**EXTERNAL QUALITY REVIEW AND CONSULTANT SERVICES**

**FLORIDA HEALTHY KIDS CORPORATION**

**AND**

**[EQRO]**

**Effective Date: January 1, 2018**

**Table of Contents**

[Section 1 Definitions 5](#_Toc485892160)

[Section 2 Term of this Contract 6](#_Toc485892161)

[Section 3 Fees and Costs 6](#_Toc485892162)

[3-1 Pricing 6](#_Toc485892163)

[3-2 Billing 6](#_Toc485892165)

[3-3 Payment 7](#_Toc485892166)

[3-4 Reimbursement of funds 7](#_Toc485892167)

[3-5 Reimbursement for travel. 7](#_Toc485892168)

[Section 4 Duties of EQRO 8](#_Toc485892169)

[4-1 EQR-Related Activities 8](#_Toc485892170)

[4-1-1 Assessment of Compliance – EQR Protocol 1 8](#_Toc485892171)

[4-1-2 Validation of Performance Measures – EQR Protocol 2 9](#_Toc485892172)

[4-1-3 Validation of Performance Improvement Projects – EQRO Protocol 3 9](#_Toc485892173)

[4-1-4 Optional Protocols (Protocols 4-8) 10](#_Toc485892174)

[4-1-5 General Work Requirements 10](#_Toc485892175)

[4-1-6 Presentations 11](#_Toc485892176)

[4-1-7 Implementation 11](#_Toc485892177)

[4-2 Reports and Deliverables 12](#_Toc485892178)

[4-2-1 General Work Deliverables 12](#_Toc485892179)

[4-2-2 General Report Requirements 12](#_Toc485892180)

[4-2-3 Annual EQR Protocol Reports 13](#_Toc485892181)

[4-2-4 Activities Reports 14](#_Toc485892182)

[4-2-5 Internal Quality Control Plan 14](#_Toc485892183)

[4-2-6 Implementation Plan 14](#_Toc485892184)

[4-2-7 Financial Statements 14](#_Toc485892185)

[4-3 Key Staff 15](#_Toc485892186)

[4-4 Records Retention and Accessibility 15](#_Toc485892187)

[4-5 Use of Subcontractors or Affiliates 16](#_Toc485892188)

[4-6 Indemnification 17](#_Toc485892189)

[4-7 Insurance 17](#_Toc485892190)

[4-8 Lobbying Disclosure 18](#_Toc485892191)

[Section 5 General Terms and Conditions 18](#_Toc485892192)

[5-1 Evaluation and Monitoring 18](#_Toc485892193)

[5-2 Amendment 18](#_Toc485892195)

[5-3 Assignment 18](#_Toc485892196)

[5-4 Attachments 18](#_Toc485892197)

[5-5 Attorneys Fees 18](#_Toc485892198)

[5-6 Bankruptcy 19](#_Toc485892199)

[5-7 Change of Controlling Interest 19](#_Toc485892200)

[5-8 Confidentiality 19](#_Toc485892201)

[5-9 Conflicts of Interest 20](#_Toc485892202)

[5-9-1 Conflicts of Interest General Terms 20](#_Toc485892203)

[5-9-2 Gift Prohibitions 20](#_Toc485892204)

[5-9-3 Non-Solicitation 20](#_Toc485892205)

[5-10 Entire Understanding 21](#_Toc485892206)

[5-11 Force Majeure 21](#_Toc485892207)

[5-12 Governing Law; Venue 21](#_Toc485892208)

[5-13 Independent Contractor 23](#_Toc485892209)

[5-14 Name and Address of Payee 23](#_Toc485892210)

[5-15 Notice and Contact 23](#_Toc485892211)

[5-16 Severability 24](#_Toc485892212)

[5-17 Survival 24](#_Toc485892213)

[5-18 Termination of Contract 24](#_Toc485892214)

[5-18-1 Termination for Lack of Funding 24](#_Toc485892215)

[5-18-2 Termination for Lack of Payment 24](#_Toc485892216)

[5-18-3 Termination for Lack of Performance or Breach 24](#_Toc485892217)

[5-18-4 Termination upon Revision of Applicable 25](#_Toc485892218)

[5-18-5 Termination upon Mutual Agreement 25](#_Toc485892219)

[5-19 Transition Plan and Process 25](#_Toc485892220)

[ATTACHMENT A: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION 29](#_Toc485892221)

[ATTACHMENT B: CERTIFICATION REGARDING LOBBYING 30](#_Toc485892222)

[ATTACHMENT C: BAA and HIPAA Breach Report Form 31](#_Toc485892223)

[ATTACHMENT D: CONFLICT OF INTERESTS DISCLOSURE FORM 45](#_Toc485892224)

[ATTACHMENT e: pERFORMANCE GUARANTEES 46](#_Toc485892225)

[ATTACHMENT F: REPORTS AND DELIVERABLES 50](#_Toc485892226)

[ATTACHMENT G: ENROLLMENT FILE LAYOUT 53](#_Toc485892227)

**FLORIDA HEALTHY KIDS CORPORATION**

**EXTERNAL QUALITY REVIEW AND CONSULTANT SERVICES CONTRACT**

This Contract (the “Contract”) is entered into between Florida Healthy Kids Corporation (“FHKC”), a Florida not-for-profit corporation, pursuant to Chapter 617, *Florida Statutes*, and **[*enter EQRO’s COMPLETE LEGAL name*, *name of state and state type of business]* (“EQRO”)** (together, the “Parties”) to provide external quality review and consultant services.

**BACKGROUND**

FHKC issued an Invitation to Negotiate (“ITN”) in May, 2017 for certain activities relating to external quality review and consultation services involving FHKC’s contracted medical and dental plans. Proposals were reviewed and [EQRO] was selected as the respondent providing the best value to FHKC. The ITN and Entity’s response thereto is hereby incorporated by reference and made part of this Contract.

THEREFORE, in consideration of the services to be performed and payments to be made, together with the mutual covenants and conditions hereinafter set forth, the Parties agree as follows:

Section 1 Definitions

1. “AHCA” means the State of Florida’s Agency for Health Care Administration.
2. “Applicant” means a parent or guardian of a child or a child whose disability of nonage has been removed under Chapter 743, *Florida Statutes*, who applies for determination of eligibility for health benefits coverage under ss. 409.810-409.820, *Florida Statutes*.

1-3 “Commencement Date” means the date services begin under this Contract.1-4 “Contract” means this contract, all attachments and any amendments. 1-5 “Effective Date” means January 1, 2018. 1-6 “Enrollee” means an individual who meets FHKC standards of eligibility and has been enrolled in the Program. 1-7 “EQRO” means [contracted vendor], the external quality review organization required by 42 C.F.R. §438.364.

1-8 “Plans” means the medical and dental carriers under contract with FHKC to provide health benefit services to Enrollees.1-9 “Florida Statutes” means the Florida Statutes as amended from time to time by the Florida Legislature during the term of this Contract.

1-10 “Liquidated Damages” mean the amounts stipulated in this Contact and agreed to by the Parties as a reasonable estimation of the losses if the EQRO breaches the terms of the Contract or fails to perform its obligations fully, correctly and on time, as determined in the sole discretion of FHKC.  The Parties agree that the actual damages in such situations are uncertain and difficult to ascertain. The Parties’ mutual intent in establishing the liquidated damages as set forth in this Contract is to make a good-faith effort and estimation of damages, and not to penalize the EQRO.1-10

1-11 “Program” means the program administered by FHKC as created by and governed under section 624.91, *Florida Statutes*, and related state and federal laws.

* + 1. “Services” means any service, activity, deliverable or other work or action required to fulfill the terms of this Contract.

Section 2 Term of this Contract

The term of this Contract is three (3) years. The Effective Dates are:

This Contract shall begin on January 1, 2018.

This Contract shall end on December 31, 2020.

This Contract may be extended at FHKC’s option for up to a maximum of three (3) additional one-year periods beyond the initial term indicated above. FHKC agrees to notify EQRO by October 31 of the year prior to the extension year if FHKC does not intend to exercise a one-year extension option. In no event shall this contract extend beyond December 31, 2023.

Section 3 Fees and Costs

3-1 Pricing

FHKC agrees to pay EQRO at the rate of [dollar amount] per year for the performance of services under this Contract. However, all billing must be itemized with specificity as to time, date, purpose and specific number of hours.

Work performed for Protocol 4, if elected by FHKC, will be billed at [amount]

3-2 Billing

EQRO agrees to bill FHKC monthly. Such bills will include the specificity required by this section of the Contract.

EQRO will bill FHKC an equal portion of the annual rate each month. FHKC reserves the right to change the Contract billing and payment methodology to deliverable-based should such a change be in FHKC’s best interests and warranted by EQRO’s performance. Changes to deliverable-based payments are at FHKC’s sole discretion and will be effective at the beginning of the next contract year.

Invoices must clearly identify the payee, the contract, the amount owed, the timeframe for which payment is owed, the date the invoice is sent to FHKC, due date, contact information for questions and concerns, a unique invoice number, and total amount paid to date in the contract year. Invoices shall not contain extraneous or ambiguous information.

