

**ADMINISTRATIVE SERVICES AGREEMENT
BETWEEN THE STATE OF ALASKA AND
OREGON DENTAL SERVICE**

Effective January 1, 2014

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ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Agreement (the "**Agreement**") is entered into between the State of Alaska ("**Plan Sponsor**"), and Oregon Dental Service ("**ODS**"). Plan Sponsor and ODS are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**." This Agreement is effective January 1, 2014 (the "**Effective Date**").

RECITALS

WHEREAS, Plan Sponsor has established and maintains self-funded employee benefit plans for certain employees, retirees, and their dependents (the "Members"); and

WHEREAS, ODS provides certain services to self-funded dental plans, including claims processing services; and

WHEREAS, Plan Sponsor desires to retain ODS to furnish the services described herein for the dental plan portions of the Plan Sponsor's self-funded benefits plans, one for active employees and their dependents and the other for retirees and their dependents (the "**Plan**").

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the following:

SECTION 1. RELATIONSHIP OF PARTIES

1.1. ODS RESPONSIBILITIES

The Parties acknowledge and agree that ODS is acting in an administrative and fiduciary capacity in performing ODS' duties and obligations under this Agreement. ODS may use ODS' reasonable business practices and ODS' reasonable understanding of the terms of the Plan in carrying out ODS' administrative duties under this Agreement. ODS will be functioning in an administrative capacity with respect to matters not covered in SECTION 5. The State of Alaska is the Plan Sponsor and fiduciary for the Plan with respect to all matters except those covered in SECTION 5, for which ODS is the fiduciary.

Except as covered in SECTION 5, ODS will abide by all decisions of the Plan Sponsor on all questions of substance and procedure concerning the Plan. Except as covered in SECTION 5, ODS is not the plan administrator responsible for compliance with the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the federal Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) or other applicable law. ODS will not be responsible for advising the Plan Sponsor with respect to its fiduciary duties under this Agreement.

ODS shall discharge its obligations under this Agreement with that level of reasonable care which a similarly situated prudent services provider would exercise under similar circumstances,

and subject to the standards in Exhibit A. In addition, when acting as the fiduciary, ODS will observe the standard of care and diligence required by a fiduciary under applicable Alaska law.

1.2. ODS IS NOT INSURING ANY PLAN LIABILITIES

ODS does not insure or underwrite any benefit associated with the Plan and will have no financial risk or liability with respect to the provision of benefits paid pursuant to the Plan, except as covered in Section 5.

1.3. AUTHORITY

Plan Sponsor grants ODS the authority to serve as an agent of Plan Sponsor in carrying out ODS' duties under this Agreement, but only those ODS duties that are expressly stated in this Agreement or as mutually agreed in writing by the Parties.

1.4. PLAN SPONSOR RESPONSIBLE FOR ADOPTION OF PLAN

Plan Sponsor, and not ODS, has the sole and ultimate authority and responsibility for sponsoring, adopting, amending, designing and terminating the Plan.

Plan Sponsor has provided ODS with preliminary Plan documents at least thirty (30) days prior to the Effective Date. Final Plan documents will be provided to ODS upon their completion. Plan Sponsor agrees that it is responsible for satisfying any and all Plan reporting and disclosure requirements imposed by law, including updating the Plan to reflect any changes in benefits.

1.5. ODS IS AN INDEPENDENT CONTRACTOR

ODS is and will remain an independent contractor with respect to the services being performed under the terms of this Agreement and will not for any purpose be deemed an employee of Plan Sponsor or the Plan, and ODS will not be deemed to be a partner or to be governed by any legal relationship other than that of independent contractor. ODS does not assume any responsibility for the general policy design of the Plan; the adequacy of the funding thereof; nor any act, omission or breach of duty by Plan Sponsor.

1.6. PLAN ACTS THROUGH PLAN SPONSOR

Any actions, directions or representations made by the Plan Sponsor to ODS in writing made by an authorized representative of the Plan Sponsor may be considered the actions, directions or representations of the Plan.

SECTION 2. THE PLAN AND OTHER DOCUMENTS

2.1. PLAN ADOPTED

The current Plan is incorporated into this Agreement in Exhibit F. ODS shall act in accordance with the Plan terms, as applicable to services provided by ODS under this Agreement. If Plan Sponsor changes or adds any benefits under the Plan, ODS will not be required to administer those changes or additions unless all of the following conditions have been met:

- a. Plan Sponsor has provided advance notice to ODS of Plan Sponsor's intent to change or add benefits under the Plan;
- b. ODS has provided Plan Sponsor advanced written notice of ODS' willingness and ability to adequately administer the changes or additions; and
- c. When agreed upon by the Parties, any changes in the fees required by ODS to administer the changes or additions are included in a written amendment to the Fee Schedule.

2.2. ADMINISTRATIVE INFORMATION

Plan Sponsor will furnish ODS with any and all instructions, contracts, information or documents deemed necessary by ODS to properly perform ODS' obligations under this Agreement. Such information will include, but not be limited to, copies of the Plan and any and all amendments or successor documents. ODS, at the request of Plan Sponsor and as part of ODS' duties under this Agreement, may prepare and/or print the Plan and summary details of the Plan to Members. However, Plan Sponsor retains ultimate authority as to the content, distribution and legal or regulatory requirements related to the Plan.

2.3. OTHER BENEFIT PLANS

If Plan Sponsor adopts additional self-funded benefit plans, Plan Sponsor may negotiate with ODS for the inclusion of services needed by such plans under this Agreement.

SECTION 3. TERM OF AGREEMENT

3.1. TERM

For the purposes of this agreement, Term means the period of time this Agreement remains in effect.

3.2. RENEWAL

The initial Term of this Agreement will commence on January 1, 2014 and terminate on December 31, 2016, unless terminated sooner under Section 4. The Agreement may renew by a written notice of the Plan Sponsor (at least ninety (90) days prior to the end of the current term) to ODS for up to four (4) subsequent calendar years, each of which is referred to as a Term, if provided for by the laws of the State of Alaska. If the Agreement is terminated early for any reason prior to the expiration of a full 12 month period, the shorter period between the first day of the Term and the date the Agreement is terminated is the Term.

Any renewal is subject to a revised Fee Schedule when proposed in advance by ODS, unless:

- a. By or before the anniversary of the Effective Date, the Parties have not completed negotiation of an agreement to an amended Fee Schedule and any other amendments to this Agreement proposed by either Party; or
- b. Either Party has given 30 days advance written notice prior to the anniversary of the Effective Date of the Party's intent not to renew the Agreement.

If, by the conclusion of any Term, the Parties have not completed the negotiations for, and execution of, a new Fee Schedule, but termination of this Agreement has not occurred, ODS at ODS' discretion may continue ODS' services under this Agreement using the last approved Fee Schedule. Any Fee Schedule subsequently agreed upon by the Parties may be in effect retroactively, depending on the Parties' agreement to renew.

Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be renewed beyond the initial three (3) year term.

Any extension shall be effective only after it is reduced to writing and executed by all parties to the Agreement. Any agreement to extend this Agreement shall include, but not necessarily be limited to: (1) an unambiguous statement that the Agreement is being extended; (2) the Term of the extension; (3) the amount of any Fees to be paid during the Term of the extension or a statement that no payment will be made during the extension; (4) a statement that all terms and conditions of the original Agreement shall, unless explicitly delineated in the extension, remain as they were in the original Agreement; and, (5) if the duties of either party will be different during the extension than they were under the original Agreement, a detailed description of those differences.

SECTION 4. TERMINATION AND MODIFICATION

4.1. TERMINATION WITHOUT CAUSE

The Plan Sponsor, by written notice, may terminate this Agreement, in whole or part, when the Plan Sponsor determines that termination is in its best interest. The Plan Sponsor will be liable only for fees and benefits paid as set forth under this Agreement for services rendered before the effective date of termination.

4.2. CONFLICT OF INTEREST

The Commissioner of the Department of Administration reserves the right to terminate this Agreement if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program developed by ODS. The Commissioner's determination regarding any questions of conflict of interest shall be final.

4.3. TERMINATION FOR CAUSE

This Agreement terminates, and ODS' obligation to process claims and pay benefits will cease upon such termination, in accord with any of the following:

- a. Thirty (30) business days after written notice by registered mail has been given by ODS to Plan Sponsor or by Plan Sponsor to ODS, of the breach of material obligations under this Agreement; provided that such breach has not been cured within such thirty (30) day period. Notwithstanding the foregoing, Plan Sponsor's default in any payment under this Agreement will be subject to termination under Section 4.3.b.;
- b. Upon thirty (30) business days written notice by registered mail, in ODS' sole discretion, if Plan Sponsor fails to pay:

- i. Paid Claims to ODS by their due date or if Plan Sponsor does not pay any other payment due under this Agreement by its due date. Paid Claim means the amount ODS has paid on behalf of Member pursuant to this Agreement in response to a request for the payment of benefits under the Plan; or
- ii. Administrative fees, charges or other amounts due to ODS under the terms of this Agreement;
- c. As of the effective date of any law, regulation or interpretation if any law or regulation is enacted which prohibits the continuance of this Agreement, or any existing law or regulation is interpreted, by the Plan Sponsor or ODS, to so prohibit the continuance of this Agreement; and
- d. If the Plan is materially modified, as determined by the Plan Sponsor, unless this Agreement is amended to make such modified plan the Plan under this Agreement.

4.4. OTHER RIGHTS TO TERMINATE

ODS' and Plan Sponsor's right to terminate pursuant to this Section will be in addition to and not a limitation of any right to terminate (or right to offset) under any other provisions of this Agreement.

4.5. LATE PAYMENT AND REINSTATEMENT

Any payment received by ODS after termination of this Agreement will be deposited for security purposes only and will not be deemed to have been accepted for reinstatement or as an accord and satisfaction. This Agreement will be reinstated only upon the written consent of ODS.

4.6. MODIFICATION

Except as otherwise specifically provided in this Agreement, this Agreement may be modified only by a written agreement signed by an authorized representative of each Party.

SECTION 5. ODS' SERVICES

5.1. CLAIMS PROCESSING

During the Term of this Agreement, and any period of Run-Out Claims Processing (as defined in the following paragraph), ODS will issue benefit payments and denials, along with explanations of benefits, in accordance with (i) the terms of the Plan, (ii) ODS' dental and payment policies, and (iii) any Participating Provider contracts, for those claims Incurred between the Claims Incurred dates and the end of the Run-Out period. Incurred means the date upon which services or supplies have been provided to Member during the Term. For the purposes of this Agreement, Participating Provider means any dentist or other health care provider as permissible under Plan benefits, licensed where required, performing services within the scope of its license, with whom ODS has entered into an agreement which allows Member to obtain dental care services according to certain pre-negotiated fees and other relevant terms.

ODS will administer claim payments under this Agreement according to the standards set forth in Exhibit A. If performance is below the standards set forth in Exhibit A, ODS will pay penalties to the Plan Sponsor as described in Exhibit A.

Run-Out Claims Processing or Run-Out means ODS will continue to process claims and otherwise provide administrative services with regard to claims Incurred prior to the date of termination of this Agreement. ODS will discontinue processing any and all claims upon termination of this Agreement and completion of any period of Run-Out, regardless of the Incurred date of the claim, as further provided in Section 8 of this Agreement.

In evaluating claims, ODS will use ODS' claim processing system of edits and other applicable standards to determine whether claims are Covered Services. Covered Services means the services, supplies, treatments or accommodations that are included within that term in the Plan. If there is a discrepancy between any handbook or summary and the Plan, the Plan must be followed.

Specifically, in accordance with the Plan terms, ODS will:

- a. Process claims and provide notices;
- b. Conduct first and second level appeal reviews, as required by the Plan, subject to federal regulations and the terms of the Plan; and
- c. Coordinate external review requests with Individual Review Organizations (IROs), subject to a fixed fee as indicated in the Fee Schedule, when so required by the terms of the Plan.

ODS will not be responsible for handling eligibility appeals, which will be handled by the Plan Sponsor, as described in Section 7.

In processing claims and providing notices, including appeals of adverse benefit determination and final adverse benefit determinations, ODS will strictly adhere to requirements under the Plan, the Patient Protection and Affordable Care Act of 2010 ("PPACA"), Section 2719 of the Public Health Service Act ("PHSA"), and Technical Release 2010-01 issued by the U.S. Department of Labor, Employee Benefits Security Administration, August 23, 2010, and all applicable law, regulations, and terms of the Plan. In processing claims, appeals, and reviews, ODS agrees to serve as a fiduciary and shall observe the standard of care and diligence required of a fiduciary under applicable Alaska law. ODS will act as the Plan Sponsor's and the Plan's agent for purposes of coordinating external reviews under the Plan and shall be solely liable for compliance with all applicable laws.

5.2. DEFENSE OF CLAIM LITIGATION AND DISPUTES

In the event a dispute arises with a Member or other third party over Plan benefits, or any action taken by ODS related to the payment of Plan benefits in the performance of ODS' duties under this Agreement (referred to in this Agreement as a Claim Dispute), the Parties agree to the following:

- a. **Notification of Dispute:** When a Party reasonably determines that a Claim Dispute may arise, the Party will promptly notify the other Party in writing as to the issues involved in the Claim Dispute.
- b. **Defense:** In the event of a legal, administrative, or other action arising out of the administration, processing, or determination of a Claim, the Plan Sponsor will undertake the defense of such action. If ODS is named as a party to such legal action, the Plan Sponsor, in its sole discretion, may agree to defend ODS, provided there is no conflict of interest between the Parties, or any claim of any error, omission, negligence, fraud or criminal act of ODS under this Agreement. The Plan Sponsor agrees to pay the amount of Claims included in any judgment or settlement Plan Sponsor enters into in such action. ODS shall not be liable for any part of such judgment or settlement, including but not limited to legal expenses and punitive damages, except to the extent provided in Section 9 of this Agreement. Notwithstanding anything to the contrary, this section shall not apply to any class action.

