, without regard to any other limitations period set forth by law or statute.

29.5. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

30. Commercial Nondiscrimination

30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Department, in all subcontracts.

31. Prompt Pay Requirements

31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
- (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
 - (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
 - (c) Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.

Verification shall include a review of:

- i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- (b) If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- (c) If the Department determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
- i. Terminate the Contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

- (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

32. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the Department may withhold payment of any invoice or retainage. The Department may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

Contractor will work with the State to obtain a waiver to the Living Wage Law under COMAR 21.11.10.05(G) due to the fact that Contractor cannot meet the reporting requirements absent an appropriate waiver.

33. Use of Estimated Quantities

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

34. Risk of Loss; Transfer of Title

Reserved.

35. Effect of Contractor Bankruptcy

All rights and licenses in the Deliverables granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses in the Deliverables granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such Deliverables, including intellectual property and embodiments of intellectual property therein subject to the terms of this Contract, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

36. Miscellaneous

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.

36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

37. Contract Manager and Procurement Officer

37.1 The State representative for this Contract is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Manager may authorize in writing one or more State representatives to act on behalf of the Contract Manager in the performance of the Contract Manager's responsibilities. The Department may change the Contract Manager at any time by written notice to the Contractor.

37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

38. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:

Sherreon Washington, Contract Manager
Department of Budget and Management
301 West Preston Street, STE 705
Baltimore, MD 21015
Phone Number: 410-767-8006
E-Mail: sherreon.washington1@maryland.gov

With a copy to:

Donshane Turner, Procurement Manager
Department of Budget & Management
45 Calvert St., Room 174
Annapolis, MD 21401
Phone Number: (410) 260-7885
E-Mail: donshane.turner2@maryland.gov

If to Contractor:

Extend Health, LLC
Attention: Ann Ivory
Managing Director, Client Services
38 East Scenic Pointe Drive, Suite 200
Draper, UT 84020
Phone Number : (832) 707-6281
Email: ann.ivory@wtwco.com

With a copy to:

Willis Towers Watson
Attention: Legal Counsel

800 North Glebe Road
Arlington, VA 22203
Phone Number: (703) 258-8000
Email: IMLegal@wtwco.com

39. Liquidated Damages for MBE

39.1 The Contract requires the Contractor to comply in good faith with the MBE Program and MBE Contract provisions. The State asserts it will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation. Unless otherwise provided by law, the parties agree the remedies in this Section are the State's sole and exclusive remedy for breaches of this Section.

(a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$34.71 per day until the monthly report is submitted as required.

(b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$121.48 per MBE subcontractor.

(c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.

(d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

(e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$100.00 per day until the undisputed amount due to the MBE subcontractor is paid.

39.3 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

40. Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

- 40.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:
- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
 - (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract; and
 - (c) Otherwise providing good information management practices regarding all health information and medical records.
- 40.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the selected Offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.504 and in the form as required by the Department.
- 40.3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer. This definition may be updated from time to time as set forth in the HIPAA regulations and any such updated definition shall automatically replace the definition set forth herein.

41. Limited English Proficiency

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.

SIGNATURES ON NEXT PAGE

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

Contractor EXTEND HEALTH, LLC [Redacted]	State of Maryland DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) [Redacted]
By: _____	By: Helene Grady, Secretary
Date: _____	Date: <u>7-25-24</u>
[Redacted]	Wit [Redacted]
[Redacted]	[Redacted]
Approved for form and legal sufficiency this <u>25th</u> day of <u>JULY</u> , 20 <u>24</u>	
_____ Assistant Attorney General	

Exhibit E
Program and HRA Administrative Services Schedule

I. Program Specifics.

1. Pursuant to the services to be provided in accordance with the Contract and Exhibits, the following terms shall apply.

1.1 The services "Services" set forth herein will be provided by Contractor and its affiliates, including its duly licensed insurance agency subsidiary, Extend Insurance Services LLC, and Acclaris, Inc. Contractor shall provide the State's "Eligible Individuals" access to the "Program" and shall assist the Eligible Individuals in enrolling a suitable individual "Product(s)" effective on the "Program Effective Date".

(a) Eligible Individual shall mean (i) a retiree of the State who is Medicare eligible and eligible to participate in the HRA program pursuant to Maryland law and/or (ii) any other class of persons mutually agreed upon by Contractor and the State.