The parties agree that under no circumstances shall the total charges to FHKC for the performance of this Contract and all associated costs exceed the amounts listed in section 4-1 per FHKC fiscal year.

3-3 Payment

FHKC will make payment to EQRO within thirty (30) calendar days of receiving an invoice from EQRO provided such billing is in accordance with the terms of this Contract. If FHKC requests detail or clarification regarding an invoice, payment shall be made within thirty (30) calendar days of receipt of acceptable detail or clarification. FHKC shall determine if such detail or clarification is acceptable.

In the event FHKC disagrees with or questions any amount due under an invoice, FHKC agrees to pay the amount not in dispute in accordance with the terms of this Contract and communicate such disputed amounts to EQRO in writing within thirty (30) calendar days of the invoice date or date of receipt of most recent detail or clarification. The Parties agree to engage in good faith discussions to resolve all disputed amounts expeditiously.

EQRO agrees to use any advanced funds only for the purposes identified under this Contract.

EQRO agrees that no funds received under this Contract will be utilized to purchase food, beverages or other refreshments except as may otherwise be permitted under s. 624.91, F.S.

3-4 Reimbursement of funds

EQRO agrees to return to FHKC any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Contract that were paid under this Contract. EQRO shall return any such funds to FHKC within thirty (30) calendar days of identification by FHKC or EQRO.

3-5 Reimbursement for travel.

For the purposes of fulfilling the obligations of this Contract within the scope of its terms, EQRO may be entitled, in addition to the payment agreed to in subsection 3-1 above, to receive from the funds of FHKC reimbursement for per diem and travel expenses as provided by Section 112.061, *Florida Statutes*, in the same amounts and under the same procedures as Board Members of FHKC are entitled to such reimbursements pursuant to Section 624.91(6)(c), *Florida* *Statutes*. Per diem and travel expenses, as well as incidentals not specified in this Contract, for which reimbursement is sought must be approved by an authorized officer or employee of FHKC before they are incurred for reimbursement to be considered. In addition, EQRO may be entitled to receive reimbursement for necessary photocopy costs at the rate of twenty (20) cents per page and tele-copies at a rate of one dollar ($1.00) per page. Reimbursement for postage, express mail and long distance phone calls will be for the expense actually incurred by EQRO and must be itemized with specificity in billings to FHKC so as to identify the individual costs.

Section 4 Duties of EQRO

4-1 EQR-Related Activities

Quality of Care External Quality Review (EQR) protocols published by the Centers for Medicare and Medicaid Services (CMS) and their successors are incorporated by reference. EQR-related activities provided by EQRO shall follow the requirements of these protocols and shall be in accordance with 42 C.F.R. §438.364, unless otherwise approved by CMS and FHKC.

EQRO shall provide the EQR-related activities described in this section.

4-1-1 Assessment of Compliance – EQR Protocol 1

EQRO will assess Plan compliance with state and federal law and contract requirements over the course of the initial three (3) year term. Approximately one-third (1/3rd) of the required standards shall be reviewed each year to allow for a complete assessment of standards over the three (3) year period.

EQRO will validate each Plan’s network adequacy during the preceding twelve (12) months annually to comply with 42 C.F.R. §438.358(2)(b)iv, and 42 C.F.R. §438.14(b)(1). This validation shall be part of the assessment of compliance protocol report unless CMS publishes a separate protocol relevant to this validation. EQRO will adopt the procedures required by any new relevant protocols.

EQRO shall also review all standards receiving a “Not Met” determination the year before on an annual basis.

Should FHKC choose to exercise the renewal option(s), EQRO will conduct the assessment over the course of the three (3) renewal year options, following the initial term framework, unless otherwise approved by FHKC. The EQRO will continue to validate network access annually and review all standards receiving a “Not Met” determination in the prior year during any renewal period.

EQRO must provide a comprehensive report of all Plan findings that details deficiencies by Plan to FHKC. EQRO shall provide each Plan with a draft version of the content specific to that Plan and provide the Plans an opportunity to respond to the findings. Plans must be provided a minimum of 10 business days to respond. EQRO shall incorporate the Plans’ responses in the final report to FHKC. Plan responses shall be labeled appropriately. EQRO will also calculate and report an overall compliance percentage for each Plan in this report. The third annual report shall include data from all three years.

4-1-2 Validation of Performance Measures – EQR Protocol 2

FHKC determines which performance measures will be validated.

EQRO must use NCQA-certified software to assist in validating HEDIS performance measures.

EQRO will provide a detailed report containing the performance measure validation findings and recommendations. Findings and recommendations should be included at both a Plan-specific level and summarized in aggregate. This report must also briefly discuss changes from previous years’ results to the current measurement year.

4-1-3 Validation of Performance Improvement Projects – EQRO Protocol 3

FHKC intends to incorporate Plan-Do-Study-Act (PDSA) components in the PIP approach, but may choose to utilize a traditional approach without PDSA components. EQRO will provide validation of PIPs regardless of the approach chosen.

EQRO will develop a PIP framework and methodology using Plan-Do-Study-Act (PDSA) components. Framework and methodology must comply with CMS’ EQR mandated activity protocol 3.

EQRO will submit an training plan to FHKC for approval by [date to be determined during procurement process] and provide training to Plans to ensure compliance with PIP methodology and all reporting requirements.

EQRO will serve as the subject matter expert to FHKC and the Plans to aid in the use of best practices during development and performance of the PIPs.

EQRO will provide FHKC with an annual report validating the PIPs. EQRO shall include Plan-specific recommendations to FHKC. EQRO shall also review the final PIP results and FHKC’s stated goals and priorities to identify opportunities for improvement and make recommendations for Healthy Kids, as a whole, in the annual report.

All recommendations must include both identification of specific areas of opportunity for improvement and suggested methods for achieving improvement.

EQRO shall also provide FHKC with interval reports during the PIP cycle year [at a frequency to be determined during procurement process].

During the first year of the Contract, EQRO shall validate the 2017 PIPs while transitioning Plans to the PDSA-incorporated PIP process.

4-1-4 Optional Protocols (Protocols 4-8)

FHKC may, at its sole discretion, require EQRO to perform protocol 4 activities. Such work will be at the price stated in subsection 4-1. Should FHKC choose to have protocol 4 activities performed, EQRO will provide an annual report detailing the findings by an agreed upon due date no later than December 31st.

EQRO agrees to have informational discussions with FHKC regarding protocols 5-8 and will provide pricing for such work upon request and as specified by FHKC.

4-1-5 General Work Requirements

1. EQRO shall meet the qualifications of an external quality review organization as defined in 42 C.F.R. §438.354, including the independence requirements, while performing services under this Contract. Should the EQRO cease to meet these qualifications, the EQRO must immediately notify FHKC. Such notification must be made in writing, or made verbally and immediately followed in writing. FHKC may, at its sole discretion, terminate the Contract.

Failure to meet these requirements may require FHKC to procure a new EQRO contractor to maintain compliance with law. The EQRO shall pay a minimum of $100,000 in liquidated damages and, for any amounts over $100,000, the EQRO shall be liable for reasonable, documented costs of re-procurement and costs to redo necessary EQR-related work that FHKC incurs to remain in compliance with law. Liquidated damages apply to mandated and optional EQR-related activities described in protocols 1-8 that EQRO is contracted to perform under this Contract. Actual damages sustained by FHKC may be impractical or difficult to determine and repair. EQRO agrees liquidated damages are not a penalty and are intended to ease the administrative burden of determining and repairing actual damages.

1. EQRO will develop, implement and maintain an internal quality control plan to ensure the terms of this Contract are met. This internal quality control plan must include how EQRO will ensure contractual obligations are met, descriptions of interventions and/or escalations that will be used should EQRO become aware that contractual obligations may not be met or have not been met, the review schedule of operational policies and procedures relevant to this Contract, and how EQRO will ensure analytical and reporting consistency are maintained. The internal quality control plan must be implemented within 2 months of the contract effective date.
2. EQRO will demonstrate a willingness and ability to communicate and effectively work with FHKC staff, Plan staff and others in a professional manner.
3. To the best of EQRO’s ability, EQRO will conduct activities in a strategic manner to avoid unnecessary duplication of effort.
4. EQRO shall conduct joint conference calls with FHKC and each Plan prior to beginning EQR-related activities to ensure all entities involved understand the expected activities, relevant timeframes, responsibilities, and to address any questions, concerns or issues.
5. After any EQR-related activity requiring onsite visits, EQRO shall conduct a post-review meeting with each Plan to identify and discuss any issues identified during onsite visit(s) or during the pre-onsite visit review(s).
6. EQRO shall prepare agendas and meeting materials for any site visits, meetings or planned conference calls with the Plans or FHKC. Agendas and meeting materials are subject to FHKC approval.
7. EQRO shall accept enrollment files from FHKC, or FHKC’s designated contractor, in the format required by FHKC. The enrollment file layout is provided in Attachment G to this Contract. File layouts may change at FHKC’s discretion. Such changes do not require an amendment to this Contract.

