



a Florida KidCare partner

**Florida Healthy Kids Corporation**

**INVITATION TO NEGOTIATE 2021-01**

**for**

**Marketing, Advertising, Public Relations, and Creative  
Services**

**March 5, 2021**

**Proposals Due April 5, 2021  
5:00 p.m. Eastern Time**

*This ITN, future amendments, notices, etc., related to the ITN will be available and accessible through the Florida Healthy Kids Corporation website at [healthykids.org/news/calendar/procurement/](https://healthykids.org/news/calendar/procurement/). It is the responsibility of the interested individuals to check [healthykids.org/news/calendar/procurement/](https://healthykids.org/news/calendar/procurement/) for future postings under this ITN.*

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**I. Introduction**

**A. Purpose**

The Florida Healthy Kids Corporation (“FHKC”) invites interested parties to submit proposals to this invitation to negotiate (“ITN”). The purpose of this ITN is to determine through the negotiation process the Respondent(s) best qualified to employ marketing, advertising, public relations, and creative services for the Florida KidCare program.

FHKC is a private, not-for-profit organization created by the Florida Legislature in section 624.91, Florida Statutes, to ensure the availability of child-centered health and dental plans that provide comprehensive, quality health care services for Florida children. FHKC is tasked under Florida law with marketing Florida KidCare. FHKC receives and processes most Florida KidCare applications, provides application assistance, maintains the Florida KidCare website, and collaborates with public and private partners, including the state agencies that share responsibility for Florida KidCare, to promote the program. The services being solicited under this ITN will augment and complement FHKC marketing resources and efforts.

The overarching goal of all FHKC marketing activities, including those proposed by Respondents to this ITN, is to reduce the total number of uninsured children in Florida. Key success metrics include increases in overall Florida KidCare enrollment and retention of current Florida KidCare enrollees.

**B. Florida KidCare Program Overview**

Florida KidCare is the umbrella brand established by the Florida Legislature for four different programs that together provide a continuum of government subsidized and low-cost health insurance coverage for Florida children. Coverage is based on several factors: a family’s income as a percentage of the federal poverty level; a child’s age; and for a relatively small number of children, a special medical condition. The federal poverty level is calculated by taking into account a family’s income and the number of household members.

Each of the four programs offers comprehensive medical, dental, and vision benefits tailored to the needs of children at each developmental stage. To apply for coverage, families may fill out an online application at [floridakidcare.org](http://floridakidcare.org), download the application and mail it in, or apply over the telephone. Upon determination of eligibility by Florida KidCare, children are enrolled in the program for which they qualify.

Applications are accepted year-round. Children are enrolled for 12 continuous months, after which eligibility must be re-established through the renewal process.

For the vast majority of families whose children enroll in a Florida KidCare program, the direct family costs are very low or free because of subsidies provided by the federal and state governments. For children who do not meet the subsidy eligibility guidelines, coverage may be purchased at full cost or “full-pay.” Information about the full-pay options is available on the Florida KidCare website, and it is marketed and publicized as both a separate product, as well as part of the overall Florida KidCare program

The following is a brief description of each Florida KidCare program:

1. **Medicaid for Children.** Of the more than 2.3 million Florida children enrolled in Florida KidCare, more than 2.2 million are covered through this program. It is free and covers children through the end of age 18.
2. **Florida Healthy Kids.** This program covers children from ages 5 through the end of 18 whose household incomes exceed the Medicaid cut-off. Most families with Florida Healthy Kids coverage receive subsidized coverage and pay \$15 or \$20 per month with nominal copays, dependent on their health plan. This monthly premium covers all eligible children in the family. Families whose incomes exceed the upper eligibility limit may enroll in the full-pay program, at a cost of \$230 a month per child for health and dental insurance or \$215 a month per child for health insurance only (no dental provided). More than 150,000 children are enrolled in the Florida Healthy Kids subsidized program, and more than 19,000 are enrolled in the Florida Healthy Kids full-pay program.
3. **MediKids.** This program covers children from ages 1 through the end of 4. Like Florida Healthy Kids, qualifying children are from families whose incomes exceed the Medicaid cut-off, and subsidized coverage costs \$15 or \$20 a month. This monthly premium covers all eligible children in the family. Families whose incomes exceed the upper eligibility limit may enroll in the full-pay MediKids program and pay \$187.96 a month. Nearly 20,000 children are enrolled in the MediKids subsidized program, and more than 6,700 are enrolled in the MediKids full-pay program.
4. **Children’s Medical Services (“CMS”).** This program covers children with special health care needs from birth through the end of age 18. Coverage costs \$15 or \$20 a month and applies to all eligible children in the family. Approximately 12,000 children are currently enrolled in CMS.

The Behavioral Health Network (BNet) is a Florida KidCare program developed in partnership with the Department of Health and the Department of Children and Families. The BNet program is available to children enrolled in the Children’s Medical Services (CMS) Health Plan or Florida Healthy Kids subsidized plan, ages 5 through 18 who have mental health or substance use concerns. The BNet program treats the entire spectrum of behavioral health disorders. Enrollment in BNet is voluntary and for those children who are enrolled, they receive behavioral services for the treatment of their behavioral conditions.

Enrollees are required to renew their coverage once every 12 months based on the month of their initial enrollment in the Florida KidCare program or the last renewal completion date.

Proposals should focus on marketing Florida KidCare, as a whole, and not each of the four separate programs; however, proposals should address marketing Florida KidCare's full-pay options differently, as they target a different, higher-income population of Floridians than the subsidized Florida KidCare options.