(b) Program shall mean the Individual Marketplace Medicare Program.

(c) Products shall mean individual Medicare Part D Plans. The Products consist of individual policies and are not intended to be, and it is agreed that they are not, sponsored or endorsed by the State. It is agreed that the individual Products are separate from, and not grouped together with, the HRA. The Products shall be treated as individual policies for purposes of any applicable law.

(d) The Program Effective Date is the date that individual coverage shall become effective.

1.2 Unless otherwise expressly agreed in writing, Contractor does not accept any fiduciary or trust responsibilities or related liability in connection with the performance of the services. Contractor does not provide legal, accounting, or tax advice, including with respect to the creation, adoption, operation, or termination of the State's benefits programs.

1.3 The State agrees that:

(a) Contractor will rely on the documentation and information provided by the State or the State's representatives and Contractor does not take responsibility for verifying the accuracy or completeness of it.

(b) the State is in compliance, and will continue to comply, with all laws, rules, regulations, or government authority guidance applicable to the State; and

(c) The State is solely responsible for any and all decisions to terminate or make changes to its group health plan offerings and to offer Eligible Individuals access to the Program;

(d) In this Contract and in the course of providing the services, Contractor has received and further may receive written or oral directions from the State, its representatives, or its legal

counsel (“State Directions”) concerning provision of the services. State Directions include but are not limited to: (i) approval of Contractor’s choice of methodology or approach to providing the Services including but not limited to the processes set forth in the configuration specifications documents, and if applicable the funding documents, completed during Program implementation; (ii) if applicable, the interpretation of any provision of any State sponsored health plan(s); (iii) instructions concerning compliance with applicable laws and regulations; and (iv) instructions concerning compliance with subpoenas or other legal process. Contractor shall be fully protected in relying upon and complying with any the State Directions in performing its obligations under this Contract. Contractor may also rely upon all data, records or other information supplied to Contractor by the State or the State’s vendors (“State Information”). If and to the extent that Contractor acts or fails to act as a result of reasonable reliance upon any State Directions or any State Information, Contractor shall be relieved of any liability arising therefrom and such act or failure to act shall not constitute a default, breach, or non-performance of any warranty or obligation of Contractor. Contractor shall not be deemed to have breached this Contract with respect to any act or failure to act undertaken in good faith relating to any instructions requested by Contractor if the State fails to supply State Directions in a timely manner; and

- (e) If required, in order to ensure a smooth transition of the Eligible Individuals from their existing group health plans to individual plans, the State shall notify, or cause to be notified, the Centers for Medicare & Medicaid Services (“CMS”), prior to the Program Effective Date, of the change in creditable coverage status that arises from the transition of the Eligible Individuals from their existing group health plan offerings on the Program Effective Date. If required, the State shall also notify CMS prior to the transition of any Eligible Individuals from their existing group health plan offerings who age-in subsequent to the Program Effective Date. Contractor shall provide the State with advice and guidance on how to submit this notification to CMS and provide template letters for the State’s review.

1.4 Eligibility Data and Communications

- (a) The State shall use best efforts to deliver all retiree Eligibility Files to Contractor prior to the Program Effective Date as mutually agreed to by the Parties. “Eligibility Files” means the electronic file(s) of all applicable data related to the Eligible Individuals in a format specified by Contractor as set forth in the eligibility file requirements document(s) provided to the State during implementation.
- (b) The State acknowledges that the timely provision of accurate, consistent, and complete Eligibility Files and HRA data (collectively, “State Data Files”) in the format specified by Contractor is essential to its delivery of services hereunder. The State is responsible for ensuring the State Data Files are accurate and timely delivered to Contractor.
- (c) Initial Communication. The State shall communicate the availability of the Program to all Eligible Individuals as mutually agreed to by the parties prior to the Program Effective Date. Thereafter, Contractor shall undertake to communicate and provide access to the Program to the Eligible Individuals using communication methods such as direct mail, inbound and outbound telephone calls, email, text messages, and any other manner mutually agreed upon by the Parties.