5.3. GENERAL ADMINISTRATIVE SERVICES

ODS will:

- a. Answer Member inquiries regarding eligibility, Plan benefits, status of benefit payments, complaints and requests for forms;
- b. Upon request of Plan Sponsor, assist in the development and design of the Plan, both initially and in connection with benefit revisions, additions and extensions, although the design of the Plan is the sole responsibility of Plan Sponsor;
- c. Upon the separate written request of the Plan Sponsor and subject to Section 2.2 and the payment of additional fees to be indicated by ODS, draft, prepare and print handbooks and other Member materials, but not any SBC;
- d. Upon request of Plan Sponsor, assist with the enrollment of Members;
- e. Maintain eligibility files based upon information provided by Plan Sponsor;
- f. Issue identification cards to Plan Sponsor or directly to Members;
- g. Initiate reasonable overpayment, subrogation and similar right of reimbursement recovery efforts in accordance with ODS' standard business practices;
- h. Provide Members with access to Participating Providers. Plan Sponsor will not attempt to establish or negotiate its own dental care provider contracted network; and
- i. Upon request of Plan Sponsor, prepare standard reports for use by the Plan in the financial management and administrative control of the Plan.

5.4. PROCESSING ERRORS

The parties will cooperate fully to make reasonable efforts to recover Benefit Payments in excess of amounts payable under the terms of the Plan. If it is determined that any Benefit Payment has been made by ODS to, or on behalf, of an ineligible person, or if it is determined that more than the appropriate amount has been paid, ODS shall undertake good faith efforts to recover the erroneous payment. For the purpose of this provision, "good faith efforts" constitute ODS's outreach to the responsible party twice via letter, phone, email or other means to attempt to recover the payment at issue. If the Member or the Participating Provider does not respond within 90 days, ODS may offset amounts due to the responsible party. If those efforts are unsuccessful in obtaining recovery, ODS may use an outside vendor, collection agency or attorney to pursue recovery unless the Plan Sponsor directs otherwise. Overpayment recoveries made through third party recovery vendors, collection agencies, or attorneys are credited to the Plan Sponsor net of fees charged by ODS or those entities; provided, however, that ODS shall bear the cost of collection for overpayments due to ODS's negligence or breach of this Agreement. ODS shall also reimburse the Plan Sponsor for any overpayments not collected to the extent that the overpayment is due to ODS's negligence or breach of this Agreement.

5.5. NONSTANDARD REPORTS

If the Plan Sponsor requests any nonstandard report and ODS, in its sole discretion, agrees to provide such report, ODS reserves the right to charge a reasonable fee for nonstandard reports, *i.e.*, those not included in Exhibit C. Nonstandard reports shall be subject to a charge as indicated in the Fee Schedule, if any. All other charges for any nonstandard reports not specifically indicated in the Fee Schedule shall be agreed upon by the Parties in writing before the reports are prepared. Notwithstanding the foregoing, ODS will not prepare Incurred But Not Reported (IBNR) reports nor will ODS sign prepared financial statements.

5.6. SUBROGATION AND RIGHT OF REIMBURSEMENT

ODS will make its best efforts to identify and pursue potential subrogation and similar right of reimbursement recovery opportunities with regard to claims Incurred under the Plan, in accordance with ODS' standard business practices. The parties agree that ODS may decide to not pursue a potential subrogation and similar right of reimbursement recovery opportunity that is less than \$25.00. Plan Sponsor will notify ODS of subrogation and right of reimbursement opportunities of which it becomes aware. A fixed percentage of subrogation and right of reimbursement recoveries will be withheld to cover ODS' costs of pursuit of such recoveries and is identified as the subrogation/right of reimbursement fee in the Fee Schedule, if any. This subrogation/right of reimbursement fee shall be in addition to any other fees and expenses that ODS is entitled to, or otherwise obligated to pay, out of any subrogation or similar right of reimbursement recovery.

Unless notified to the contrary by Plan Sponsor by or before the later of the termination date or the completion of any period of Run-Out, ODS will continue, after termination and completion of any Run-Out, to pursue Plan subrogation and similar right of reimbursement files that are then in its possession and will be entitled to withhold the subrogation/right of reimbursement fee from recoveries it obtains on those files. ODS' pursuit of recoveries under this provision, whether before or after the termination date and completion of any period of Run-Out, will continue only as long as ODS determines such recoveries are active and viable. The subrogation/right of

reimbursement fee is calculated from the amount recovered, net of any attorney fees, costs, or other expenses that are paid to effectuate the recovery and net of any stop-loss reinsurance credited first to ODS. ODS will calculate and withhold the subrogation/right of reimbursement fee from each net recovery and then credit or remit the remaining net balance of the recovery to Plan Sponsor.

5.7. NOTICES

ODS shall provide the following notices to Members, unless instructed otherwise by the Plan Sponsor:

- a. For 2014 only, certificates of creditable coverage in the format and under the circumstances and within the time periods as required by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); to the extent not covered by the medical plan notices;
- b. For 2014 only, HIPAA Information on Categories of Benefits Notice, to the extent not covered by the medical plan notices;
- c. Upon enrollment and annually thereafter, a HIPAA special enrollment rights notice; and
- d. Any other notices required by applicable law.

ODS shall perform such duties in compliance with HIPAA, PPACA, Internal Revenue Code Section 9801, and all applicable regulations, all as amended from time to time. All such notices shall contain the content and be distributed in the method, during the time frame, and to the applicable Members as required by law.

SECTION 6. PLAN SPONSOR REQUIREMENTS

6.1. PAYMENT OF FEES

Plan Sponsor will pay ODS all administrative fees as set forth in the Fee Schedule and any other fees set forth in this Agreement or other applicable Exhibits. The Fee Schedule and any other Exhibits may be amended as set forth in this Agreement. See also Exhibit A for the fee offsets that could occur due to performance guarantees.