According to a report published in October 2020 by Georgetown University's Center for Children and Families, current estimates assume more than 343,000 Florida children are uninsured. Of these, approximately 179,000 children or 57 percent are eligible for subsidized insurance through Florida KidCare but are not currently enrolled. Miami- Dade, Palm Beach, Broward, Hillsborough, and Orange Counties rank the highest in total uninsured children statewide.

Previous Florida KidCare marketing and outreach tactics have included:

- Paid print, radio, television, outdoor and digital / social media advertising.
- Earned media generated through news releases, editorials, media tours, interviews, and other strategies.
- Community partner grants supporting local promotional creativity and application assistance in high uninsured markets and rural counties where a lack of resources and information about Florida KidCare may exist.
- Strategic sponsorships of local special events and partnerships promoting Florida KidCare among key influencers including schools, hospitals, community health clinics, churches and health care providers.
- Production of marketing and promotional materials.
- Traffic to both the Florida KidCare and Florida Healthy Kids website(s) and call center. It is anticipated that in 2021, FHKC will combine and redesign its two current websites (healthykids.org and floridakidcare.org). Respondents may be consulted on this project but will not be responsible for website design or coding.
- Special projects including data sharing and direct marketing in partnership with schools; outbound telemarketing; celebrity spokespersons; and co-marketing with participating health and dental plans.

### **C. Additional Resources for Respondents**

- Appendix 1: Background Information
- Websites: [healthykids.org](https://www.healthykids.org) and [floridakidcare.org](https://www.floridakidcare.org)
- Additional enrollment data available at [healthykids.org/data/](https://www.healthykids.org/data/)
- [Georgetown University Health Policy Institute, Center for Children and Families - "Children's Uninsured Rate Rises by Largest Annual Jump in More Than a Decade" Report](#)

## D. Definitions and Acronyms

Capitalized words and acronyms used but not otherwise defined in this ITN document shall have the same meaning as those terms set forth in Appendix 2: Draft Contract, attached to this ITN.

For purposes of this ITN, the following definitions apply:

- “Access” means to review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.
- “Best Value” means the highest overall value to FHKC based on price, quality, and any other factors pertaining to the services sought by this ITN and is therefore most advantageous to FHKC.
- “Confidential Information” means Vendor’s business information that is confidential, proprietary, trade secret, or otherwise not subject to disclosure pursuant to chapter 119, Florida Statutes, the Florida Constitution, or other authority.
- “FHKC Intended Decision” means the:
  - a. Issuance of ITN specifications or addenda;
  - b. Notice of Contract Award;
  - c. Withdrawal of the solicitation; or
  - d. Rejection of all proposals.
- “File” means to submit to FHKC by email to [COMSIssuingOffice@healthykids.org](mailto:COMSIssuingOffice@healthykids.org)
- “Invitation to Negotiate” or “ITN” means this solicitation, including all attachments, appendices, and addenda, for competitive sealed proposals to select one or more Respondents with which to commence negotiations for the procurement of contractual services.
- “Notice of Contract Award” means the final decision by the FHKC Board of Directors or Executive Committee to award the Contract(s).
- “Post,” “Posted,” or “Posting” in reference to the solicitation procedures of this ITN means the noticing on FHKC’s designated website, [healthykids.org/news/calendar/procurement/](http://healthykids.org/news/calendar/procurement/), of FHKC Intended Decisions or any other matters relating to this procurement.

- “Public Records Request” means a request for documents, data, or records pursuant to Chapter 119, Florida Statutes, the Florida Constitution, or other authority.
- “Respondent” means, depending on the context, those parties that either respond to or intend to respond to this ITN.
- “Responsible” means a vendor who has the capability in all respects to fully perform the Contract requirements and the integrity and reliability that will assure good faith performance.
- “Responsive” in reference to a proposal means a proposal submitted by a Respondent that conforms in all material respects to the solicitation. “Responsive” in reference to a Respondent means a Respondent that has submitted a proposal that conforms in all material respects to the solicitation.
- “Section” or “Subsection” means a section or subsection, as appropriate, of this ITN.
- “Work Plan” means a detailed summary of the Respondent’s proposed services and approach in delivering the marketing, advertising, public relations, and creative services for increasing and maintaining enrollment in the Florida KidCare program.

**E. Proposed Budget for ITN Contract**

The annual budget for all services solicited under this ITN, including but not limited to professional services, production expenses, and media placements, is anticipated to be up to \$500,000.

An additional, non-recurring sum(s) of up to \$400,000 will also be provided during the first year of the contract for additional marketing and paid advertising services to highlight the benefits of, and enrollment in, the Florida KidCare Program.

Additional advertising and production funds may be allocated throughout the course of the Contract to address specific programmatic needs.

**F. Anticipated Contract Term**

FHKC expects to award at least one Contract but reserves the right to award more than one Contract should it be to the benefit of FHKC, in its sole discretion. Respondents are not guaranteed any minimum level of services under this ITN, and selected vendors must be willing to work and coordinate efforts with any other vendor that may be awarded a Contract under this ITN.

The award of any Contract(s) under this ITN is contingent upon the availability of funds and Board approval. The proposed effective date of any Contract(s) issued under this ITN is July 1, 2021. It is anticipated that the Contract will provide for an initial term of five years and a renewal term for a period of up to three years, at FHKC’s sole discretion; however, negotiations may lead to shorter or longer initial and/or renewal terms.