4-1-6 Presentations

FHKC may find it necessary or desirable for EQRO to occasionally present at board, quality committee or other meetings. EQRO agrees to provide this service upon request. Effective communication and polished public speaking skills are vital to the performance of this task. EQRO shall ensure a knowledgeable staff member with excellent public speaking skills will perform these duties. EQRO will assign a different staff member to perform this service upon FHKC’s request.

4-1-7 Implementation

EQRO will ensure all resources needed for a timely and complete implementation are available. At a minimum, EQRO will develop tools to assist in provision of protocols 1 through 3, report templates, PIP framework, PIP training plan and the internal quality control plan as part of implementation of the Contract. EQRO will also provide FHKC with a list of any information needed from the Plans to implement this Contract.

4-2 Reports and Deliverables

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

4-2-1 General Work Deliverables

1. EQRO shall provide FHKC with copies of all written communications provided to Plans. This includes, but is not limited to, emails, site visit and interview agendas, requests for documentation, and instructions and guidance provided to the Plans. Such communications will be provided to FHKC prior to or simultaneously with provision to the Plans as determined by FHKC.
2. EQRO shall provide FHKC with written summaries of all site visits and meetings and call notes for all conference calls with the Plans and/or FHKC. At a minimum, summaries and call notes must include the names of attendees, the date, the format of the meeting (i.e., conference call, site visit, etc.), topics discussed and any takeaways for the EQRO, Plan or FHKC. Summaries and call notes shall be provided to FHKC within five (5) business days of the meeting or call.

4-2-2 General Report Requirements

1. Reports are subject to the due dates listed in Attachment E.
2. Reports are subject to approval by FHKC.
3. EQRO shall amend or update its reports or report formats at the request of FHKC.
4. Reports and deliverables must be provided to FHKC in an electronic format. Draft reports must be provided in Microsoft Word unless otherwise noted. Final reports must be provided in Microsoft Word and Adobe PDF unless otherwise noted. Physical copies of reports must be provided upon request.
5. PDFs of reports must be legible, searchable and contain functional links. PDFs of scanned documents are not acceptable.
6. Reports must have logical progression and consistent layouts, be free of grammatical and formatting errors, include a table of contents with working links, and use plain language where possible.
7. Final reports may be made publicly available by FHKC. If a report contains any confidential, trade secret or proprietary information, the EQRO will provide a redacted copy of the report simultaneously with the marked, non-redacted report. The redacted report shall redact only the specific information that constitutes a trade secret.

4-2-3 Annual EQR Protocol Reports

1. The reports required by subsections 4-1-1, 4-1-2 and 4-1-3 must include, as appropriate, an executive summary, background information required for context, objectives of the activity, relevant definitions, description of methodology, specific recommendations for improvement, assessment of Plans’ strengths, comparative information for industry benchmarks and previous Plan performance and conclusions for the Program including identification and possible implications of trends.

Recommendations for improvement must include both identification of the opportunity for improvement and suggested methods for achieving improvement. Recommendations must be achievable within current state and federal statutes related to the Program. Additional recommendations that require legislative action may be included, but must be clearly identified as such.

1. In addition to the reports described in subsections 4-1-1, 4-1-2, and 4-1-3, EQRO will provide an annual technical report summarizing findings on access and quality of care. This report must meet all federal requirements. For all activities, these requirements include , but are not limited to, a description of the manner in which data was aggregated, analyzed and conclusions drawn from regarding quality, timeliness and access to care; objectives of each activity; technical methods of data collection and analysis; description of the data obtained, including validated performance measurement data; conclusions drawn from the data; assessment of each Plan’s strengths and weaknesses in regards to quality, timeliness and access to services; recommendations for improving services, including how FHKC can target goals and objectives to better support improvement in quality, timeliness and access to services; methodologically appropriate comparative information; and an assessment of the degree to which each Plan has effectively addressed recommendations for quality improvement made by EQRO during the previous year’s EQR.
2. A draft report is due to FHKC forty-five (45) calendar days in advance of the final report’s due date for each of these reports.

4-2-4 Activities Reports

EQRO will provide a monthly report briefly listing the activities performed in the prior month.

EQRO will provide a quarterly report summarizing work completed in the quarter, major issues that occurred (including issue status), noteworthy successes, lessons learned and activities planned for the next quarter. Work reported in the quarterly report may be summarized more broadly than work reported in the monthly report.

4-2-5 Internal Quality Control Plan

EQRO’s internal quality control plan, as required in subsection 4-1-5(b) shall be developed and implemented during implementation of this Contract. The internal quality control plan must be submitted to FHKC for approval within two (2) months of the Commencement Date. Beginning in the second year of the Contract, EQRO shall provide FHKC with an attestation attesting to the continued maintenance (including review, necessary revisions and use) of the internal quality control plan by July 1st each year.

4-2-6 Implementation Plan

EQRO will provide an implementation plan to FHKC for approval within five (5) business days of the Contract Effective Date. The implementation plan may be submitted in Microsoft Excel or Microsoft Project. The implementation plan must include the tasks necessary to fully implement this Contract and the timeframes and responsible parties for each task. The implementation plan must also identify key milestones and task dependencies.

EQRO will provide an updated implementation plan on a weekly basis until implementation is completed. The required frequency of updated implementation plans may be changed with approval from FHKC. Changes to task due dates require written approval from FHKC.

4-2-7 Financial Statements

EQRO agrees to provide to FHKC, by July 1st (first) each year, an audited financial statement for EQRO’s preceding fiscal year. If such is not customarily available in the ordinary course of EQRO’s business, then a written statement from an accountant verifying the financial stability of EQRO shall be submitted and be subject to the approval of the FHKC Board of Directors.

4-2-8 Subcontractor Reporting

EQRO will provide FHKC with an annual report listing all subcontractors or affiliates that performed services under this Contract for the EQRO during the calendar year by December 31. EQRO shall attach a copy of EQRO’s executed contracts with such subcontractors and affiliates.

4-3 Key Staff

EQRO shall maintain qualified staff at levels sufficient to perform the work required by this Contract. EQRO shall provide FHKC with the contact information for key staff members and shall provide notice of any staff member changes within five (5) business days. EQRO shall provide updated contact information for a replacement within five (5) business days.

Key staff must include, but are not limited to, an executive officer with the authority to resolve escalated issues and agree to changes to the Contract and a contract manager to work directly with FHKC as the primary day-to-day contact. The contract manager must be knowledgeable about EQRO activities and able to discuss the status of work related to the Contract, reports, EQRO’s performance, issues EQRO encounters and other such topics. The contract manager must also be responsive to FHKC via email and phone during regular business hours. EQRO will inform FHKC’s contract manager in advance of planned periods of unavailability and provide a backup contact.

4-4 Records Retention and Accessibility

A. EQRO agrees to maintain books, records and documents in accordance with generally acceptable accounting principles which sufficiently and properly reflect all expenditures of funds provided by FHKC under this Contract.

B. EQRO shall have all records used or produced in the course of the performance of this Contract available at all reasonable times for inspection, review, audit or copying to FHKC, any vendor contracted with FHKC or any state or federal regulatory agency as authorized by law or FHKC. Access to such records will be during normal business hours and will be either through on-site review of records or through the mail. These records shall be retained for a period of at least five (5) years following the term of this Contract, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all tasks are completed.

C. EQRO agrees to cooperate in any evaluative efforts conducted by FHKC or an authorized subcontractor of FHKC both during and for a period of at least five (5) years following the term of this Contract. These efforts may include a post-Contract audit.

D. Additionally, ENTITY shall include all the requirements of this subsection in all approved subcontracts and assignments and ENTITY agrees to require subcontractors and assignees to meet these requirements.

It is expressly understood that evidence of EQRO’s refusal to substantially comply with this provision, or such failure by EQRO’s subcontractors, assignees or affiliates performing under this Contract, shall constitute a breach and renders this Contract subject to unilateral cancellation by FHKC.

4-5 Use of Subcontractors or Affiliates

EQRO may contract with subcontractors or affiliates to deliver services under this Contract subject to the following conditions:

A. EQRO identified the subcontractor or affiliate in its response to the procurement document for services covered by this Contract.

B. ENTITY has provided FHKC with a copy of the current contract or other written agreement and any amendments for services under this Contract between ENTITY and the subcontractor or affiliate. FHKC shall have the right to withhold its approval of any such contracts, agreements and amendments.

C. EQRO’s contract with the subcontractor or affiliate fully complies with all terms and conditions of this Contract between EQRO and FHKC.

D. EQRO agrees to notify FHKC in advance of the termination of such agreements with any subcontractor or affiliate.

E. EQRO shall provide FHKC with advance notice of ENTITY’S intent to contract with any new subcontractors or affiliates for services covered under this Contract. Prior to execution, EQRO shall forward for FHKC’s review and approval any proposed agreement for services with subcontractors or affiliates.

F. By April 1st (first) each year, EQRO agrees to provide FHKC with an annual report listing, for the previous calendar year, of all subcontractors or affiliates that performed services under this Contract for the EQRO during the calendar year. EQRO shall attach a copy of EQRO’S executed contracts with each such subcontractor and affiliate.