- (d) Contact with Eligible Individuals. As part of the Program, Contractor shall establish, maintain, and operate a call center to provide the Services described in this Contract to the Eligible Individuals. The State hereby designates Contractor as the State's designee to contact and communicate with Eligible Individuals regarding the Program that the State has selected for its Eligible Individuals. Any and all contacts by Contractor with Eligible Individuals with respect to the Program shall be on behalf of the State for the purpose of providing the State's Eligible Individuals with information and access to the Program selected by the State. The State hereby represents that it is fully authorized to contact the Eligible Individuals in the manner contemplated by this Contract, including by authorizing Contractor to contact the Eligible Individuals on the State's behalf in relation to the Program. If required, the State has obtained the prior express written consent of the Eligible Individuals to contact them by telephone, including the telephone numbers provided in the Eligibility Files, whether through a land line or wireless number, in relation to the Program.
- (e) Access to Systems. The State agrees that the State is responsible for the use and access to any computer systems and websites related to the Program by the State or through the use of any access credentials assigned to or selected by the State. The State further agrees that Eligible Individuals are responsible for their own use and access to any computer systems and websites related to the Program by such Eligible Individuals or through the use of any identifying information and/or access credentials assigned to or selected by such Eligible Individuals. The State acknowledges that Contractor shall have no responsibility for the Eligible Individuals' creation or use of access credentials to access the systems and websites related to the Program.

II. HRA Administrative Services.

The State sponsors a Health Reimbursement Arrangement within the meaning of Internal Revenue Service Notice 2002-45 ("HRA"). This HRA Administrative Services Schedule (the "Schedule") shall provide additional terms and conditions to those in the Contract and Exhibits and shall address certain administrative Services which are provided by Contractor to the State's HRA. For purposes of this Schedule, any reference to "Contractor" shall include any corporate affiliate, including Acclaris Inc., as well as any subcontractor, that provides the Services outlined herein. A "Participant" shall refer to such Eligible Individuals who elect to participate in the Services provided pursuant to this Schedule. Unless otherwise defined herein, all capitalized words and phrases used herein shall have the meanings assigned to them in Contract or Exhibits. For purposes of this Schedule only, the Contract, Exhibits, and this Schedule may be collectively referred to as the "Terms".

1. Overview of Services.

(a) Nature of Services:

(i) HRA Access - The State shall require that Eligible Individuals can only access the State's HRA through Contractor and that any funding provided by the State to an Eligible Individual is contingent upon the Eligible Individual accessing the Program through Contractor.

(ii) Administrative Services Only - The State understands and agrees that Contractor's sole function with respect to the HRA is to act as recordkeeper or provide other administrative Services in accordance with the Terms. Under the Terms, Contractor does not render investment advice, is not the "plan administrator," trustee or a fiduciary, as these terms or other analogous terms may be defined under

Applicable Law, and does not provide legal, tax or accounting advice with respect to the creation, adoption or operation of the HRA. The State is responsible for devising and adopting the HRA plan document and Contractor's role as administrator is to follow the guidelines set forth in such HRA plan document.

(iii) Services Inconsistent with Role - If, based on changes in the applicable regulatory structure or the interpretation of the regulatory structure, there is a reasonable likelihood that any service being, or to be, provided under this Schedule by Contractor could constitute a discretionary function and thereby subject Contractor to classification as a "fiduciary" under applicable state, local, or federal law with respect to the HRA, and such service could not be restructured in a manner that would not subject Contractor to classification as a "fiduciary" under Applicable Law, then the State will work with Contractor to ensure that Contractor is not deemed a fiduciary. If that is not possible, then upon reasonable notice to the State, Contractor may decline to thereafter provide the specific service which would cause Contractor to be classified as a "fiduciary". The failure to provide any such service shall not constitute a breach of Contractor's obligations under the Terms.

(iv) Compliance Responsibility - The State is solely responsible for ensuring that, to the extent applicable, its benefit programs, employee sponsored health plans, and its HRA(s) comply with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Internal Revenue Code of 1986, as amended (the "Code"), and any other applicable laws. If applicable, with respect to any employer sponsored health plan(s) ("Plan(s)"), the State agrees it shall maintain full discretionary authority and control over the management, administration and funding of the Plans and all Plan assets, including making all final decisions with regards to such Plans and operating the Plans in accordance with applicable law. Contractor, acting solely in its role as an administrative services provider, shall provide the State with general information relating to industry best practices for HRA compliance with applicable laws and shall notify the State if it reasonably believes that any State Instructions related thereto are in conflict with applicable laws.