## G. Calendar of Events and Deadlines

An anticipated calendar of events and deadlines is established below for this ITN process. Any of the deadlines or dates may be modified at FHKC’s sole discretion. Respondents submitting a Letter of Intent will be notified of any changes to the timeline and notices will also be Posted to [healthykids.org/news/calendar/procurement/](http://healthykids.org/news/calendar/procurement/). FHKC may modify the Calendar of Events and any deadlines at its sole discretion.

EVENT	DATE/TIME (All Times Are Eastern)
Final ITN Release Date	March 5, 2021
Respondent deadline to submit questions regarding the ITN via email to the Issuing Office	March 10, 2021   5 PM
FHKC anticipated date to post answers to Respondents’ questions at <a href="http://healthykids.org/news/calendar/procurement/">healthykids.org/news/calendar/procurement/</a>	Week of March 15, 2021
Respondent deadline to submit Letter of Intent	March 22, 2021   5 PM
Respondent deadline to submit electronic proposal and to postmark hard copy proposal	April 5, 2021   5 PM
Evaluations	April 7-20, 2021
Negotiations	April 29, 2021
Notice of Contract Award – Public Meeting	May 7, 2021, 2021   9:00 AM
Effective Date of Services/Implementation Date	July 1, 2021

## II. SCOPE AND GOALS OF THE ITN

FHKC is soliciting proposals from Respondents for a variety of marketing, advertising, public relations, and creative services. The vendor(s) selected under this procurement process may be responsible for providing the services described in this solicitation on either an ongoing basis through a long-term contract or through short-term, project-limited arrangements on an as-needed basis when identified by FHKC. The selected vendor(s) is expected to consistently coordinate with FHKC marketing and communications staff and must demonstrate its willingness and ability to integrate existing strategies into its Work Plan as may be required by FHKC. Additionally, the successful vendor(s) must also show a history of successful marketing collaboration involving multiple entities external to their direct influence.

FHKC seeks vendors who demonstrate knowledge and understanding of all four Florida KidCare programs and who can provide all of the services listed below as a comprehensive proposal or in the form of ad hoc services. The list contains the minimum services sought by FHKC through this ITN, but Respondents may propose additional services.

- **Strategic development** including an initial review and proposed refresh of Florida KidCare branding, annual examination of advertising placements and brand messaging and ongoing development of a fully integrated 12-month marketing strategy.
- **Marketing creative** including concept; layout and design; copywriting; and production of traditional and digital advertising, email templates, brochures, postcards, infographics, outreach toolkits, other marketing materials, and FHKC Annual Report.
- **Paid advertising planning, purchasing and placement**, including traditional and digital advertising, using strategic, data-driven techniques.
- **Direct marketing**, including traditional direct mail, email, telephone / mobile, and other digital direct response channels.
- **Social media strategy and content development** for Facebook; Twitter; Pinterest; LinkedIn; Instagram; target audience-centric websites and blogs; and other digital communication channels.
- **Media relations**, including proactive editorial planning; message development; drafting, editing, and distribution of news releases, op-eds and related content; follow-up to secure coverage; fielding and facilitating response to media inquiries; coordinating interviews and editorial board meetings; serving as a spokesperson, as needed; ongoing development and maintenance of target media lists; and tracking and reporting media coverage.
- **Search engine optimization**, including keyword research to ensure efficacy of relevant paid advertising tactics, as well as on-page optimization and competitive analysis reports.
- **Other marketing and communications consultation and related support**, including issue/crisis management; retention strategies and messaging; talking points and speeches; messaging to state legislators, advocacy organizations, potential and existing partners, and other interested parties.
- **Analytics** measuring results and return on investment of all executed advertising, marketing, and communications strategies.

FHKC is soliciting proposals under this ITN from Responsive and Responsible Respondents that can deliver all of the services described above, either in-house or through the use of FHKC-approved subcontractors.

Respondents must defend their proposed Work Plan within the submitted proposal using data-driven techniques to show qualitative and quantitative return on investment for all proposed services, especially as it relates to increasing the number of Florida KidCare completed applications and enrollment from all targeted populations, as well as retaining existing enrollees.

The awarded Respondent will be provided a copy of FHKC's Florida KidCare branding guidelines and must always adhere to FHKC's branding guidelines for all items.

### **III. PROCUREMENT PROCESS**

#### **A. Process Overview**

FHKC intends this ITN process to be divided into two (2) phases: the evaluation phase and the negotiation phase.

The evaluation phase involves FHKC's evaluation of proposals. During the evaluation phase, all Responsive proposals will be evaluated to determine Respondent(s) that advance to the negotiation phase.

The negotiation phase involves FHKC's negotiations with Responsive and Responsible Respondents. During the negotiation phase, the negotiation team may request revised proposals and/or best and final offers based on the negotiations. Final contract terms will be established with the selected Respondents during the negotiation phase. The negotiation team may cease negotiations with any Respondent at any time during the negotiations phase.

After negotiations, the negotiation team intends to recommend to the FHKC Board of Directors or Executive Committee an award of Contract(s), identifying the Respondent(s) that provide the Best Value. The FHKC Board of Directors or Executive Committee shall determine the final award of any Contract, after which the Notice of Contract Award will be posted.

Respondents that are not Responsive or Responsible, not selected for negotiations, or with whom the negotiation team ceased negotiations will not be formally eliminated from the ITN process until the Board of Directors or Executive Committee issues the final award of one or more Contracts.

At its option, the negotiation team may, without any negotiation, recommend the execution of a Contract or Contracts with any Respondent. Therefore, proposals should be submitted in complete form and pursuant to all terms and conditions as required in this ITN.