All contracts, agreements, and amendments between EQRO and its subcontractors or affiliates to provide services under this Contract shall be reduced to writing and shall be executed by both parties. All such fully executed documents shall also be available to FHKC within seven (7) business days of request for production.

Failure of EQRO to comply with the provisions of this section shall constitute a breach and renders this Contract subject to unilateral cancellation by FHKC.

4-6 Indemnification

EQRO shall indemnify, defend and hold FHKC, its officers, directors, agents and employees harmless from all claims, losses, suits, judgments or damages, including court costs and attorney’s fees, arising out of:

A. negligence, intentional torts or breach of contract by EQRO;

B. any claims or losses attributable to the acts of any subcontractor, person or entity performing or furnishing services, materials, or supplies on behalf of EQRO in connection with the performance of this Contract whether or not FHKC knew or should have known of such claims, losses or acts; or

C. any failure of EQRO, its officers, employees or subcontractors to observe the requirements of applicable Florida or federal law, regardless of whether FHKC knew or should have known of such failure.

4-7 Insurance

EQRO shall not commence any work in connection with the Contract until it has obtained all types and levels of insurance required and approved by FHKC. Such coverage must include the following:

1. Commercial general liability insurance. This insurance will provide coverage for all claims that may arise for the Services completed under this contract, whether such Services are completed by the EQRO or its subcontractors. Such insurance shall include a hold harmless agreement in favor of FHKC and must include FHKC as an additional named insured for the entire length of the Contract.
2. Professional liability/errors and omissions insurance. The minimum limits shall be [$TBD] per occurrence and [$TBD] aggregate;
3. Cyber liability insurance; and
4. Workers’ Compensation Insurance.

Within ten (10) business days of contract execution, EQRO shall provide FHKC proof of coverage of all insurance coverages by a certificate of insurance. Continuing evidence of insurance coverage must be provided to FHKC by July 1st of each year.

FHKC shall be exempt from and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such a deductible shall be the sole responsibility of EQRO and/or subcontractor holding such insurance. The same holds true of any premiums paid on any insurance policy pursuant to this Contract. Failure to provide proof of coverage when requested may result in the Contract being terminated.

4-8 Lobbying Disclosure

EQRO shall comply with applicable state and federal requirements for the disclosure of information regarding lobbying activities of EQRO, subcontractors or any authorized agent. Certification forms shall be filed by EQRO certifying that no state or federal funds have been or will be used in lobbying activities on an annual basis.

Section 5 General Terms and Conditions

5-1 Evaluation and Monitoring

EQRO agrees to cooperate in any evaluative or monitoring efforts conducted by FHKC or an authorized contractor of FHKC both during and for a period of at least five (5) years following the term of this Contract. These efforts may include a post-Contract audit.

5-2 Amendment

This Contract may be amended by mutual written consent of the Parties at any time. This Contract shall automatically be amended to the extent necessary from time to time to comply with state or federal laws or regulations or the requirements of FHKC’s contract with AHCA upon notice by FHKC to EQRO to that effect.

5-3 Assignment

This Contract and the monies that may become due under it may not be assigned by EQRO without the prior written consent of FHKC. Any purported assignment without such consent shall be deemed null and void.

5-4 Attachments

Attachments A through E are all incorporated into this Contract by reference. In any conflict between these Attachments and this Contract, the Contract provision shall control.

5-5 Attorneys Fees

In the event of any legal action, dispute, litigation or other proceeding with relation to this Contract, FHKC shall be entitled to recover from EQRO its attorney fees and costs incurred, whether or not suit is filed, and if filed, at both trial and appellate levels. Legal actions are defined to include administrative proceedings. It is understood that the intent of this provision is to protect the Enrollees who receive health insurance benefits through the Program and rely upon the continuation of the Program.

5-6 Bankruptcy

FHKC shall have the absolute right to elect to continue or terminate this Contract, at its sole discretion, in the event EQRO or any of its approved subcontractors file a petition for bankruptcy or for approval of a plan of reorganization or arrangement under the Bankruptcy Act. EQRO shall give FHKC notice of the intent to petition for bankruptcy or reorganization or arrangement at the time of the filing and immediately provide a copy of such filing to FHKC. FHKC shall have thirty (30) calendar days to elect continuation or termination of this Contract.

5-7 Change of Controlling Interest

FHKC shall have the absolute right to elect to continue or terminate this Contract, at its sole discretion, in the event of a change in the ownership or controlling interest of EQRO or any of its approved subcontractors. EQRO shall give FHKC notice of regulatory agency approval, if applicable, prior to any transfer or change in control of documentation of the change of regulatory agency approval is inapplicable. FHKC shall have thirty (30) calendar days to elect continuation or termination of this Contract.

5-8 Confidentiality

1. EQRO shall treat all information, particularly personal or identifying information relating to Applicants or Enrollees that is obtained through its performance under this Contract, as confidential information to the extent confidential treatment is provided under state and federal laws including section 409.821, *Florida* *Statutes*, regarding confidentiality of information held by FHKC and the Florida KidCare Program. EQRO shall not use any information obtained in any manner except as necessary for the proper discharge of its obligations and to secure its rights under this Contract. Such information shall not be divulged without written consent of FHKC, the Applicant, or the Enrollee. This provision does not prohibit the disclosure of information in summary, statistical or other form which does not identify individuals.
2. EQRO and FHKC mutually agree to maintain the integrity of all trade secret designated information to the extent provided under the law. Neither party will disclose or allow others to disclose such information as determined by law by any means to any person without prior written approval of the other party, or until a court of competent jurisdiction issues a final judgment requiring FHKC to release the information. All trade secret information will be so designated. This requirement does not extend to routine reports and membership disclosure necessary for efficient management of the Program.
3. EQRO understands that FHKC, by virtue of its contract with AHCA, is subject to the Florida Public Records Act, Section 119.07, *Florida Statutes*, and therefore all such information may be considered a public record and open to inspection. Thus, unless otherwise confidential or exempted by law, EQRO shall allow public access to all documents, papers, letters, electronic correspondence or other material subject to the provisions of Chapter 119, *Florida Statutes*, and made or received by EQRO in conjunction with this Contract. However, EQRO agrees to advise FHKC prior to the release of any such information.

5-9 Conflicts of Interest

5-9-1 Conflicts of Interest General Terms

1. EQRO confirms that, to the best of its knowledge, the responsibilities and duties assumed pursuant to this Contract are not in conflict with any other interest to which EQRO is obligated or from which EQRO benefits.
2. EQRO agrees to inform FHKC immediately after becoming aware of any conflicts of interest which it may have with the interests of FHKC, as set forth in this Contract and which may occur in the future.
3. Within ten (10) days of contract execution, EQRO shall submit a disclosure form identifying any relationships, financial or otherwise, with any FHKC Board Member, FHKC Ad Hoc Board Member, or any employee of FHKC.

5-9-2 Gift Prohibitions

In accordance with FHKC Corporate Policies, EQRO affirms its understanding that FHKC Board Members, FHKC Ad Hoc Board Members and FHKC employees are prohibited from accepting any gifts, including but not limited to, any meal, service, or item of value, even de minimus, from those entities that conduct or seek to conduct business with FHKC.

5-9-3 Non-Solicitation

EQRO recognizes and acknowledges that, as a result of this Contract, EQRO will come into contact with employees of FHKC and that these employees have received considerable training by FHKC. EQRO agrees not to solicit, recruit or hire any individual who is employed by FHKC during the term of this Contract, unless waived in each instance by FHKC in writing. This prohibition shall be in effect for both the term of this Contract and twelve (12) months immediately following its termination.

5-10 Entire Understanding

This Contract, with all Attachments hereby incorporated by reference, embodies the entire understanding of the parties relating to the subject matter of this Contract, and supersedes all other agreements, negotiations, understanding, or representations, verbal or written, between the parties relative to the subject matter hereof.

5-11 Force Majeure

Neither Party shall be responsible for delays or failure in performance of its obligations under this Contract resulting from acts beyond the control of the Party. Such acts shall include, but are not limited to, blackouts, riots, acts of war, terrorism, epidemics, fire, communication line failure, power failure or shortage, fuel shortages, hurricanes, or other natural disasters.

5-12 Governing Law; Venue

This Contract shall be governed by applicable state and federal laws and regulations as may be amended during the term of the Contract, whether or not expressly included or referenced in this Contract.

EQRO agrees to comply with the following provisions as such may from time to time be amended during the term of this Contract:

A. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color or national origin.

B. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap.

C. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex.

D. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age.

E. Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.

F. The Americans With Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires accommodation for persons with disabilities.

G. Section 274A (e) of the Immigration and Nationalization Act, FHKC shall consider the employment by any contractor of unauthorized aliens a violation of this Act.

H. Title XXI of the federal Social Security Act.

I. All applicable state and federal laws and regulations governing FHKC.

J. All regulations, guidelines and standards as are now or may be lawfully adopted under the above statutes.

K. The Immigration Reform and Control Act of 1986 prohibits employers from knowingly hiring illegal workers. EQRO shall employ individuals who may legally work in the United States – either U.S. citizens or foreign citizens who are authorized to work in the United States. EQRO shall use the U.S. Department of Homeland Security’s E-Verify Employment Eligibility System to verify the employment status of:

- All persons employed by EQRO, during the term of this Contract, to perform employment duties within Florida; and,

- All persons, including subcontractors, assigned by EQRO to perform work pursuant to this Contract.