6.2. FEE ADJUSTMENTS FOR INCREASE OF ADMINISTRATION

If, during any Term of the Agreement, ODS’ administrative duties materially change or ODS’ expenses of administration materially increase for the reasons stated below, ODS may provide reasonable notice to Plan Sponsor by registered mail, and at least ninety (90) days before the change would go into effect, proposing an alternative Fee Schedule. The parties shall then negotiate in good faith to mutually agree (or not) to any such increase. Following negotiations and an agreement, such new Fee Schedule will go into effect effective when the Plan Sponsor so consents. For the purpose of this Section, ODS may propose to adjust the Fee Schedule in the following situations:

- a. ODS' costs increase due to legislative or regulatory changes;
- b. ODS' costs increase due to mutually agreed upon benefit changes or additional ODS services; or
- c. Plan enrollment increases or decreases by 10% or more at any time during the Term relative to the "Enrollment Assumption" listed in the Fee Schedule.

Such agreed upon fee adjustment will continue for the remainder of the Term, subject to the agreement of the Plan Sponsor.

6.3. TAXES

Plan Sponsor will not pay any federal, state or local taxes, except as may be provided as a covered benefit under the Plan.

6.4. CLAIMS BILLING

Based on the billing period, ODS will notify Plan Sponsor by an agreed-upon method (such as by electronic mail) of the amount of Paid Claims since the Effective Date (if this is the first such notification under this Agreement) or since the most recent previous notification (if this notification is other than the first under this Agreement). This notification is referred to as the "Claims Billing."

6.5. FUNDS FOR PAYMENT OF BENEFITS

Plan Sponsor will provide to ODS all funds necessary to pay Plan benefits. Plan Sponsor will pay to ODS the amount of each Claims Billing communicated to Plan Sponsor not later than five (5) business days (excluding federal and State of Alaska holidays) of receipt of the Claims Billing.

Payment of administrative fees by Plan Sponsor is due within ten (10) business days (excluding federal and State of Alaska holidays) of receipt of the billing. If payment is not received by the 15th of the month, ODS reserves the right to terminate this Agreement pursuant to Section 4.3. Failure to pay on time can result in late fees and/or a claims hold.

Payment of premiums is based on ODS-generated billings. If payment is adjusted by Plan Sponsor, detailed supporting documentation is needed for each adjustment prior to payment. Discrepancies must be included in the next payment.

6.6. LATE FEES

If administrative fees, claims or other invoices are not paid to ODS by the due date, ODS may in its discretion charge a reasonable late fee that must be negotiated with the Plan Sponsor. Late fees are calculated from the date payment is due.

6.7. ADVANCE DEPOSIT

Prior to the Effective Date of this Agreement, Plan Sponsor will pay to ODS an advance deposit as set out in the Fee Schedule. The advance deposit is calculated on the basis of the enrollment

assumption documented in the Fee Schedule. Each time this Agreement is renewed for an additional Term, ODS will re-evaluate the enrollment assumption and advance deposit and, if necessary, Plan Sponsor will pay to ODS the amount needed to bring the advance deposit to the re-evaluated amount. After a final accounting by ODS following termination of this Agreement and completion of any period of Run-Out, ODS will refund the balance of the advance deposit remaining after offset of any amount owed to ODS for any reason. ODS will not pay interest on advanced deposits but is entitled to any earned interest from the advance deposit.

6.8. INFORMATION NECESSARY TO COMPLY WITH GOVERNMENTAL REQUIREMENTS

Plan Sponsor will provide the information necessary for ODS to comply with ODS' obligations under any federal or state law related to this Agreement, including but not limited to the social security numbers of Members, the working status of Members and tax identification number of Plan Sponsor, as required by the Medicare Secondary Payor reporting requirements applicable to third party administrators for group health plans under Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007.

SECTION 7. ELIGIBILITY

7.1. ELIGIBILITY

Plan Sponsor, not ODS, is responsible for determining, maintaining and remedying errors on Member eligibility records. If enrollment forms are not provided to ODS, Plan Sponsor will provide Member eligibility records to ODS in a form mutually acceptable and upon an agreed frequency.

ODS will provide identification cards and will reissue cards as needed as a result of eligibility changes reflected on the cards. A request for a mass reissue of cards to Members is also available upon request with an associated fee, as described in the Fee Schedule or any other written agreement, to cover the cost of the cards and postage.

7.2. COMMENCEMENT OF COVERAGE

A Member's coverage begins as specified in the Plan documents. Administrative Fees are payable for partial months of coverage in the following manner (i) entry on the 1st through 15th of the month – 100% of Administrative Fee, and (ii) entry on 16th through month end – no Administrative Fee.

7.3. RETROACTIVE ELIGIBILITY TERMINATION

Member termination notices should be sent to ODS prior to the Member's termination date when possible to reduce claims overpayments. However, retroactive termination notices will be allowed and must be in accordance with PPACA when applicable. Members may be terminated retroactively up to 12 months for billing and claims adjustments. ODS reserves the right to charge a fee for reprocessing retroactive claims, as administrative fees do not cover the months for which claims are being reprocessed.

7.4. TIMELY INFORMATION

Plan Sponsor acknowledges that ODS' ability to effectively perform the administrative services required by this Agreement depends upon Plan Sponsor's furnishing to ODS timely information in the form of properly completed applications and data for Members who are eligible for coverage and timely notice of those who terminate coverage.

7.5. NO LIABILITY IF INFORMATION NOT TIMELY

ODS will not be liable for non-performance or delay in the performance of this Agreement caused by or contributed to in whole or in significant part by the failure of Plan Sponsor to timely furnish any information necessary to determine eligibility for coverage or for adjudication of benefits. ODS reserves the right to hold the processing and payment of claims as to a Member until necessary information is received from Plan Sponsor.

7.6. NO LIABILITY IF INFORMATION NOT CORRECT OR COMPLETE

ODS will not be liable for any claims payment errors based on incorrect or incomplete eligibility information unless ODS could have reasonably been expected to take mitigating steps to avoid or reduce the impact of such errors. If ODS identifies such an error, and if Plan Sponsor requests that ODS pursue recovery of any overpayment based on the incorrect eligibility information ODS received, Plan Sponsor will pay ODS a fixed percentage of any recovery to cover ODS' costs of this pursuit as identified in the Fee Schedule, if any. This fee will be in addition to any other fees and expenses that ODS is entitled to, or otherwise obligated to pay, out of any recovery.

To reduce the likelihood of incorrect or incomplete eligibility information, Plan Sponsor should regularly review ODS bills and membership lists to ensure records are accurate. ODS will supply monthly membership to Plan Sponsor on a mutually established schedule.

SECTION 8. DISPOSITION OF RUN-OUT CLAIMS UPON TERMINATION

8.1. TERMINATION OF ADMINISTRATIVE SERVICES

The Parties agree that ODS will process Run-Out Claims in accordance with Plan terms after the termination of this Agreement. ODS will continue to perform Run-Out Claims, however, only:

- a. For the amount of time presented in the Fee Schedule (or any other written agreement of the Parties for Run-Out Claims Processing services);
- b. For claims Incurred prior to the termination date;
- c. If Plan Sponsor pays the Run-Out Claim Processing fees presented on the Fee Schedule (or any other written agreement of the Parties for Run-Out Claims Processing services) in a timely manner; and
- d. If Plan Sponsor remits an advance deposit (or increases the existing amount of the deposit, if any) to ODS in advance and in an amount to be reasonably determined

in ODS' sole discretion based upon ODS' estimate of claims Incurred but not paid and an estimate of the Run-Out administrative expenses, as calculated by ODS.