#### **B. Proposals**

The negotiation team reserves the right to recommend a Contract award(s) without any further discussion with any Respondent regarding the proposals received. The negotiation team reserves the right to contract individual Respondents to clarify any point regarding their proposals or to correct minor discrepancies. The negotiation team is not obligated to accept any proposal modification or revision after the proposal submission date.

Proposals containing conditions, caveats, or contingencies for acceptance will not be considered and may be disqualified without further consideration or opportunity for modification or clarification by a Respondent.

Joint ventures and legal partnerships that submit a combined proposal shall be viewed as one (1) Respondent.

Respondents may not submit more than one proposal under multiple entities that coordinate to respond to this ITN or are affiliated and/or linked by shared ownership or controlling interests. FHKC shall make the final determination of such and will notify Respondents of any such situations. After FHKC determines that the Respondents are Responsible, FHKC may request the withdrawal of all but one of the proposals; otherwise, any or all such Respondents may be disqualified from the ITN process, at FHKC's sole discretion. Proposals meeting the minimum qualifications will then be evaluated as to the services being proposed and the relative value of those services to the cost proposed.

### **C. Single Point of Contact**

This procurement process will be under a cone of silence between the release of the ITN and the end of the 72-hour period following the Posting of the Notice of Contract Award, excluding Saturdays, Sundays, and FHKC holidays.

During the cone of silence, Respondents or persons acting on their behalf may only contact FHKC regarding this procurement by emailing the Issuing Office at [COMSIssuingOffice@healthykids.org](mailto:COMSIssuingOffice@healthykids.org) or during scheduled negotiation sessions. The subject line for each email must contain the ITN number in the subject line of the email. No faxes or telephone calls will be accepted.

Further, during the cone of silence, Respondents or persons acting on their behalf may not contact any other FHKC employee, Board of Directors member, or committee member (including ad hoc members); any employee of the executive branch of the State of Florida; or any employee of the legislative branch of the State of Florida concerning any aspect of this solicitation. Violation of this provision may be grounds for rejecting a proposal.

Any contact by an agent of a Respondent, including an affiliate, a person with a relevant business relationship with the Respondent, or an existing prospective subcontractor to a Respondent will be presumed to be on behalf of a Respondent unless otherwise demonstrated.

### **D. Order of Precedence**

In the event of conflict in terms among the documents published during this ITN, the following order of precedence shall apply:

- Addenda to the ITN, if any

- This ITN document
- All attachments and appendices to this ITN

**E. Letter of Intent and Electronic Access to Secure Partner Connect**

Respondents intending to submit a proposal must email a Letter of Intent (Attachment C) to the Issuing Office via email at [COMSIssuingOffice@healthykids.org](mailto:COMSIssuingOffice@healthykids.org) by the time and date indicated in Subsection I.G, Calendar of Events and Deadlines. The Attachment C: Letter of Intent must:

- Clearly identify the Respondent;
- Provide a contact name and contact information, including mailing address, email address, desk telephone number, and cell phone number, if available, for the person (e.g. executive officer or designee) responsible for the proposal;
- Provide an alternate contact name and corresponding contact information;
- Provide the name and contact information for the person(s) responsible for accessing Secure Partner Connect; and,
- Include the signature of an executive officer representing the Respondent on the organization’s letterhead.

To enable Respondents to electronically submit their proposals, FHKC will establish access to the Secure Partner Connect site by sending an invitation to the person(s) Respondent specifies in its Attachment C: Letter of Intent. At that time, Respondent will be asked to post a blank document with a file name of “Test” to ensure site access is functional.

**F. Questions Regarding the ITN**

Respondents may submit questions concerning this ITN during the question-and-answer round in writing to the Issuing Office at [COMSIssuingOffice@healthykids.org](mailto:COMSIssuingOffice@healthykids.org). The deadline for submitting questions is set forth in Subsection I.G, Calendar of Events and Deadlines.

Respondents must submit questions in the following format:

<b>Respondent (Company)</b>				
<b>#</b>	<b>Document (e.g., ITN, Proposed Contract)</b>	<b>Document Section</b>	<b>Document Page #</b>	<b>Question</b>

Responses to all written questions received by the deadline and any resulting revisions to the ITN will be Posted for all Respondents to view. FHKC may consider questions received after the deadline and/or Post any such questions and answers at its own discretion.

During the question and answer period, FHKC will consider written requests for any information not included with the ITN. If FHKC determines such information would be beneficial, the

information may be Posted.

The ITN, including any addenda, provide the exclusive information and instructions for Respondents to submit proposals. Any other information regarding the submission of proposals provided to, or received by, a Respondent are not binding on FHKC, and Respondents should not rely on such information.

### **G. Public Records**

Absent exemption, all documents and records submitted, received, or developed during this procurement process will become publicly available upon conclusion of the procurement process. Such documents and records include all portions of any document or record submitted by Respondents, the selection criteria, scoring system, materials developed by FHKC or its consultants, and results of this ITN.

Information contained in any document or record submitted, received, or developed during the procurement process is not available to the public or any Respondent until the ITN process is concluded and a Contract(s) has been awarded.