L. Health Insurance Portability and Accountability Act /Health Information Technology for Economic and Clinical Health Act (HIPAA/HITECH)

M. To comply with the Department of Health and Human Services Privacy Regulations in the Code of Federal Regulations, Title 45, Sections 60 and 164, regarding disclosure of protected health information as specified in Attachment C.

EQRO agrees that compliance with this assurance constitutes a condition of continued receipt of or benefit from funds provided through this Contract and such compliance is binding upon EQRO, its successors, transferees, and assignees for the period during which services are provided. EQRO further agrees that all contractors, subcontractors, sub-grantees or others with whom it arranges to provide goods, services or benefits in connection with any of its programs and activities are not discriminating against either those whom they employ nor those to whom they provide goods, services or benefits in violation of the above statutes, regulations, guidelines and standards.

It is expressly understood that evidence of EQRO’S refusal or failure to substantially comply with this section or such failure by EQRO’S subcontractors or anyone with whom EQRO affiliates in performing under this Contract shall constitute a breach and renders this Contract subject to unilateral cancellation by FHKC.

Any legal action with respect to the provisions of this Contract shall be brought in federal or state court in Leon County, Florida.

5-13 Independent Contractor

The relationship of EQRO to FHKC shall be solely that of an independent contractor. The Parties acknowledge and agree that neither Party has the authority to make any representation, warranty or binding commitment on behalf of the other Party, except as expressly provided in this Contract or as otherwise agreed to in writing by the Parties, and nothing contained in this Contract shall be deemed or construed to (i) create a partnership or joint venture between the Parties or any affiliate, employee or agent of a Party; or (ii) constitute any Party or any employee or agent of a Party as an employee or agent of the other Party.

5-14 Name and Address of Payee

The name and address of the official payee to whom the payment shall be made:

For EQRO:

Name

Address

Email

5-15 Notice and Contact

All notices required under this section shall be in writing and may be delivered by certified mail with return receipt requested, by facsimile with proof of receipt, by electronic mail with proof of receipt or in person with proof of delivery.

Notice required or permitted under this Contract shall be directed as follows:

For FHKC:

Austin Knoll

Florida Healthy Kids Corporation

661 East Jefferson Street, 2nd Floor

Tallahassee, FL 32301

850-224-5437 (Phone)

850-224-0615 (Fax)

Nolla@healthykids.org

For EQRO:

Name

Address

Phone/fax

Email

In the event that different contact persons are designated by either Party after execution of this Contract, notice of the name and address of the new contact will be sent to the other Party and be attached to the originals of this Contract.

5-16 Severability

If any of the provisions of this Contract are held to be unenforceable by a court of competent jurisdiction, such a provision or provisions shall be severed from the remaining provisions of the Contract, which shall remain in full force and effect.

5-17 Survival

The provisions of the following sections: Records Retention and Accessibility; Indemnification; Attorney Fees; Confidentiality; Conflicts of Interest; Non-Solicitation and Governing Law; Venue; Transition Plan, and Process shall survive any termination of this Contract.

5-18 Termination of Contract

5-18-1 Termination for Lack of Funding

This Contract is subject to the continuation and approval of funding to FHKC from state, federal and other sources. FHKC shall have the absolute right, in its sole discretion, to terminate this Contract if funding for the Program is to be changed or terminated such that this Contract should not be sustained. FHKC shall send EQRO notice of termination and include a termination date of not less than thirty (30) calendar days from the date of the notice.

5-18-2 Termination for Lack of Payment

If FHKC fails to make payments in accordance with the schedule included in this Contract, EQRO may suspend work and pursue the appropriate remedies for FHKC’s breach of its payment obligations. EQROmust provide FHKC at least thirty (30) calendar days written notice of any suspension due to lack of payment and allow FHKC an opportunity to correct the default prior to suspension of work.

5-18-3 Termination for Lack of Performance or Breach

The continuation of this Contract is contingent upon the satisfactory performance of the EQRO and corresponding evaluations by FHKC. If EQRO fails to make timely progress on the objectives of this Contract or fails to meet the deliverables described under this Contract in the time and manner prescribed, FHKC reserves the right to terminate this Contract, or any part herein, at its discretion and such termination shall be effective at such times as is determined by FHKC. In its sole discretion, FHKC may allow EQRO up to thirty (30) calendar days to cure any performance deficiencies prior to termination. FHKC may, in its sole discretion, extend the cure period for good cause shown.

FHKC further reserves the right to immediately terminate this Contract by written notice to the EQRO for breach of any provision of the Contract by the EQRO, for the EQRO’s failure to perform satisfactorily any requirement of this Contract, or for any defaults in performance of this Contract, as determined in FHKC’s sole discretion.

Waiver of the failure to perform satisfactorily or of breach of any provision of this Contract shall not be deemed to be a waiver of any other failure to perform or breach and shall not be construed to be a modification of the terms of this Contract.

5-18-4 Termination upon Revision of Applicable Law

FHKC and EQRO agree if federal or state revisions of any applicable laws or regulations restrict FHKC’s ability to comply with the Contract, make such compliance impracticable, frustrate the purpose of the Contract or place the Contract in conflict with FHKC’s ability to adhere to its statutory purpose, FHKC may unilaterally terminate this Contract. FHKC shall send EQRO notice of termination and include a termination date of not less than thirty (30) calendar days from the date of notice.

5-18-5 Termination upon Mutual Agreement

With mutual agreement of both parties, this Contract, or any part herein, may be terminated on an agreed date prior to the end of the Contract without penalty to either party.

5-19 Transition Plan and Process

Upon the expiration or termination of this Contract for any reason, should FHKC choose to use another vendor, EQRO shall ensure a smooth transition. EQRO shall provide a transition plan to FHKC within fifteen (15) business days of notice of the expiration or termination of this Contract. Acceptance of the transition plan shall be determined in the sole discretion of FHKC. Failure for the EQRO to provide a timely transition plan acceptable to FHKC shall be cause to hold the EQRO in default and for failure to perform; and in such event liquidated damages in the amount of five hundred dollars ($500.00) per day may be charged against the EQRO. FHKC also may withhold payment to EQRO for nonperformance or unsatisfactory performance of the terms of this Contract.

EQRO shall provide staff, services and other resources for consultation and the successful and complete transition after the expiration or termination of this Contract, as requested by FHKC. The “Transition Period” required is estimated to be three (3) months after the expiration or termination of this Contract. In the event, the actual Transition Period extends longer than the estimated Transition Period; the EQRO shall continue to perform the duties pursuant to this Contract and to provide the necessary level of staff, services and other resources until the actual Transition Period is completed successfully, as determined in the sole discretion of FHKC.

During the actual Transition Period, FHKC agrees to continue payment to EQRO, pursuant to Section 3 of this Contract. However, such payment shall be prorated and limited to the actual duties performed by the EQRO and the staff, services and other resources provided during the actual Transition Period, as requested and required by FHKC. The EQRO’s billing shall be itemized with specificity as to time, date, purpose and specific number of hours and document the actual staff, services and other resources provided during the actual Transition Period.

**[TWO (2) SIGNATURE PAGES FOLLOW]**

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

**FOR**

**EQRO:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**NAME:**

**TITLE:**

**DATE SIGNED:**

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_ )

The foregoing instrument was acknowledged to me before this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,20\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. He/She is personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

Notary Public – State of Florida

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print, Type or Stamp Name of Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FOR**

**FLORIDA HEALTHY KIDS CORPORATION:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**NAME: Rebecca Matthews**

**TITLE: Chief Executive Officer**

**DATE SIGNED:**

STATE OF FLORIDA )

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_ )

The foregoing instrument was acknowledged to me before this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2017, by Rebecca Matthews, as Chief Executive Officer on behalf of the Florida Healthy Kids Corporation. She is personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

Notary Public – State of Florida

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print, Type or Stamp Name of Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires

**Reviewed by:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_/\_\_\_\_\_/20\_\_\_

Steven M. Malono, Corporate Counsel

Florida Bar Number: 0705705

|  |
| --- |
| ATTACHMENT A: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION  **CONTRACTS AND SUBCONTRACTS** |

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, signed February 18, 1986. The guidelines were published in the May 29, 1987, Federal Register (52 Fed. Reg., pages 20360-20369).

**INSTRUCTIONS**

A. Each entity whose contract/subcontract equals or exceeds twenty-five thousand dollars ($25,000) in federal monies must sign this certification prior to execution of each contract/subcontract. Additionally, entities who audit federal programs must also sign, regardless of the contract amount. The Florida Healthy Kids Corporation cannot contract with these types of Entities if they are debarred or suspended by the federal government.

B. This certification is a material representation of fact upon which reliance is placed when this contract/subcontract is entered into. If it is later determined that the signer knowingly rendered an erroneous certification, the Federal Government may pursue available remedies, including suspension and/or debarment.