If Plan Sponsor breaches paragraph (c) or (d), all administrative services required of ODS under any term of this Agreement or otherwise, including but not limited to claims processing and payments, will immediately cease; except that, if ODS reasonably concludes that it is legally required to continue providing administrative services, Run-Out Claims Processing will continue and Plan Sponsor is obligated to pay ODS for its Run-Out Claims Processing services under the terms of this Agreement. All provisions of this Agreement needed to process Run-Out Claims shall survive termination of this Agreement.

8.2. DISPOSITION OF CLAIMS AFTER TERMINATION

After termination of this Agreement and completion of any period of Run-Out, ODS will deny:

- a. All claims under the Plan that are in the possession of ODS for which payment has not been issued, regardless of the date the claims were Incurred; and
- b. All claims under the Plan that are received by ODS thereafter.

Plan Sponsor will pay ODS all benefit payments and administration charges that are due ODS and remain unreimbursed at the time of or after termination and completion of any period of Run-Out.

SECTION 9. INDEMNIFICATION

The Parties agree to the following provisions:

- a. ODS will indemnify, defend and hold harmless Plan Sponsor and the Plan, their affiliates and their respective directors, officers, employees (acting in the course of their employment, but not as claimant) and agents, for that portion of any claim, liability, settlement and related expense (including the cost of legal defense through and including any appeals) resulting from ODS' breach of this Agreement, error, omission, negligence, gross negligence, willful misconduct, criminal conduct, fraud or breach of a fiduciary responsibility related to or arising out of this Agreement.
- b. ODS shall not be required to indemnify Plan Sponsor or the Plan for a claim of or liability for, the independent negligence of the Plan Sponsor or the Plan. If there is a claim of or liability for, the joint negligence, error, or omission of ODS and the independent negligence of the Plan Sponsor or the Plan, the indemnification shall be appropriated on a comparative fault basis. The term "independent negligence" is negligence other than the Plan Sponsor's selection, administration, monitoring or controlling of ODS and in approving and accepting ODS's work.
- c. Notwithstanding anything herein to the contrary, Plan Sponsor and the Plan, jointly and severally, will remain obligated for:

- i. Any claim or loss which results from Plan Sponsor's incorrect certification of Member eligibility which ODS could not reasonably have discovered; and
- ii. The payment of all Plan benefits.

SECTION 10. BUSINESS ASSOCIATE AGREEMENT

As part of this Agreement, ODS has executed a Business Associate Agreement, Exhibit D.

SECTION 11. GENERAL

11.1. INSURANCE

ODS will obtain, at its own cost, and keep in force adequate policies providing comprehensive general liability and other insurance in amounts consistent with the following policies of insurance. If ODS procures one or more claims-made policies to satisfy its obligations under this Agreement, ODS will obtain any extended reporting endorsement ("tail coverage") required to continuously maintain such coverage in effect for all acts, omissions, events or occurrences during the Term of this Agreement, without limit or restriction as to the making of the claim or demand. Evidence of the insurance coverage required under this Section will be made available upon request.

Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If ODS's policy contains higher limits, the Plan Sponsor shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to the Effective Date of the Agreement and must provide for advance notice to the Plan Sponsor of cancellation, nonrenewal, or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this Agreement and shall be grounds for termination of ODS's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under Alaska Statute, Title 21.

- a. Workers' Compensation Insurance – ODS shall provide and maintain, for all employees engaged in work under this Agreement, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.
- b. Commercial General Liability Insurance – ODS shall provide and maintain commercial general liability insurance covering all business premises and operations used by ODS in the performance of Services under this Agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.
- c. Commercial Automobile Liability Insurance – ODS shall provide and maintain commercial automobile liability insurance covering all vehicles used by ODS in the performance of Services under this Agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

- d. Professional Liability Insurance – ODS shall provide and maintain professional liability insurance covering all errors, omissions or negligent acts in the performance of professional Services under this Agreement with minimum coverage limits of \$2,000,000 per occurrence/annual aggregate.

11.2. USE AND OWNERSHIP OF CERTAIN RECORDS

For the purposes of this agreement, Proprietary Materials means ODS proprietary and confidential records, documents, lists, books, recorded information, data stored on data processing media, trade secrets, symbols, trademarks, service marks, systems, formats, programs, procedures, protocols, contract forms, pricing data, de-identified data, utilization information, fee schedules, reasonable and customary charges profiles, designs and business plans. Proprietary Materials specifically includes any data and information, including any data provided to Plan Sponsor or the Plan in the form of a data extract or otherwise, related to the composition of the ODS network of Participating Providers, the contracted (or "allowed" amounts) paid to Participating Providers, the terms of the agreement between ODS and the Participating Providers and the discounts to ODS offered by Participating Providers. Proprietary Materials also consist of any analyses, compilations, studies or other documents created on the basis of other Proprietary Materials. All Proprietary Materials are the sole property of ODS. ODS will have the right to protect the confidentiality of the Proprietary Materials and will not be required to make such Proprietary Materials available to anyone. Notwithstanding the foregoing, if Plan Sponsor needs information that ODS has in its possession in order to fulfill plan administration functions including but not limited to quality assurance reviews, appeal adjudications, plan design and trend analysis, ODS will make such information available to Plan Sponsor provided Plan Sponsor gives reasonable notice of the need for such information and such information relates to ODS' services under the Agreement.

Plan Sponsor agrees to maintain the confidentiality of any Proprietary Materials ODS provides, and Plan Sponsor will not provide any Proprietary Materials to any other person, including any data extracts or summary information, except to the extent such Proprietary Materials have been made available to the public without fault of Plan Sponsor. If the Plan Sponsor is legally required to produce Proprietary Materials, the Plan Sponsor will notify ODS such that ODS has reasonable opportunity to seek to maintain confidentiality of such information or has notified Plan Sponsor in writing that it will take no action to maintain such confidentiality.

Plan Sponsor acknowledges and agrees that in order to perform the Services under this Agreement, ODS or its affiliates or authorized agents shall have the right to use all documents, records, reports, and data, including data recorded in ODS's data processing systems, created by or provided to ODS ("Documentation"), subject to compliance with privacy laws and regulations, including without limitation regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The Parties agree that records and documents that constitute "protected health information" as that term is defined in 45 CFR 160.103 and that pertain to administration of the Plan will be and remain the joint property of the Plan and ODS.