(v) Funding Responsibility - Contractor shall not be liable for any failure or refusal to pay or honor any claim for benefits made against or pursuant to the HRA. In addition, Contractor shall not be liable or use its funds for the payment of benefits under the HRA, including, without limitation, where sought as damages in an action against the State, Contractor or the HRA. Contractor does not insure or underwrite the State's liability to provide benefits under the HRA, and the State shall have sole responsibility and liability for payment of all benefits under the HRA.

(b) Reliance Upon HRA Data - The State acknowledges that the timely provision of accurate, consistent and complete HRA Data in the format specified by Contractor is essential to its delivery of Services hereunder and that Contractor will rely on such HRA data when providing the Services. For these purposes, "HRA Data" means all data and records supplied to Contractor in connection with performing the Services pursuant to the Terms. HRA Data shall include current Participant names, addresses, contribution amounts and effective dates, and status.

(c) Reliance Upon Persons Designated by the State - The State will provide names and other information for persons authorized to take actions for or provide information on behalf of the HRA. Until notified of a change, Contractor may reasonably rely upon this information and may act upon instructions received from and/or on information (including HRA Data) provided by these named persons. Contractor has the right to assume that those persons continue to be authorized unless notified otherwise.

2. Transition of Participants: Contractor will provide the communication Services described in the Terms. Ordinary course customization of communication materials will be provided at no cost to the State upon the State's request, however costs for unique or out-of-the-ordinary customization work will be charged to the State and Contractor will notify the State and obtain the State's approval of such costs prior

to commencing any unique or out-of-the-ordinary customization work. Contractor will process all HRA credit allocations as provided in the Eligibility File and/or HRA Data received from the State. The State shall cooperate with Contractor with regard to proper settlement of eligibility issues and inquiries. Late notification of HRA eligibility or incorrect HRA eligibility information provided by the State to Contractor may result in erroneous HRA benefit payments. In this event, the State shall be solely responsible for any such erroneous payments and the State shall also be solely responsible for collecting any such erroneous payments from the Participant.

3. HRA Administrative Services and Recordkeeping:

(a) Transfer of Funds – The State will authorize from its general assets amounts equal to the claims that are paid by Contractor by selecting one of the settlement methods available as listed in the HRA funding documents provided to the State by Contractor. HRA reimbursements to Participants shall be provided through ACH direct deposit and the State hereby authorizes Contractor to initiate ACH direct deposits for the payment of allowable medical expenses. Further, the State hereby grants Contractor the authority to write checks to Participants for the payment of allowable medical expenses which Contractor may provide in limited circumstances; however, if the State requests that Contractor regularly provide checks for HRA reimbursements to Participants, the State agrees to pay Contractor an additional fee which shall be disclosed and agreed to in writing prior to the issuance of such checks. In the event that the State has insufficient funds, the applicable Funding Failure Triage Policy shall apply.

(b) Participant Accounts - Contractor will establish a Participant account for each HRA Participant or joint accounts for spouses, as determined by the State, for whom it receives HRA Data. Contractor is not responsible for determining if such HRA Participants are eligible under the terms of the HRA.

(c) Claims Processing –

(i) Review of Claims - Contractor will review and substantiate initial claims in accordance with standards set forth under Applicable Law, including IRS guidelines concerning eligible medical expenses, and Department of Labor claims procedure regulations. Claims will be processed in accordance with the terms of the State's HRA plan document. Contractor will also process a first level of an appeal of a denied HRA benefit claim in accordance with standards set forth under Applicable Law, including IRS guidelines concerning eligible medical expenses, and Department of Labor claims procedure regulations. The second and final level of appeal will be to the State or the HRA plan administrator. The claims processing instructions in the State's HRA Plan Document shall be consistent with this paragraph.