C. EQRO shall provide immediate written notice to the contract manager at any time EQRO learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. The terms “debarred,” “suspended,” “ineligible,” “person,” “principal,” and “voluntarily excluded,” as used in this certification, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the contract manager for assistance in obtaining a copy of those regulations.

E. EQRO agrees by submitting this certification that, it shall not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract/subcontract unless authorized by the Federal Government.

F. EQRO further agrees by submitting this certification that it will require each subcontractor of this contract/subcontract whose payment will equal or exceed twenty-five thousand dollars ($25,000) in federal monies, to submit a signed copy of this certification.

G. The Florida Healthy Kids Corporation may rely upon a certification of EQRO that it is not debarred, suspended, ineligible, or voluntarily excluded from contracting/subcontracting unless it knows that the certification is erroneous.

H. This signed certification must be kept in the contract manager’s file. Subcontractor’s certifications must be kept at the contractor’s business location.

**CERTIFICATION**

EQRO certifies, by signing this certification, that neither EQRO nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract/subcontract by any federal agency.

Where EQRO is unable to certify to any of the statements in this certification, EQRO shall attach an explanation to this certification.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature (Above) Date of Signature

Name and Title of Authorized Signatory: Name of EQRO and Business Address:

|  |
| --- |
| ATTACHMENT B: CERTIFICATION REGARDING LOBBYING  **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE CONTRACTS** |

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative Contract and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative Contract.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress or an employee of a member of congress in connection with this federal contract, grant, loan or cooperative Contract, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans and cooperative Contracts) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000.00) and not more than one hundred thousand dollars ($100,000.00) for each such failure.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature (Above) Date of Signature

Name and Title of Authorized Signatory:

Name of EQRO and Business Address:

ATTACHMENT C: BAA and HIPAA Breach Report Form

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# HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 COMPLIANCE: BUSINESS ASSOCIATE (BA) AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“AGREEMENT”) is entered into by and between Florida Healthy Kids Corporation, a Florida non-profit corporation, (“FHKC” or “Covered Entity”) and \_\_\_\_\_\_\_\_\_\_\_ (the “BA”), and is incorporated in the Contract or other Ancillary Agreement (“Contract”) between FHKC and \_\_\_\_\_\_\_\_\_\_\_.

## HIPAA Compliance

FHKC and BA agree to comply with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended from time to time (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”).

FHKC and BA enters into this Agreement to comply with the requirements of the implementing regulations at 45 Code of Federal Regulations (C.F.R) Parts 160-164 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (HITECH), that are applicable to business associates, along with any guidance and/or regulations issued by Department of Health and Human Services (“HHS”).FHKC and BA agree to incorporate into this agreement any regulations issued with respect to the HITECH Act that relate to the obligations of business associates. BA recognizes and agrees that it is obligated by law through the Contract, any other written agreement and this Agreement to meet the applicable provisions of HIPAA and HITECH.

## definitions for use in this attachment

Terms used but not otherwise defined in this Agreement and the Contract shall have the same meaning as those terms in 45 C.F.R. Parts 160, 162 and 164.

## Obligations and Activities of Business associate (Privacy Rule)

### Operation on Behalf of FHKC

The BA shall use and disclose Protected Health Information (“PHI”) only as shall be permitted by the Contract and this Agreement. BA shall have the same duty to protect FHKC’s PHI as such term is defined in the Contract, and in furtherance of the duties therein.

### Compliance with the Privacy Rule

BA agrees to fully comply with the requirements under the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) applicable to "business associates," as that term is defined in the Privacy Rule, and not use or further disclose PHI other than as permitted or required by the Contract, this Agreement or as required by law.

BA shall create and/or adopt policies and procedures to periodically audit BA’s adherence to all HIPAA regulations. BA acknowledges and promises to perform such audits pursuant to the terms and conditions set out herein. BA shall make such audit policies and procedures available to FHKC for review.

### Privacy Safeguards and Policies

BA agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Contract, any Ancillary Agreement(s), this Agreement, or as required by law.

### Mitigation of Harmful Effect of Violations

BA agrees to inform FHKC without unreasonable delay and mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA, or by a subcontractor or agent of BA, resulting from a violation of the requirements of this Agreement.

### Privacy Obligations Breach and Security Incidents

#### Privacy Breach

BA will report to FHKC any use or disclosure of FHKC’s Protected Health Information not permitted by this Agreement or in writing by FHKC. In addition, BA will report, following discovery and without unreasonable delay, but in no event later than seven (7) business days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the HITECH Act and any implementing regulations. BA shall cooperate with FHKC in investigating the Breach and in meeting FHKC’s obligations under the HITECH Act and any other security breach notification laws. In the event of a breach, BA and FHKC will work together to comply with any required regulatory filings.

Any such report shall include the identification (if known) of each individual whose unsecured PHI has been, or is reasonably believed by BA to have been, accessed, acquired, or disclosed during such Breach. BA will make the report to FHKC’s Privacy Officer not more than seven (7) business days after BA learns of such non-permitted use or disclosure.

Any items not known at the time of the initial report will be subsequently reported to FHKC as answers are determined. All elements will be reported no later than 30 days after the date of the initial report, or as soon as feasible, whichever is sooner.

#### Access of Individual to PHI and other Requests to Business Associate

If BA receives PHI from FHKC in a designated record set, BA agrees to provide access to PHI in a designated record set to FHKC in order to meet its requirements under 45 CFR § 164.524. If BA receives a request from an individual for a copy of the individual's PHI, and the PHI is in the sole possession of the BA, BA will provide the requested copies to the individual and notify FHKC of such action within five (5) business days of completion of the request. If BA receives a request for PHI in the possession of FHKC, or receives a request to exercise other individual rights as set forth in the Privacy Rule, BA shall promptly forward the request to FHKC within two (2) business days. BA shall then assist FHKC as necessary in responding to the request in a timely manner. If a BA provides copies of PHI to the individual, it may charge a reasonable fee for the copies as the regulations shall permit.

### Recording of Designated Disclosures of PHI

BA agrees to document disclosures of PHI and information related to such disclosures as would be required for FHKC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

### Security and Privacy Compliance Review upon Request

#### HHS Inspection

BA shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the HHS for purposes of determining Covered EQRO’s compliance with HIPAA and HITECH. Except to the extent prohibited by law, BA agrees to notify FHKC of all requests served upon BA for information or documentation by or on behalf of the HHS. BA shall provide to FHKC a copy of any PHI that BA provides to the HHS concurrently with providing such PHI to the HHS.

#### FHKC Inspection

Upon written request, to make available to FHKC during normal business hours BA’s internal practices, books, and records relating to the use and disclosure of PHI or EPHI received from, or created or received on behalf of, FHKC in a time and manner designated by FHKC for the purposes of FHKC determining compliance with the HIPAA Privacy and Security Requirements.

## Obligations and Activities of Business associate (Security Rule)

### Compliance with Security Rule

BA shall ensure compliance with the HIPAA Security Standards for the Protection of Electronic Protected Health Information (“EPHI”), 45 C.F.R. Part 160 and Part 164, Subparts A and C (the “Security Rule”), with respect to Electronic Protected Health Information covered by the Contract and this Agreement effective on the compliance date for initial implementation of the security standards set for in 45 C.F.R. §164.318.

### Security Safeguards and Policies

BA agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of FHKC as required by the Security Rule. The BA will maintain appropriate documentation of its compliance with the Security Rule. These safeguards will include, but shall not be limited to:

1. Annual training to relevant employees, contractors and subcontractors on preventing improper use or disclosure of PHI, updated as appropriate;
2. Adopting policies and procedures regarding the safeguarding of PHI, updated and enforced as necessary;
3. Implementing appropriate technical and physical safeguards to protect PHI, including access controls, transmission security, workstation security, etc.

### Security Provisions in Business Associate Contracts

BA shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from, maintained, or created for FHKC or that carries out any duties for the BA involving the use, custody, disclosure, creation of, or access to PHI supplied by FHKC, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with BA, incorporating the same restrictions and conditions in this Agreement with BA regarding PHI.

### Florida Consumer Notice of System Breach

BA understands that FHKC or its customers may be a “information holder” (as may be BA) under the terms of section 817.5681, *Florida Statutes*, and that in the event of a breach of the BA’s security system as defined by that statute, the BA shall indemnify and hold FHKC harmless for expenses and/or damages related to the breach. Such obligation shall include, but is not limited to, the mailed notification to any Florida resident whose personal information is reasonably believed to have been acquired by an unauthorized individual. In the event that the BA discovers circumstances requiring notification of more than one thousand (1,000) persons at one time, the person shall also notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by section 817.5681(12), *Florida Statutes*, of the timing, distribution and content of the notices. Substitute notice, as defined by section 817.5681(6)(c), *Florida Statutes*, shall not be permitted except as approved in writing in advance by FHKC. The parties agree that PHI includes data elements in addition to those included described as “personal information” under section 817.5681, *Florida Statutes*, and agree that BA’s responsibilities under this paragraph shall include all PHI.