Upon reasonable prior written request, and subject to the provisions of Section 11.3, and as permitted by applicable law, the Plan-related benefit payment information contained in the Documentation shall be made available to Plan Sponsor or to a third party designated by Plan

Sponsor, for inspection during regular business hours at the place or places of business where it is maintained by ODS, for purposes related to the administration of the Plan.

ODS must retain all Documentation under this Agreement for a period of seven (7) years after the creation of such Documentation; notwithstanding the foregoing, all contracts shall be retained for a period of seven (7) years after their termination date. All Documentation related to Benefit Payments under the Plan will be maintained by ODS for seven (7) years after the end of the year in which a final adjudication of a claim is made. In addition, ODS must retain any documents, working papers, and supporting data that may be required in litigation involving the services provided under this Agreement, if requested to do so, and for as long as reasonably requested by the State of Alaska. Additionally, subject to ODS's right to protect attorney-client and work product privileged documents, any requested documents must be provided to the State at no cost within thirty (30) days of request, or such other time as may be reasonable under the circumstances given the size and scope of the request and accessibility of the data.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this Agreement, including, but not limited to, the Alaska Care Employee Health Plan and Alaska Care Retiree Benefit Plan logos and designs, are produced for and remain the sole property of the Plan Sponsor and may be used by the Plan Sponsor for any other purpose without additional compensation to ODS. ODS agrees not to assert any rights and not to establish any claim for these materials under the design patent or copyright laws.

11.3. CONFIDENTIALITY

- a. **Plan Sponsor Confidentiality** – ODS agrees that all Confidential Information shall be used only for purposes of providing the Services under this Agreement and shall not disseminate or allow dissemination of Confidential Information except as provided for in this Section 11.3. ODS shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the Confidential Information. "Reasonable care" means compliance by ODS with all applicable federal and state laws, including the Social Security Act and HIPAA. ODS must promptly notify the Plan Sponsor in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the Confidential Information. Confidential Information, as used herein, means any data, files, software, information or materials (whether prepared by the Plan Sponsor or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential by federal or state law, or as defined by the Plan Sponsor classification and categorization guidelines (i) provided by the Plan Sponsor to ODS or an ODS agent or otherwise made available to ODS or an ODS agent in connection with this Agreement, or (ii) acquired, obtained or learned by ODS or an ODS agent in the performance of this Agreement. Examples of Confidential Information include, but are not limited to: patient health information, personally identifiable information, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses). If Confidential Information is

requested to be disclosed by ODS pursuant to a request received by a third party and such disclosure of the Confidential Information is required under applicable State or federal law, regulation, governmental or regulatory authority, ODS may disclose the Confidential Information after providing the Plan Sponsor with written notice of the requested disclosure (to the extent such notice to the Plan Sponsor is permitted by applicable law) and giving the Plan Sponsor opportunity to review the request. If ODS receives no objection from the Plan Sponsor, it may release the Confidential Information within thirty (30) days. Notice of the requested disclosure of Confidential Information by ODS must be provided to the Plan Sponsor within a reasonable time after ODS's receipt of notice of the requested disclosure and, upon request of the Plan Sponsor, shall seek to obtain legal protection from the release of the Confidential Information. This Agreement shall not be construed to restrict the use or disclosure of information that: (1) is public knowledge other than as a result of a breach of this Agreement; (2) is independently developed by a party not in violation of this Agreement; (3) is made available to a party by any person other than ODS or Plan Sponsor, provided the source of such information is not subject to any confidentiality obligations with respect to it; or (4) is required to be disclosed pursuant to law, order, regulation or judicial or administrative process, but only to the extent of such required disclosures and after reasonable notice to the other party.

- b. **Plan Sponsor Publicity** – All documents, data compilation, reports, computer programs, photographs and any other work provided to or produced by ODS in the performance of this Agreement shall be kept confidential by ODS unless written permission is granted by the Plan Sponsor for its release. Any publicity given to the Services provided under this Agreement, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for ODS, shall identify the Plan Sponsor and shall not be released without prior written approval from the Plan Sponsor.
- c. **Plan Participant Confidential Information** – The Plan Sponsor and ODS shall comply with the Business Associate Agreement attached to and made a part of this Agreement.
- d. **Disclosure of Proposal Contents** – All proposals and other material submitted as part of the proposal and response process for this Agreement become the property of the Plan Sponsor and may be returned only at the Plan Sponsor's option. AS 40.25.110 requires public records to be open to reasonable inspection. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time a notice of award is issued. Thereafter, proposals will become public information. However, confidential material, including trade secrets and proprietary data, that were identified as such by ODS and accepted by the Procurement Officer in writing shall be held confidential.
- e. **Upon Termination** – Upon termination of the Agreement, each party, upon the request of the other, will return or destroy all copies of all of the other's Confidential Information in its possession or control except to the extent such

Confidential Information must be retained pursuant to applicable law, to the extent such Confidential Information cannot be disaggregated from ODS's databases, or except as otherwise provided under the Business Associate Agreement; provided, however, that ODS may retain copies of any such Confidential Information it deems necessary for the defense of litigation concerning the Services it provided under the Agreement and as necessary to process runoff claims under Section 8 of this Agreement.

- f. **Damages** – Plan Sponsor and ODS acknowledge that compliance with the provisions of this Section 11.3 is necessary to protect the business and good will of each party and its affiliates and that any actual or potential breach will irreparably cause damage to each party or its affiliates for which money damages may not be adequate. Plan Sponsor and ODS, therefore, agree that if a party or party's representatives breach or attempt to breach paragraphs (a) through (f) hereof, the other party will not oppose such party's request for temporary, preliminary and permanent equitable relief, without bond, to restrain such breaches, together with any and all other legal and equitable remedies available under applicable law or under the Agreement. The prevailing party shall be entitled to recover from the non-prevailing party the attorneys' fees and costs it expends in any action related to such breach or attempted breach. Disclosure of public information in accordance with the Plan Sponsor's freedom of information laws and regulations shall not constitute a breach of this Section 11.3.

11.4. ENTIRE AGREEMENT AND ORDER OF PRECEDENT

This Agreement and its Exhibits supersede and replace all prior oral or written agreements, if any, between Plan Sponsor and ODS and is the entire agreement between the Parties. It also supersedes the request for proposal issued by the Plan Sponsor (RFP No. 2013-0200-1396), the ODS response to the request and any supplemental materials in the ODS response.

Exhibit means the following when referenced collectively:

- a. Exhibit A – Performance Guarantees
- b. Exhibit B – "Fee Schedule " means the document with that title that is attached to this Agreement and that contains the list of fees and other prices for ODS' services.
- c. Exhibit C – "Reports" means the documents with that title that are attached to this Agreement and that contains the lists or reports to be delivered by ODS to Plan Sponsor.
- d. Exhibit D – "Business Associate Agreement" means the document with that title that is attached to this Agreement and that contains the terms among the Parties that are required to comply with HIPAA.
- e. Exhibit E – "Designated Contact Person(s)" means the document with that title that is attached to this Agreement and that contains the list of designated persons who are authorized to receive protected health information.