#### **1. Information Exempt from Disclosure**

If a Respondent asserts that any portion of any document or record submitted by the Respondent during the procurement process contains Confidential Information, the Respondent must take the following steps to protect the Confidential Information:

- a. Respondent shall submit a non-redacted copy of the document or record as follows:
  - i. For every page containing trade secret information, Respondents shall mark such page “**TRADE SECRET**” in red font, followed by the statutory basis for such claim. For example: “**TRADE SECRET** pursuant to section 812.081, Florida Statutes.”
  - ii. For every page containing information that is not trade secret but is otherwise not subject to disclosure shall be marked “**EXEMPT**” in red font, followed by the statutory basis for such claim. For example: “**EXEMPT** pursuant to section 119.071(3)(b), Florida Statutes.”
- b. In addition, Respondents shall submit a separate, redacted copy of the document or record as follows:
  - i. The redacted document shall contain the solicitation name, number and the Respondent’s name and shall be clearly titled “Redacted Copy.”
  - ii. Documents provided electronically shall contain “REDACTED” at the end of the file name
  - iii. Redacted copies should only contain redactions of those portions of material the Respondent claims contain Confidential Information. See Section 4 for submission requirements.

A Respondent may **not** redact the entirety of its proposal, and FHKC may reject a proposal that is so marked.

## 2. FHKC's Response to Public Records Requests

If a Public Records Request is submitted to FHKC for any document or record submitted by a Respondent during this solicitation, FHKC is authorized to release the redacted document or record without conducting any pre-release view of the redacted document or record or notifying the Respondent.

Failure to identify and mark such portions of a document or record as directed in Subsection III.G.1. shall constitute a waiver of any claimed exemption. **IF A RESPONDENT FAILS TO SUBMIT A REDACTED COPY OF ANY DOCUMENT OR RECORD, OR PORTIONS THEREOF, FOLLOWING THE INSTRUCTIONS SET FORTH IN THIS ITN, FHKC IS AUTHORIZED TO RELEASE THE DOCUMENT OR RECORD IN RESPONSE TO A PUBLIC RECORDS REQUEST WITHOUT NOTIFYING THE RESPONDENT.** FHKC will not attempt to discern which elements a Respondent is attempting to protect from disclosure.

In the event of a Public Records Request seeking Confidential Information, FHKC will notify the Respondent that such an assertion has been made. It is the Respondent's responsibility to assert the information in question is exempt from disclosure under Chapter 119, Florida Statutes, or other applicable law. If FHKC becomes subject to a demand for discovery or disclosure of the Confidential Information of the Respondent in a legal proceeding, FHKC shall give the Respondent prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law). The Respondent is responsible for defending its determination that the redacted portions of its proposal or other documents are confidential, proprietary, trade secret, exempt, or otherwise not subject to disclosure. FHKC will not engage in any independent review or determination as to whether redacted or non-redacted information is Confidential Information.

## 3. Indemnification

Respondents that fail to identify information that is confidential, proprietary, trade secret, exempt, or otherwise not subject to disclosure as directed herein acknowledge and agree to waive any right or cause of action, civil or criminal, against FHKC, its employees, and its representatives for the release or disclosure of such information not so identified.

Respondents acknowledge and agree to protect, defend, and indemnify FHKC for any and all assertions, claims, suits, or proceedings arising from or relating to the Confidential Information and/or Respondent's claim that its proposal or other documents are trade secret, confidential, or otherwise not subject to disclosure to the third party. FHKC may use counsel of its choosing to defend any claims, and the Respondent shall promptly pay FHKC's invoices for legal services

on a monthly basis for all costs and expenses, including legal fees, incurred in defending such claims.

#### **H. Special Accommodation**

Any person requiring a special accommodation because of a disability should notify the Issuing Office via email at [COMSIssuingOffice@healthykids.org](mailto:COMSIssuingOffice@healthykids.org).

#### **I. Cost of Preparation**

FHKC is not liable for any costs incurred by Respondents in responding to or participating in this ITN.

#### **J. Receipt of Proposal**

All methods of delivery or transmittal to FHKC are exclusively the responsibility of Respondents and the risk of non-receipt or delayed receipt shall be borne exclusively by Respondents.

#### **K. Firm Proposal**

By submitting a proposal, Respondents acknowledge and agree that their proposals shall remain firm and shall not be withdrawn until the resulting Contract(s) is executed. However, Respondents may request to withdraw proposals within three Business Days after the due date for proposals provided in Section I.G, Calendar of Events and Deadlines. FHKC may approve such requests upon proof of the impossibility to perform based upon an obvious error as determined solely by FHKC.

#### **L. Use of Proposal Content**

All materials provided by Respondents to FHKC through this ITN become the exclusive property of FHKC and may not be removed by Respondents and will not be returned to Respondents. FHKC will have the right to use any or all ideas or adaptations of the ideas presented in any such materials without permission from or compensation to the Respondent. Selection or rejection of a Respondent for award will not affect this right.

#### **M. Subcontracting**

Successful Respondents are fully responsible for all work performed under the Contract resulting from this solicitation. Respondents should carefully review the Subcontractor requirements of Appendix 2: Draft Contract.

Respondents must identify Subcontractors as required by ITN subsections 3.M and Tab C:C-7. If Respondent needs to replace a Subcontractor prior to FHKC's Notice of Contract Award, the Respondent shall provide to the Issuing Office via email at [COMSIssuingOffice@healthykids.org](mailto:COMSIssuingOffice@healthykids.org), a request to substitute the Subcontractor and explain the basis for the substitution of the Subcontractor.

#### **N. Right to Inspect, Investigate and Rely on Information**

FHKC reserves the right to inspect Respondent's facilities and operations, to investigate any of Respondent's representations, and to rely on information about a Respondent in FHKC's records or known to its personnel in making its Best Value determination.