(ii) Payment of Claims - Contractor will process initial claims within eight (8) business days of the date Contractor receives a claim request from a Participant. Checks, and ACH fund transfers, if applicable, will be issued each business day or, at the State's request, at a different frequency as specified in the HRA Plan Document, upon receipt of claims in good order. Initial claims are in "good order" when the reimbursement request satisfies the terms of the State's HRA plan document and any claims processing rules of Contractor and the claim contains all pertinent information, including information required to substantiate the claim. Contractor will not reimburse a Participant's claim unless the Participant has sufficient funds credited to his/her HRA account at the time the claim is submitted. If the Participant does not have sufficient funds credited to his/her HRA account at the time the claim is submitted, the reimbursement request will be held by Contractor and processed in accordance with the time frame described in this paragraph starting with the date that such funds are available.

(iii) Unsubstantiated Claims/Ineligible Expenses – If it is determined that a claim previously processed as in "good order" is subsequently found to be unsubstantiated or include an ineligible

expense, a letter will be sent to Participant, and in addition, reminder notifications will be sent to Participant on a monthly basis until such amounts are collected from Participant or until the account has been closed (and Contractor may initially offset such ineligible expense against future eligible expenses). Where Contractor is unsuccessful after three collection attempts, the State will be responsible for collecting such amounts (as well as any applicable tax reporting). Contractor will provide an electronic data file with an overpayment report identifying the Participants and amounts to enable the State to collect directly.

(d) Department of Labor Form 5500 - Contractor will annually provide the State (or other individual at the direction of the State) with any information pertaining to the HRA necessary for the State to complete Department of Labor form 5500.

(e) Debit Card Services – Contractor shall provide the State with debit cards in relation to the HRA administrative services, as outlined in the Debit Card Services Schedule, attached hereto as Appendix 1.

4. Notice of Errors: All information supplied to the State or Participant will be deemed correct if notice of discrepancies is not given to Contractor by the Participant or the State within one hundred twenty (120) days of the completion of the State's annual audit or special audit as permitted by the terms of the Contract.

5. Amendments to HRA Plan Document:

(a) Amendments to HRA Documents - The State will inform Contractor of changes it desires to implement for the HRA thirty (30) days prior to the time Contractor is expected to implement such changes. If upon notification by the State of changes to the HRA, Contractor determines, in its sole discretion, that such changes are reasonably expected to require more than thirty (30) days to implement, Contractor shall notify the State and the Parties will work together to determine a mutually acceptable revised time period for the implementation of such changes.

(b) Notwithstanding the foregoing, maintenance of an HRA plan document consistent with HRA operations, Applicable Law and all legal or regulatory requirements is the sole responsibility of the State.

6. Compensation: In consideration for its Services provided hereunder, the State shall pay Contractor the HRA fees specified in the Terms. In addition, Contractor's affiliate Acclaris may also receive the following compensation in relation to the Services it provides:

Earned Credit Rate: Acclaris receives an earned credit rate ("ECR") for holding an account at the bank through which funding amounts pass that applies to reduce the banking fees that Acclaris and its affiliates incur. The ECR is based on a variety of factors, including the bank's monthly investable balance, the number of days in a billing month, current market conditions (including the economy and competitive landscape), as well as individual customer relationships. The ECR is not attributable to any specific Acclaris client but rather the entirety of all balances held by Acclaris on behalf of all of its clients. In the event the ECR ever exceeds bank fees incurred by Acclaris or its affiliates, the excess is forfeited. The ECR is variable as noted herein, but based on historical data Acclaris estimates that the ECR will not exceed 1.95% and, using a pro rata methodology, Acclaris estimates that the total ECR it receives per plan is less than \$1,800 annually.

7. Reserved.

8. Legal Counsel: The State understands and agrees that neither Contractor nor any of Contractor's other Affiliates are permitted to provide the State with legal or tax advice or otherwise engage in the practice of law. The State acknowledges that it will not rely on any information provided as if it were legal or tax advice, and acknowledges that Contractor hereby recommends and advises the State to review with its legal and tax counsel all documents provided to it by Contractor and any questions concerning the State's responsibilities under the Terms and the HRA.