- f. Exhibit F – "Plan Documents" means the documents consisting of the Alaska Care Employee Health Plan and the Alaska Care Retiree Benefit Plan.

In the event of discrepancies among the documents, the order of precedence is:

- This Agreement
- The Plan
- The Business Associate Agreement

11.5. NON-WAIVER

The failure or refusal of any Party to enforce or enjoin any breach or violation of any provision of this Agreement will not be a waiver of that Party's right to enforce any prior or subsequent breach.

11.6. AUDIT RIGHTS

During the Term of this Agreement, the period of Run-Out and for a period of 6 months following the Agreement's termination and completion of any period of Run-Out, Plan Sponsor (or its designated claims auditing representative, if approved by ODS in writing and not unreasonably withheld) will have the right to initiate an examination of ODS' records. Examined records will relate only to Plan benefits. Any such audit will be conducted during regular business hours at ODS' offices and following 60 days prior written notice. Any examination of Members' health benefit payment records will be carried out in a manner specifically designed to protect the confidentiality of Members' medical information in compliance with all federal and state laws governing confidentiality and privacy of health information. All audits will be limited to information relating to the Term in which the audit is conducted and/or the immediately preceding Term and will be concluded within 24 months of the last day of the Term under audit. ODS will not be required to disclose any information in violation of applicable law. ODS does not permit any extrapolation from a sample of claims to make determinations about the universe of claims processed as a whole.

Prior to commencement of any audit, Plan Sponsor and its outside auditor, if any, will execute a written audit agreement with ODS which sets forth the terms and conditions of the audit. ODS reserves the right to deny access to a third party contingency fee auditor.

With regard to its contracts with Participating Providers and related information, the terms of which are not otherwise publicly available, ODS will provide access to its contracts with Participating Providers which are in ODS' custody and control, only (i) for the purpose of ensuring that a claim was correctly paid by the claims processing system at the appropriately contracted rate, and (ii) in a manner that ODS deems would protect the confidential and/or proprietary information contained therein. This reservation of right pertains not only to the actual contracts but also to any data, reports or other information generated from which the terms of the contracts could be determined, which are considered Proprietary Material. Plan Sponsor shall not use or disclose any terms of the Participating Provider agreements in any manner that would competitively disadvantage ODS.

Notwithstanding the foregoing, random quality assurance reviews performed by Plan Sponsor are not “audits” subject to the provisions of this section 11.6. Plan Sponsor shall have access to claims adjudication and appeals adjudication data for purposes of conducting such reviews.

11.7. SEVERABILITY

In the event any one or more of the terms, conditions or provisions contained in this Agreement or any application thereof is declared invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality or enforceability of the remaining terms, conditions or provisions of this Agreement and any other application thereof will not in any way be affected or impaired thereby, and this Agreement will be construed as if such invalid, illegal or unenforceable provisions were not contained herein.

11.8. RESTRICTION ON ASSIGNMENT

ODS will not assign or transfer any of its rights, or delegate any of its duties or obligations hereunder, directly or indirectly, without the prior written consent of the Commissioner of the Department of Administration and the Procurement Officer.

11.9. NOTICES

Except for a revised Fee Schedule under Section 6 (which would be effective as provided in that Section) and except for amendments to this Agreement (which would be effective on the amendment effective date), all notices, requests, demands and other communications required or permitted to be given or made under the Agreement will be in writing by registered mail or electronic mail and will be effective on the date of actual receipt, and will be sent to Plan Sponsor or ODS, as the case may be, to such address, person or entity as set forth below, or as any Party will designate by notice to the other Parties in accordance herewith.

11.10. NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any right or remedy of any nature whatsoever; and nothing in this Agreement will create, or be deemed to create, any rights, obligations or legal relationship between ODS and any Member.

11.11. THIRD PARTY ADMINISTRATORS

ODS recognizes that the Plan Sponsor may choose to work with third party administrators (TPAs) for handling of COBRA, active and retiree membership, and for active eligibility processing. In these situations, ODS will accept eligibility or payment from the TPA as if it were from the Plan Sponsor provided information was received timely and accurately. However, ODS reserves the right to confer only with the Plan Sponsor if the TPA process is causing accuracy concerns, processing challenges or timing delays.

11.12. FORCE MAJEURE

Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the

nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, or unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault of negligence of the non performing party. If the Plan Sponsor fails to reimburse ODS for Benefit Payments for a period of at least fifteen (15) business days as a result of a Force Majeure event, ODS may suspend claims payment to protect against the credit risk.

11.13. SURVIVAL

All rights and obligations will cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 5, 6, 8, 9, 10, and 11.

11.14. GRATUITIES

ODS certifies and warrants that no gratuities were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement. If ODS breaches or violates this warranty, the Plan Sponsor may, at its discretion, terminate this Agreement without liability, or deduct from the contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage or contingency fee paid by the Plan Sponsor.

11.15. EQUAL EMPLOYMENT OPPORTUNITY

ODS may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. ODS shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. ODS shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.

ODS shall state, in all request for proposals or advertisements for employees to work on the Plan Sponsor contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.

ODS shall send to each labor union or representative of workers with which ODS has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of ODS's commitments under this Section 11.15 and post copies of the notice in conspicuous places available to all employees and applicants for employment.

ODS shall include the provisions of this Section 11.15 in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontract. For the purpose of including those provisions in a contract or subcontract, as required by this Agreement, "ODS" and "subcontractor" may be changed to reflect appropriately the name and designation of the parties of the contract or subcontracts.

ODS shall cooperate fully with Plan Sponsor with respect to dealing with the problem of unlawful discrimination, and with all other Plan Sponsor efforts to guarantee fair employment practices under this Agreement, and promptly comply with all requests and directions from the State of Alaska Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices. Full cooperation includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the Plan Sponsor; permitting employees of ODS to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is required by an official or agency of the Plan Sponsor; participating in meeting; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of ODS's facilities; and promptly complying with all Plan Sponsor directives considered essential by any office or agency of the Plan Sponsor to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

Failure to perform under this Section constitutes a material breach of the Agreement.