#### **O. Requests for Supplemental Information**

Written requests for information not included with this ITN will be considered by FHKC. All attempts to satisfy reasonable requests for information will be made by FHKC. If FHKC determines that such information would be beneficial, the information will be posted on the FHKC website.

Any information or responses received by interested parties verbally or through other representatives either before or during this ITN process are not binding on FHKC, and Respondents should not rely on such information.

#### **P. Amendment of the ITN**

FHKC reserves the right to amend any portion of the ITN at any time prior to the Notice of Contract Award(s). In any such event, all Respondents will be afforded an opportunity to revise their proposals to address ONLY the amendment if, in FHKC's sole discretion, it determines such an amendment is necessary. An amendment will be Posted.

#### **Q. Waiver of Minor Irregularities**

FHKC reserves the right to waive minor irregularities when to do so would be in the best interest of FHKC and/or the Florida KidCare Program. A minor irregularity is a variation from the terms and conditions of this ITN that does not affect the price of the proposal or give the Respondent a substantial advantage over other Respondents and thereby restricts or stifles competition and does not adversely impact the interests of FHKC. At its option, FHKC may allow a Respondent to correct minor irregularities but is under no obligation to do so. In doing so, FHKC may request a Respondent to provide clarifying information or additional materials to correct the minor irregularity.

#### **R. Requests for Additional Information**

FHKC reserves the right to ask any Respondent to provide additional information or clarification regarding its proposal. It is the Respondent's responsibility to reply to such requests on a timely basis.

#### **S. Rejection of All Proposals**

FHKC reserves the right to reject all proposals at any time, including after an award is made, when to do so would be in the best interest of FHKC and/or the Florida KidCare Program, and by doing so FHKC will have no liability to any Respondent.

#### **T. Withdrawal of ITN**

FHKC reserves the right to withdraw the ITN, including after an award is made, when to do so would be in the best interest of FHKC and/or the Florida KidCare Program, and by doing so FHKC will have no liability to any Respondent.

#### **U. Reserved Rights After Notice of Award**

FHKC reserves the right to withdraw or amend its Notice of Contract Award and re-open negotiations with any Respondent at any time prior to execution of the Contract.

#### **V. No Contract Until Execution**

An award, recommendation of award, or a Notice of Contract Award under this ITN shall not constitute or form any contract between FHKC and Respondent. No contract shall be formed until such time as a Respondent and FHKC formally execute the Contract with requisite written signatures.

#### **W. Announcements and Press Releases**

Any announcements or press releases regarding a Contract awarded under this ITN must be approved by FHKC in writing prior to release.

#### **X. Filing a Protest**

Any party withstanding to challenge the specifications or any addenda of this ITN, and any Respondent seeking to protest a Notice of Contract Award(s), withdrawal of the ITN, or rejection of all proposals, must comply with FHKC's protest procedures set forth in Appendix 4: FHKC Procurement Protest Procedures.

The failure of a party or a Respondent to timely file a notice of intent to protest, formal written protest, and/or protest bond as set forth in Appendix 4, shall constitute a waiver of the party's or Respondent's right to challenge FHKC's action.

If a protest may result in an interruption of service(s) to enrollees, FHKC reserves the rights, in its sole discretion, to extend an existing contract(s) until a new contract(s) can be executed.

### **IV. SUBMISSION REQUIREMENTS**

#### **A. Overview**

Each Respondent's proposal should provide a straightforward, concise description of

Respondent's ability to provide the services sought by this procurement. Respondents should thoroughly address all stated components for each designated tab. Respondents should consult the ITN, attachments to the ITN, and any designated statutes for additional information or guidance on each of the proposed components of the ITN.

Each Respondent's proposal may not apply any conditions or exceptions to any mandatory requirements of the ITN.

Each Respondent is responsible for ensuring all components of its proposal are provided in an organized and logical fashion. FHKC is not obligated to interpret any elements not clearly labeled or described.

Proposal text must be blue or black at least 12 pt. Calibri or Times New Roman font.

### **B. Submittal of Proposals**

Each Respondent is responsible for submitting ALL copies of its proposal to FHKC by the time and date reflected on the Subsection I.G, Calendar of Events and Deadlines, and in the manner specified herein. **Electronic proposals uploaded after this date and time shall not be considered; hard-copy proposals postmarked after this date shall not be considered.**

Respondent must provide two hard-copy proposal submissions in a sealed box addressed as follows:

Attention: Heather Napolitano, Issuing Officer  
Florida Healthy Kids Corporation  
1203 Governors Square Blvd, Ste. 400  
Tallahassee, FL 32301

Each hard-copy proposal must identify the ITN number; be clearly marked with Respondent's official and legal name, address and contact information; and be bound in a three-ring binder.

Respondents must also upload an electronic copy of the proposal to the folder labeled "{Respondent Name} ITN Proposal" on the Secure Partner Connect site. The electronic copies to be uploaded are as follows:

1. One electronic copy of the non-redacted proposal.
  - All file names must include the ITN number, the Respondent's name, and the document title; for example, ITN 2021-01 Company A Proposal.
  - The proposal, excluding attachments, shall be one document and include a table of contents with active links to each "tabbed section"; proposal attachments, such as Attachment B: Proposal Cover Sheet, shall be provided as separate files.
2. If applicable and as described in Subsection III.G, Public Records, one electronic redacted copy of the entire proposal (including all attachments) following the

instructions in the bullets above. The file name must include the ITN number, the Respondent's name, the document title, and "REDACTED COPY"; for example, ITN 2021-01 Company A Proposal REDACTED COPY.