9. Successor Recordkeeper:

(a) Run-out Period – If the Contract is terminated and if the State agrees, Contractor will, for the remainder of the current plan year and for a 90-day period immediately following the last day of the plan year in which the Terms or this Schedule is terminated (unless another timeframe is specified in the Contract or preceding Exhibits, or required by applicable law) (the "Run-Out Period"), continue to administer claims for expenses incurred in the plan year in which the Terms or this Schedule is terminated. Upon expiration of the Run-Out Period, all obligations of Contractor to administer claims or perform any other Services under this Schedule shall cease. The fees set forth in the Terms shall be applicable to any services provided during the Run-Out Period and additional fees may apply for services beyond the standard Run-Out Period services described herein. If a longer Run-Out Period is requested by the State, Contractor's then-current fees shall apply, which shall be agreed to in a writing signed by both Parties.

(b) Successor Recordkeeper - Upon termination, the parties agree that Contractor shall have no further duty or responsibility to the State or the HRA under this Schedule except as provided by the Run-out Period described in paragraph 9(a) of this Schedule, unless otherwise specified in the Contract or preceding Exhibits, or required by applicable law. However, Contractor will use reasonable efforts to transfer all relevant non-proprietary information concerning the HRA, in Contractor's standard format, to the State or to a successor service provider to the extent permitted by Applicable Law. Any unforeseeable costs or expenses incurred by Contractor in effecting this transfer shall be paid by the State unless waived in writing by Contractor. The State agrees that Contractor may charge reasonable fees for the provision of requested records or reports that Contractor previously provided.

10. Survival: The Parties acknowledge and agree that the provisions of paragraphs 9(a) and 9(b) of this Schedule shall survive the termination of this Schedule for the length of the Run-Out Period.

11. Writing and Signature; Electronic Transactions: Unless otherwise explicitly required by law, the State represents that the HRA document(s) will allow for transactions to be made by electronic means. Under the HRA document(s) and this Schedule together, notices, consents and other actions by or on behalf of, or with respect to, the HRA, its Participants and their respective beneficiaries ("HRA Transactions") may be effected, in whole or in part, by electronic means, including via recorded telephonic communications if applicable. Any HRA Transaction relating to Services provided under this Schedule may be initiated or effected by the State, Contractor, a Participant or a beneficiary by use of electronic means authorized by Contractor, Internet access system (including Contractor's website) or telephone service line. Use of electronic means for HRA Transactions is subject to the terms and conditions established by Contractor and disclosed to the State and Participants, and electronic transactions shall be binding on the parties if Contractor, acting in good faith, believes that such transactions are authorized by the State, a Participant, or a beneficiary, as applicable.

Appendix 1 to HRA Administrative Services Schedule

Debit Card Services Schedule

This Debit Card Services Schedule ("Appendix") contains terms that apply to Contractor's provision of Debit Card Services to the State. The terms in this Appendix are in addition to those provided in the Terms.

I. Definitions

Capitalized terms not otherwise defined herein are defined as set forth in the Terms. In addition to those terms defined in the Terms, and unless the context requires otherwise, the capitalized terms throughout this Appendix shall have the meaning set forth below:

Cardholder Agreement means between Contractor and/or a Contractor Vendor and the Cardholder.

Covered Individual collectively refers to a Participant and any eligible Dependents whose expenses are eligible for reimbursement from the HRA.

Debit Card Services means the administrative services related to the provision and usage of debit cards in relation to the HRA Administrative Services.

Dependent means a spouse, child or other person whose expenses are eligible for reimbursement from the HRA, as set forth in the applicable configuration and funding documents mutually agreed to by the Parties.

HRA Administrative Services means the HRA administrative services as set forth in the Schedule.

Vendor means the debit card vendor(s) selected by Contractor to provide administrative or other services related to the debit cards.

II. Debit Card Services

A. Scope and Effect of Appendix. The State agrees that it has elected to receive Debit Card Services in relation to the HRA Administrative Services provided by and through Contractor's affiliate, Acclaris, Inc. ("Acclaris"), in accordance with the Terms.

B. Acknowledgment of Corporate Affiliation and Other Forms of Compensation. The fees to be charged to the State for the Debit Card Services are set forth in the Terms. The State acknowledges that in addition to such fees, Acclaris, its corporate affiliates and/or its subcontractors, may receive other forms of compensation from third parties in the course of providing these Debit Card Services. By way of example, this compensation may be in the form of interchange or other payments from card networks or debit card issuers and float income on clearing accounts. With the exception of float income, this third-party compensation is generally unrelated to the services provided to the State and does not change the fees paid by the State.