### Reporting of Security Incidents

The BA shall track all “Security Incidents” as defined by HIPAA and shall periodically report such security incidents in summary fashion as may be requested by FHKC, but not less than annually within sixty (60) days of each anniversary of this Agreement. The BA shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of Security Incidents and responses for BA’s operations. However, the BA shall expediently notify FHKC’s Privacy Officer of any “Security Incident” which would constitute a “Security Event” as defined by this Agreement, including any “breach of the security of the system" under section 817.5681*,* Florida Statutes, in a preliminary report within two (2) business days, with a full report of the incident not less than five (5) business days of the time it became aware of the incident. The BA shall likewise notify FHKC in a preliminary report within two (2) business days of any unauthorized acquisition including but not limited to internal user access to non-test records reported to BA’s privacy manager, and any use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which it becomes aware with a full report of the incident not less than five (5) business days from the time it became aware of the incident.

BA shall identify in writing key contact persons for administration, data processing, marketing, information systems and audit reporting within thirty (30) days of the execution of this Agreement. BA shall notify FHKC of any reduction of in-house staff during the term of this Agreement, in writing, within ten (10) business days.

### HITECH Act

BA will adhere to all Privacy and Security provisions in the HITECH Act as passed as part of the American Recovery and Reinvestment Act of 2009 (“ARRA”) under Sections 13401 and 13404.

### Unsecured Protected Health Information

BA shall notify each individual whose Unsecured Protected Health Information has been or is reasonably believed by the BA to have been accessed, acquired, used, or disclosed as a result of a breach, except when law enforcement requires a delay pursuant to 45 CFR 164.412.

BA shall notify such individuals without unreasonable delay, and in no case later than sixty (60) days after discovery of the breach, as follows:

* By written notice in plain language including, to the extent possible:
  + A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
  + A description of the types of Unsecured Protected Health Information involved in the breach (including but not limited to items such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  + Any steps individuals should take to protect themselves from potential harm resulting from the breach;
  + A brief description of what BA and FHKC are doing to investigate the breach, to mitigate the harm to individuals, and to protect against further breaches; and
  + Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, website or postal address.
* BA must use a method of notification that meets the requirements of 45 CFR 164.404(d).
* BA must provide notice to the media when required under 45 CFR 164.406, and to HHS pursuant to 45 CFR 164.408.

## Electronic Transaction and Code Sets

To the extent that the services performed by BA pursuant to the Agreement involve transactions that are subject to the HIPAA Standards for Electronic Transactions and Code Sets, 45 C.F.R. Parts 160 and 162, with respect to Electronic Protected Health Information covered by the Contract and this Agreement, BA shall conduct such transactions in conformance with such regulations as amended from time to time. Without limiting the generality of the foregoing, BA also agrees that it will, in accordance with 45 C.F.R. § 162.923(c), comply with all applicable requirements of 45 C.F.R. Part 162, and require any agent or subcontractor to comply with all applicable requirements of 45 C.F.R. Part 162.

## Permitted Uses and Disclosures by BA – General Use and Disclosure Provisions

### Use of PHI for Operations on Behalf of FHKC

Except as otherwise limited by this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, FHKC as specified in the Contract, provided that such use or disclosure would not violate HIPAA if done by FHKC, or violate other policies and procedures of FHKC.

Except as otherwise provided in the Contract or this Agreement, BA is prohibited from further using or disclosing any information received from FHKC, or from any other business associate of FHKC for any commercial purposes of the BA, including, by way of example, “data mining.”

BA shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purposes of the request, use or disclosure.

## Permitted Uses and Disclosures by BA – Specific Use and Disclosure Provisions

### Third Party Disclosure Confidentiality

Except as otherwise limited in the Contract or this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are required by law, or, if permitted by law, this Agreement, the Contract and any Ancillary Agreements, provided that, if BA discloses any PHI to a third party for such a purpose, BA shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify BA of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached in a preliminary report within two (2) business days with a full report of the incident not less than five (5) business days from the time it became aware of the incident.

### Data Aggregation Services

Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to FHKC as permitted by 42 CFR § 164.504(e)(2)(I)(B).

## Provisions for FHKC to Inform BA of Privacy Practices and Restrictions

### Notice of Privacy Practices

FHKC shall provide BA with the notice of Privacy Practices produced by FHKC or provided to FHKC as a result of FHKC’s obligations with other organizations in accordance with 45 CFR § 164.520, as well as any changes to such notice.

### Notice of Changes in Individual’s Access or PHI

FHKC shall provide BA with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect BA’s permitted or required uses.

### Notice of Restriction in Individual’s Access or PHI

FHKC shall notify BA of any restriction to the use or disclosure of PHI that FHKC has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect BA's use of PHI.

## Term and Termination

### Term

The Term of this Attachment shall be effective concurrent with the Contract, and shall terminate when all of the PHI provided by FHKC to BA, or created or received by BA on behalf of FHKC, is destroyed or returned to FHKC, or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.

### Termination for Cause

This Agreement authorizes and BA acknowledges and agrees FHKC shall have the right to immediately terminate this Agreement in the event BA fails to comply with, or violates a material provision of this Agreement or any provision of the Privacy and Security Rules. Notwithstanding the aforementioned, BA shall not be relieved of liability to FHKC for damages sustained by virtue of any breach of this Agreement by BA.

### Effect of Termination; Return of Protected Health Information

Upon termination of this Agreement for any reason, except as provided in subsections below, BA shall, at its own expense, either return and/or destroy all PHI and other confidential information received from FHKC or created or received by BA on behalf of FHKC. This provision applies to all confidential information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other confidential information in the possession of sub-contractors or agents of BA.

The BA shall consult with FHKC as necessary to assure an appropriate means of return and/or destruction of PHI, and shall notify FHKC in writing when such destruction is complete. If PHI is to be returned, the parties shall document when all information has been received by FHKC.

The BA shall notify FHKC whether it intends to return and/or destroy the confidential information with such additional detail as requested. In the event BA determines that returning or destroying the PHI and other confidential information received by or created for FHKC at the end or other termination of this Agreement is not feasible, BA shall provide to FHKC notification of the conditions that make return or destruction not feasible.

## Miscellaneous

### Severability

If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be no longer required by the Privacy Rule or the Security Rule, the parties shall exercise their best efforts to determine whether such provisions shall be retained, replaced or otherwise modified.

### Cooperation

The parties agree to cooperate and to comply with procedures mutually agreed upon to facilitate compliance with the Privacy Rule and Security Rule, including procedures designed to mitigate the harmful effects of any improper use or disclosure of PHI.

### Regulatory Reference

Any reference in this Agreement to a section in the Privacy and/or Security Rule means those provisions currently in effect or as may be amended in the future.

### Modification and Amendment

This Agreement may be modified only by express written amendment executed by all Parties hereto. The Parties agree to take such action to amend this Agreement from time to time as is necessary for FHKC to comply with the requirements of the Privacy and Security Rules, HIPAA and HITECH.

### Survival

The respective rights and obligations of BA under Paragraph VIII, “Term and Termination” of this Agreement shall survive the termination of this Agreement and the Contract.

### Interpretation

Any ambiguity in this Agreement or the Contract shall be resolved so as to permit FHKC to comply with HIPAA and HITECH.

**REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**

**TWO (2) SIGNATURE PAGES FOLLOW**

IN WITNESS WHEREOF, the Parties have caused this BUSINESS ASSOCIATE AGREEMENT, to be executed by their undersigned officials as duly authorized.

**FOR**

**EQRO:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**NAME:**

**TITLE:**

**DATE SIGNED:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**WITNESS #1 SIGNATURE**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**WITNESS #1 PRINT NAME**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**WITNESS #2 SIGNATURE**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**WITNESS #2 PRINT NAME**

**FOR**

**FLORIDA HEALTHY KIDS CORPORATION:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NAME:**

**TITLE: Executive Director**

**DATE SIGNED:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**WITNESS #1 SIGNATURE**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**WITNESS #1 PRINT NAME**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**WITNESS #2 SIGNATURE**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**WITNESS #2 PRINT NAME**

**NOTIFICATION TO THE FHKC OF BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

|  |  |  |
| --- | --- | --- |
| **Contract Information** | | |
| **Contract Number** | | **Contract Title** |
|  | |  |
| **Contract Contact Information** | | |
| **Contact Person For This Incident:** |  | |
| **Contact Person’s Title:** |  | |
| **Contact’s Address** |  | |
| **Contact’s Email:** |  | |
| **Contact’s Telephone No:** |  | |