11.16. THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER ("PPACA")

To the extent required by PPACA, the Parties acknowledge that PPACA will require the Plan Sponsor to provide additional reports and disclosures to federal agencies and employees, including, without limitation: uniform notices of coverage requirements under Section 2715 of the PHSA; information to the Secretary of Health and Human Services (the "Secretary") regarding claims data and policies, financial information, information to the Secretary on denied claims, and other information under Section 2715A of the PHSA; information to the Secretary relating to provider reimbursement structures that improve quality of care, including wellness and health promotion activities under Section 2717 of the PHSA; notices to employees regarding state-based health insurance exchanges and information related to the Plan under Section 18B of the Fair Labor Standards Act; and information to the Internal Revenue Service and employees related to the employees covered under the Plan, Plan premiums, and other Plan information under Sections 6055 and 6056 of the Internal Revenue Code. The parties further acknowledge that guidance on these reporting and disclosure requirements has not yet been issued by relevant federal agencies. ODS shall provide reasonable cooperation to the Plan Sponsor in the Plan Sponsor's efforts to comply with these obligations and shall timely provide information in its possession to the Plan Sponsor for the Plan Sponsor to meet these obligations.

When requested by the Plan Sponsor, ODS shall provide consultative and administrative services regarding the application of PPACA to the Plan and its design.

11.17. LOCATION OF WORK

- a. all services provided under this Agreement by ODS and all subcontractors shall be performed in the United States; and
- b. ODS is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report. <http://www.state.gov/g/tip>

11.18. CONTRACT PERSONNEL

ODS must identify and provide contact information for all key personnel that are ultimately responsible for the services provided to the State under this Agreement. Any change of the key personnel named in the proposal must be approved, in advance and in writing, by the Plan Sponsor. ODS must provide written justification as to why these key personnel are being removed or diverted; provide the names of the proposed substitutes or replacements including the education, work experience, and other relevant experience of each. Personnel changes that are not approved by the Plan Sponsor may be grounds for the Plan Sponsor to terminate the Agreement.

11.19. NOTICE OF PROPOSED SALE OR TRANSFER OF ODS

ODS shall provide the Plan Sponsor with the earliest possible notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of ODS. Such notice shall be provided to the Plan Sponsor in accordance with the "Notice" provision of this Agreement.

11.20. SOVEREIGN IMMUNITY

The Plan Sponsor does not waive sovereign immunity by entering into this Agreement, and specifically retains immunity and all defenses available under the laws of the State of Alaska.

11.21. INSPECTION & MODIFICATION – REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

ODS is responsible for the completion of all work set out in the Agreement. All work is subject to inspection, evaluation, and approval by the Plan Sponsor. The Plan Sponsor may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the Agreement. The Plan Sponsor may instruct ODS to make corrections or modifications if needed in order to accomplish the Agreement's intent. ODS will not unreasonably withhold such changes. Substantial failure of ODS to perform the contracted services may cause the Plan Sponsor to terminate the Agreement. In this event, the Plan Sponsor may require ODS to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

11.22. INSPECTIONS AND REPORTS

Plan Sponsor may inspect, upon providing advance notice, in the manner and at reasonable times it considers appropriate, all ODS's facilities and activities under this Agreement. During normal business hours, the Plan Sponsor may also inspect those areas of any subcontractor's or joint

venture's place of business that are related to the performance of this Agreement. If the Plan Sponsor makes such an inspection, ODS, subcontractor or joint venture must provide reasonable assistance. ODS shall make progress and other reports in the manner and at the times the Plan Sponsor reasonably requires.

11.23. TIME IS OF THE ESSENCE

Time is of the essence in all provisions of this Agreement.

11.24. FIDELITY BOND

Not required since Plan is not an ERISA covered plan.

11.25. CLASS ACTIONS

Plan Sponsor and ODS recognize that, from time to time, ODS, Plan Sponsor or the Plan may receive notice of a pending class action that seeks recovery on behalf of a class that may include ODS or Plan Sponsor (a Class Action). Notwithstanding any language to the contrary in this Agreement, ODS will have no duty to participate in the Class Action on behalf of Plan Sponsor or the Plan. However, ODS has a duty to notify Plan Sponsor of receipt of notice of any Class Action filed by Members that relates to the Plan or that affects the administration of the Plan. Plan Sponsor or the Plan may request that ODS provide information for a Class Action or assist in pursuing a recovery for Plan Sponsor in a Class Action. ODS will have the sole discretion to accept or reject such a request. If accepted, ODS will be the appointed agent of the Plan and submit necessary claim information. The services provided will be subject to the payment of additional administrative fees and other related costs to ODS by Plan Sponsor.

11.26. CHOICE OF LAW/JURISDICTION

The Agreement shall be governed by the laws of the State of Alaska, including but not limited to, A.S. 36.30.620. In the event a dispute concerning the terms of this Agreement is litigated, the Superior Courts of the State of Alaska shall have jurisdiction over this Agreement and the parties and the venue shall be the First Judicial District, Juneau, Alaska.

11.27. COMPLIANCE WITH LAWS

ODS shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement. ODS must also comply with all applicable federal or state laws regulating ethical conduct of public officers and employees. ODS shall pay all taxes and other such amounts required by federal, state and local law including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes. ODS shall also require such payment by any subcontractor or any other persons in the performance of this Agreement. Satisfactory performance of this paragraph is a condition precedent to payment by the Plan Sponsor under this Agreement.

11.28. DISPUTE RESOLUTION

If a dispute should arise out of this Agreement or a breach thereof, the Parties will attempt in good faith to resolve the dispute informally through discussion, the exchange of documents or meetings following a Party's written notice of the existence and nature of the dispute.

Binding arbitration shall not be used in the case of a dispute between the Parties.

Other than an action between the parties for indemnification, neither party shall be liable to the other for any consequential, incidental or punitive damages whatsoever.

11.29. MODA CERTIFICATION

By signing the Offeror's Certification submitted with the proposal, MODA, and any subcontractor retained by it to perform work under this Agreement, certified that:

- (1) it complies with the laws of the State of Alaska;
- (2) it complies with the applicable portion of the Federal Civil Rights Act of 1964;
- (3) it complies with the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- (4) it complies with the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government; and
- (5) programs, services, and activities provided to the general public under the resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government.

11.30. HEADINGS

The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement and are not to be considered in construing or interpreting this Agreement.

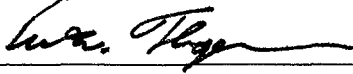
11.31. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

A fax transmission of a signature page will be considered an original signature page. At the request of a Party, each other Party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting Party. This Agreement is not binding on either party until approved by the Commissioner of the Department of Administration. Each Party shall receive a signed and dated copy of the Agreement.

Plan Sponsor:

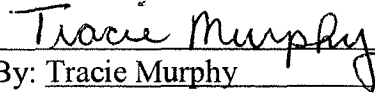
STATE OF ALASKA



By: Curtis Thayer

Its: Commissioner, Department of Administration

ODS:



By: Tracie Murphy

Its: Senior Vice-President

Attn: _____

Fax: _____

E-mail: _____

Attn: _____

Fax: _____

E-mail: _____