C. Amendments and Fee Changes Related to Changes in Law. The Parties mutually intend that, at all times, the Debit Card Services will be provided in accordance with applicable laws and regulations ("Applicable Law"). In the event that a change in Applicable Law requires a change to this Appendix and/or a change to the provision of the Debit Card Services, the Parties agree that they will make such changes to this Appendix and/or the Debit Card Services as are necessary and advisable to comply. The fees charged for the Debit Card Services have been set based on the Applicable Law in effect and applicable as of the Effective Date of this Appendix. If a change in Applicable Law results in Acclaris being required

to perform additional services not currently provided by the Debit Card Services or additional tasks in order to provide the Services set forth in the Contract, then the Parties shall jointly agree to a reasonable, proportional and equitable adjustment to the fees.

D. Funds Transfer Authorization. Prior the provision of any of the Debit Card Services, the State acknowledges that it will be required to execute a Funds Transfer Authorization document. This Funds Transfer Authorization document will be provided and completed by the Parties during implementation and configuration of the Services.

III. Card Issuance, Activation and Deactivation

A. Debit Cards (“**Card(s)**”) will be issued in accordance with Contractor’s or a Contractor Vendor’s internal approval policies and procedures, applicable law, the Cardholder Agreement and in accordance with the Terms and this Appendix. Covered Individuals who have been issued a Card are referred to as “**Cardholders**”. All Cards issued in accordance with this Appendix will be mailed to the last known address of the Covered Individual.

B. Contractor will issue a Card in the name of the Participant and eligible Dependents of a Participant, subject to Contractor or Contractor Vendor’s internal approval policies and procedures.

C. The State understands that a Covered Individual’s use of the Card is subject to the Cardholder Agreement. Neither the State, Contractor, nor any Contractor Vendor is responsible for monitoring the use of the Card and ensuring that only authorized individuals use the Card. Contractor and/or a Contractor Vendor will handle fraudulent and unauthorized transactions in accordance with the Cardholder Agreement between a Contractor Vendor and the Cardholder and/or Contractor’s standard procedures.

D. Upon the State’s written request or through e-mail or similar electronic communication, Contractor will deactivate a Covered Individual’s use of a Card. Contractor agrees to deactivate the Cardholder’s Card as soon as practicable after receiving a deactivation notice from the State, but in no event more than three (3) business day after its actual receipt of a complete notice thereof. Neither Contractor nor any Contractor Vendor is responsible for any payments of expenses made prior to the date the Card is deactivated in accordance with this Appendix.

E. Contractor and/or a Contractor Vendor reserve(s) the right to deactivate any Card without prior notice to the State or Cardholder in accordance with the terms of the Cardholder Agreement and/or this Appendix. In addition, Contractor and/or a Contractor Vendor may suspend or terminate Card use for all Covered Individuals to the extent that funding requirements are not satisfied. The Contractor platform controls the Card activation/deactivation status and will provide capabilities with its customer service portals to deactivate cards in real-time and to request new cards. To the extent permitted by law, Contractor and/or a Contractor Vendor will provide upon written request from the State, a report listing all Cards deactivated or suspended by Contractor and/or a Contractor Vendor; such report will be provided within a commercial reasonable period of time from receipt of such request.

F. Contractor and/or a Contractor Vendor will auto adjudicate Card transactions with respect to the HRA in accordance with applicable rules and regulations, as well as its normal operating procedures.

G. Contractor and/or a Contractor Vendor will provide a designated number for card activation as well as for lost/stolen cards. Availability of certain service components may be subject to the system maintenance schedules of Contractor or the applicable Contractor Vendor.

H. Neither Contractor nor any Contractor Vendor: (a) are financially responsible for the claims payable under and/or expenses incident to the HRA, or (b) is responsible to recover ineligible payments from an eligible individual who has submitted a claim and received reimbursement from an HRA except and to the extent that such ineligible payments were made solely as the result of any anomaly or malfunction in a system or system process within the control of Contractor or any Contractor Vendor; and in the event that ineligible payments were not the result of gross negligence by Contractor or any Contractor Vendor, Contractor shall not be financially responsible for the ineligible payments that could not be recovered from the Covered Individual. In such circumstances the State will cooperate with Contractor in the recovery effort consistent with IRS and other applicable government laws, regulations, and guidelines.