Business Associate hereby notifies FHKC that there has been a Breach of Unsecured (unencrypted) Protected Health Information that Business Associate has used or has had access to under the terms of the Business Associate Agreement, as described in detail below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Breach Detail** | | | | |
| **Date of Breach** | | **Date of Discovery of Breach** | | |
|  | |  | | |
| **Information about the Breach** | | | | |
| **Type of Breach:**   * **Lost or stolen laptop, computer, flash drive, disk, etc.** * **Stolen password or credentials** * **Unauthorized access by an employee or contractor** * **Unauthorized access by an outsider** * **Other (describe)** | | | | |
| **Detailed Description of the Breach** | | | | |
|  | | | | |
| **Types of Unsecured Protected Health Information involved in the breach (such as Full Name, SSN, Date of Birth, Address, Account Number, Disability Code, etc).** | | | | |
| **Personal Information:**   * **Name** * **Address** * **Date of birth** * **Social Security number** * **Drivers license or identification card number** * **Financial insurance information (credit card number, bank account number, etc)** * **Health insurance information (insurance carrier, insurance card number, etc)** * **Other Personal or Health Information (describe):** | | | **Health Information:**   * **Basic information (age, sex, height, etc)** * **Disease or medical conditions** * **Medications** * **Treatments or procedures** * **Immunizations** * **Allergies** * **Information about children** * **Test results** * **Hereditary conditions** * **Mental health information** * **Information about diet, exercise, weight, etc)** * **Correspondence between patient, or medical power of attorney** * **Organ donor authorization** | |
| **What steps are being taken to investigate the breach, mitigate losses, and protect against any further breaches?** | | | | |
|  | | | | |
| **List any law enforcement agencies you’ve contacted about the breach** | | | | |
|  | | | | |
| **Number of Individuals Impacted** | | **If over 500, do individuals live in multiple states?** | | |
|  | | **Yes** | | **No** |
| **Breach Notification** | | | | |
| **Have you made the breach public?** | | **If YES, when did you make it public** | | |
| **Yes** | **No** |  | | |
| Have you notified the people whose information was breached?   * YES. We notified them on:   Attach a copy of the letter to this form. Don’t include any personally identifiable information, other than your own contact information.   * NO. Our investigation isn’t complete. | | | | |
| Comments | | | | |
|  | | | | |

**Submitted By : Date of Submission:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

ATTACHMENT D: CONFLICT OF INTERESTS DISCLOSURE FORM

Respondent Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following are relationships, business and personal, that may create a conflict of interest that Respondent is hereby disclosing (add rows as necessary):

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of Relationship**  **(Business, Personal)** | **Name of Organization or Individual** | **Status of Organization or Individual (Current Contractor, Board Member, Enrollee, etc.)** | **Term of Relationship** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

To the best of my knowledge, no conflicts of interest exist between (Respondent Name) and any entity identified in Appendix B: Board Member and Entity Listing or any employee of Florida Healthy Kids Corporation.

Submitted By: Date of Submission:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature Above)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTACHMENT e: pERFORMANCE GUARANTEES

EQRO services provided in a timely and reliable manner are critical to FHKC’s successful provision of quality services to Enrollees and compliance with state and federal requirements. EQRO’s failure to complete work tasks, both correctly and on time in accordance with the above performance standards, will result in significant injury to FHKC and its mission but the amount of damages resulting from such injury cannot be calculated with certainty. The failure to complete a work task, both correctly and on time, shall be deemed a default.  For each such default, ENTITY shall be liable to FHKC for liquidated damages, and not a penalty, in addition to the other remedies available under the Contract.  FHKC may choose to deduct liquidated damages due to FHKC from any money payable to EQRO, or may bill EQRO. FHKC will inform EQRO in writing, by email or mail, of any liquidated damages incurred and whether FHKC is billing for or will deduct such amounts from money payable. FHKC may choose to waive liquidated damages for any reason in its sole discretion. Waiving of liquidated damages in one instance does not provide EQRO any right or expectation to future waived liquidated damages under any circumstances.

|  |  |  |
| --- | --- | --- |
| **Performance Guarantee** | **Liquidated Damages** | **Limits** |
| **1.** **Implementation Plan**  EQRO is responsible for submitting an implementation plan FHKC determines to be approvable. EQRO shall provide the final implementation plan, as described in section 4, for approval no later than five (5) business days from Contract execution. If the submitted implementation plan is not subsequently approved by FHKC, EQRO will have three business days from notification of disapproval to submit a revised implementation plan for approval. | $1,000 per calendar day for each day beyond the due date until provided to FHKC, inclusive of the day provided to FHKC.  Damages apply to the initial due date and to subsequent due dates should the implementation plan require revisions prior to FHKC approval. | Limited to $15,000 per incident. |
| **2. Internal Quality Control Plan**  EQRO shall provide and implement an internal quality control plan within two (2) months of contract execution. | $500 per calendar day for each day beyond the due date until fully implemented, inclusive of the date fully implemented. | Limited to $15,000. |
| **3a. Corrective Action Plan**  Upon FHKC’s request, EQRO shall develop and submit a corrective action plan for approval within seven (7) business days. The timeframe to provide the corrective action plan is inclusive of the date of request. If the submitted corrective action plan is not subsequently approved by FHKC, EQRO will have three (3) business days from notification of disapproval to submit a revised corrective action plan for approval.  At a minimum, corrective action plans must include: a description of the problem being corrected, a description of the solution, an implementation plan detailing the implementation of the solution with anticipated completion dates. | $1,000 per day for each day beyond the due date until provided to FHKC, inclusive of the day provided to FHKC.  Damages apply to the initial due date and to subsequent due dates should the corrective action plan require revisions prior to FHKC approval. | Limited to $30,000 per incident. |
| **3b. Corrective Action Plan**  EQRO shall complete implementation of the approved corrective action plan within thirty (30) calendar days, or by another completion date determined or approved by FHKC. | $2,000 per calendar day beyond the required completion date. | Limited to $50,000 per incident. |
| **4. Report Timeliness**  EQRO shall provide approvable reports by the required due dates. If FHKC does not approve a report, EQRO shall have five (5) business days from the date of notice of non-approval to submit a revised report unless otherwise directed by FHKC. If FHKC does not approve the revised report, a corrective action plan subject to PG-3 may be issued. | $500 per day for each day beyond the due date until provided to FHKC, inclusive of the day provided to FHKC.  Damages apply to the initial due date and to subsequent due dates should report require revisions prior to FHKC approval. | Limited to $15,000 per incident. |
| **5. Report Requirements**  EQRO shall provide reports in accordance with the report requirements described in this Contract or requested by FHKC. | $1,000 per incident in which the EQRO fails to adhere to the reporting requirements. | No limitation applies. |
| **6. General Work Deliverables Timeliness**  EQRO shall provide the deliverables listed in subsection 4-2-1 within the required timeframe. | $100 per day for each day beyond the due date until provided to FHKC, inclusive of the day provided to FHKC. | Limited to $5,000 per incident. |
| **7. General Contract Requirements**  EQRO shall comply with all provisions of this Contract. | $500 per incident in which the EQRO fails to adhere to a contractual requirement as determined by FHKC. | Liquidated damages will not be assessed based on this performance guarantee if damages are assessed based on failure to meet another performance guarantee. This limitation is not applicable to performance guarantee 3, Corrective Action Plan. |
| **8. Annual Technical Report**  EQRO shall provide the annual technical report meeting all report requirements by the due date. | $2,000 per day for each day beyond the due date until the report, meeting all report requirements, is provided to FHKC, inclusive of the date provided to FHKC. This financial consequence applies if the report is late but complete and if the report is timely but fails to meet all requirements or any combination thereof.  An additional $10,000 shall be assessed should the report be unable to be finalized and posted by April 30th due to EQRO’s delays. | No limitation applies. |

ATTACHMENT F: REPORTS AND DELIVERABLES

The following reports and deliverables are due by the dates indicated in the chart below. This chart is not an exhaustive list of reports and deliverables required by the Contract. All reports and deliverables are due at the frequency and by the dates specified in the Contract.

|  |  |  |
| --- | --- | --- |
| **Report/Deliverable Name** | **Contractual Ref.** | **Frequency and Due Dates** |
| Implementation Plan | 4-1-7; 4-2-5 | 5 business days after contract execution; weekly thereafter until completions of implementation |
| Tools, frameworks and related documents to assist in performing work provided as part of implementation | Section 4 | One time; within 60 days of the Contract effective date |
| Draft Annual Protocol Reports | 4-2-3 | Annually; 45 days in advance of final report due date |
| Comprehensive Assessment of Compliance | 4-1-1; 4-2-3 | Annually; August 31st |
| Validation of performance measures | 4-1-2; 4-2-3 | Annually; November 1st |
| PIP framework | 4-1-3 | One time; [TBD] |
| PIP validation report | 4-1-3; 4-2-3 | Annually; November 1st |
| PIP interval report | 4-1-3 | TBD |
| Subcontractor list | 4-5 | December 31st |
| Monthly activities report | 4-2-4 | 5th of every month |
| Quarterly activities report | 4-2-4 | 15th of every month |
| Internal Quality control plan | 4-2-5 | One time; 2 months from Contract Commencement Date |
| Internal quality control attestation | 4-2-5 | Annually; July 1st |
| Written communications to Plans | 4-2-1 | When provided to plan |
| Meeting summaries and call notes | 4-2-1 | Within 5 business days of meeting/call |
| Key staff contact list | 4-3 | Within 5 days of contract execution and updated as needed. |
| Financial statement | 4-2-6 | Annually; July 1st |
| Lobbying disclosure | 4-8 | Annually; December 31st |
| Security incidents report | BAA | Annually; March 1st |

ATTACHMENT G: ENROLLMENT FILE LAYOUT

[Enrollment file layout placeholder.]