All information received under this ITN is considered a public record, except as described in Subsection III.G, Public Records, and must not be password protected. Any such submissions may result in the rejection of the proposal at FHKC's sole discretion and may not receive further consideration.

As a courtesy and not an indication of Responsiveness, the Issuing Officer will email a confirmation of receipt of the electronic proposal.

### **C. Mandatory Responsiveness Requirements**

Proposals or any portions thereof that do not offer required services, fail to meet the minimum qualifications, do not meet FHKC's goals, or otherwise fail to meet the submission requirements of this ITN may be considered non-Responsive and disqualified at FHKC's sole discretion.

Each Respondent must submit its proposal by the date specified in Subsection I.G, Calendar of Events and Deadlines, as follows:

1. (i) Two hard-copy proposals (one original and one copy); (ii) one electronic, non-redacted copy; and (iii) one electronic, redacted copy (if applicable), all in the following format:

#### **Tab A:**

Attachment A: Submission Checklist; Attachment B: Proposal Cover Sheet; list of Public Records Request exemptions or statement of no exemptions, table of contents, executive summary, Attachment D: Certification Regarding Lobbying, and a copy of the Letter of Intent (Attachment C)

#### **Tab B:**

Each minimum qualification copied and pasted without modification and with a response of "yes" or "no"

#### **Tab C: Profile of Respondent**

##### **Tab C-1: Corporate Profile**

Respondent's corporate profile and experience

##### **Tab C-2**

A letter, signed on or after March 5, 2021, from a surety company or bonding agent authorized to do business in the State of Florida and written on company letterhead that documents the Respondent's present ability to obtain a performance bond or

irrevocable letter of credit in the amount of one million dollars (\$1,000,000).

**Tab C-3**

Staffing – organization chart and duties

**Tab C-4**

Attachment E: Conflict of Interest Disclosure Certification – form completed

**Tab C-5**

References – form completed for three references, each reference must be dated within the last two years and represent work completed within the last five years.

**Tab C-6**

Subcontractors – form completed for each proposed Subcontractor

**Tab C-7**

Attachment F: Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – form completed

**Tab D**

Work Plan

**Tab E**

Annual pricing proposal and first-year pricing proposal

**Tab F**

Description of privacy and security standards under the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act.

**Tab G**

Proposed revisions to the draft Contract

The original proposal and all hard copies must be provided in three-ring binders.

1. (i) One electronic, non-redacted copy and (ii) one electronic, redacted copy (if applicable)
2. (i) One electronic, non-redacted copy and (ii) one electronic, redacted copy (if applicable)

Additionally, Respondent may submit (i) one electronic, non-redacted copy and (ii) one electronic, redacted copy (if applicable), of questions, comments, and proposed revisions to Appendix 2: Draft Contract (using track changes) under Tab G, referenced above.

As a courtesy and not as an indication of Responsiveness or timeliness, the FHKC Issuing Office will email a confirmation of receipt of the electronic proposal.

All copies, hard and electronic, must include the ITN number and Respondent's official and legal name, address and contact information.

#### **D. Responding to this ITN**

Respondent must prepare proposals in the following format and order, in accordance with the instructions provided in each section. Each proposal must be tabbed as follows:

##### **Tab A: Introduction**

Respondent must include the following documents in the order listed under Tab A:

1. Attachment A: Submission Checklist (one page)
2. Attachment B: Proposal Cover Sheet completed in its entirety (three pages).
3. Public Records Disclosure Exemption List identifying any content that Respondent claims (i) is protected under Florida law and/or (ii) is exempt from disclosure under chapter 119, Florida Statutes (see Section III.G, Public Records). Respondent must identify the tab, page number, and paragraph of the information, the grounds for exemption, and statutory citation. If Respondent is not asserting any exemptions, a statement of understanding that all materials may be subject to public inspection at the conclusion of the procurement.
4. Table of Contents for the entire proposal (one page).
5. Executive Summary (one page)– Respondent must condense and highlight the contents of the proposal to the ITN, including a general description of how Respondent intends to offer the marketing, advertising, public relations, and creative services sought by this ITN.
6. A copy of Respondent's Letter of Intent (Attachment C).

##### **Tab B: Minimum Qualifications**

Respondents must meet the minimum qualifications identified below. Respondent must copy and paste without modification both the statements and boxes for each of the numbers in this subsection into its proposal and then select either "Yes" or "No."

**Responses of "No," deviations and/or caveats to the minimum qualifications** shall result in the rejection of the proposal at FHKC's sole discretion and will not receive further consideration.

1. Respondent confirms that it will be able to provide all required creative and marketing services, beginning July 1, 2021, in the manner specified in this ITN.

Yes  No

2. Respondent has at least three years of experience in providing creative and marketing services and, specifically with health-insurance related marketing, advertising, public relations, and creative services.

Yes  No

3. Respondent confirms that, if awarded this Contract, neither it nor any of its Subcontractors or agents will perform services or Access, store, or transfer PII or PHI Data outside of the continental United States.

Yes  No

4. Respondent agrees to all terms and conditions set forth in this ITN, including all Appendices (if applicable).

Yes  No

5. Respondent agrees to all terms as set forth in Appendix 2: Draft Contract, including all its attachments, without modification.

Yes  No

6. Respondent confirms it is registered with the Florida Department of State, Division of Corporations, or will be within seven (7) calendar days of Contract award, to transact business in the State of Florida. If Respondent is currently registered, Respondent must submit proof of such registration.

Yes  No

7. Respondent confirms that it has not filed for bankruptcy or receivership within the last five years.

Yes  No

### **Tab C: Profile of Respondent**

Respondent must provide a response to each of the following requests for information.

Respondent must reproduce verbatim each item into its proposal and then respond to the item using at least 12 pt., blue or black, Calibri, or Times New Roman font.

Respondents must limit the total number of pages to respond to all items in Tab C-1 to C-7, two-sided pages (equal to 10 single-sided pages).

### **Tab C-1: Corporate Profile**

Describe Respondent's corporate profile and experience, including any experience Respondent has with providing similar services for the same and/or similar marketing initiatives. Also include Respondent's knowledge, understanding, and experience marketing to low-income families with children, birth through the end of age 18, specifically Hispanics, minorities, and multi-lingual populations.

List other or previous clients for whom the Respondent has provided the same and/or similar services to those being proposed under this ITN. Contact information for three references should be included on the References table as noted below in Tab C-5: References.

Describe whether Respondent has had a contract terminated by the other party within the last three years. Describe any such event, including when, where, the parties involved, what occurred and the outcome.

### **Tab C-2: Performance Bond or Irrevocable Letter of Credit**

A letter, signed on or after March 5, 2021, from a surety company or bonding agent authorized to do business in the State of Florida and written on company letterhead that documents the Respondent's present ability to obtain a performance bond or irrevocable letter of credit in the amount of one million dollars (\$1,000,000).

### **Tab C-3: Staffing**

Respondent must provide its corporate organizational chart and identify and provide resumes for key staff members who would have responsibilities if awarded this Contract, including but not limited to the executive sponsor and contract manager. If certain positions are not filled when Respondent submits its proposal, provide a position description and the date the position is expected to be filled.

For the contract manager, Respondent must also:

- Describe other duties, if any, this person has or would have at the time the Contract is executed;
- Include the number and size of other accounts for which this person is responsible;
- Give the percentage of this person's time expected to be devoted to the FHKC account; and

- Describe the role and support by the contract manager for the implementation process.

Respondent should include the size (number of total full-time professional employees, not independent contractors or subcontractors) of its organization and the size and location of the Respondent’s primary office that would be engaged in the performance of services under this ITN.

If the Respondent proposes to subcontract, use independent contractors, or otherwise partner in any way with another vendor to provide any of the proposed services, the Respondent must provide the name of the vendor; description of services; description of related experience; size of vendor; and location of the vendor’s primary office that would be engaged in the performance of services under the Contract.

Respondent should also indicate the percentage of services that will be delivered by staff located in Florida and where services will be provided if Respondent is awarded the Contract.

**Tab C-4: Conflict of Interests Disclosure**

Respondent must review Appendix 3: FHKC Board Members, FHKC Committee Members, FHKC Staff, and Organizations and disclose any real or apparent potential conflict of interest pertaining to any member of FHKC’s Board of Directors, any member of FHKC’s committees, FHKC employee, or organization providing support to FHKC for this procurement. Respondents must complete Attachment E: Conflict of Interest Disclosure Certification in its entirety.

**Tab C-5: References**

Respondent must provide at least three (3) references with whom Respondent has current contracts with or recent contracts (within the past two (2) years) to provide a comparable scope of services and target population. Respondents should ensure the information provided is current and accurate.

FHKC may contact each reference. Respondent should not send the reference form to its references. Respondent must complete the table listed below for three (3) references in its response to this Tab.

Respondent may not use FHKC as a reference.

**Reference Form**

	<b>1</b>	<b>2</b>	<b>3</b>
Organization/Company Name:			
Contact Person			

Title			
Address:			
City/State			
Telephone Number			
Email Address			
Types of Services Provided:			
Contract Begin Date:			
Contract End Date:			
If Contract Ended, Reason Ended:			
Area of Contract: (Statewide, County, Regional)			
How Compensated Under Contract: (Per project, retainer, ad hoc, other, explain)			
Annual Contract Value:			
Contact Name for Contracting Entity:			
Contact Information for Contracting Entity:			

**Tab C-6: Subcontractors**

Respondent must complete the table below for each subcontractor that Respondent proposes to perform any portion of the services under the Contract. Respondent must complete the table as many times as needed to report each subcontractor for this Tab.

**Subcontractor Form**

<b>Information</b>	<b>Subcontractor</b>
Subcontractor Name	
Corporate address, telephone number and website	
Office address, telephone number and website	

Federal Employer Identification Number (Employer ID or Federal Tax ID, FEID)	
Occupational license number, if applicable	
W-9 verification	
Primary contact person name, address, email address and telephone number	
Summary of the history of the subcontractor's company and information about the growth of the organization on a national level and within Florida	
Describe any significant government action or litigation taken or pending against the subcontractor's company or any entities of the subcontractor's company during the most recent five (5) years	
List and describe the services the subcontractor will be responsible for in the performance of the Contract	
Explain the process for monitoring the performance of the subcontractor and measuring the quality of its results	
Describe the process to be implemented during the Contract Term to ensure that background checks (as described in the Contract) will be completed for the Subcontractor's employees	

**Tab C-7: Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion**

Respondent must complete Attachment G: Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion and submit it under this tab.

**Tab D: Work Plan**

FHKC is looking for innovation, creativity, and high-yield marketing and communication strategies to increase Florida KidCare enrollment. In this section, the Respondent shall describe in detail its proposed approach or Work Plan. The proposed Work Plan should take into consideration that Florida KidCare enrollment is open year-round.

The Work Plan must summarize each service the Respondent proposes to provide. For *each* proposed service, the Respondent must:

1. describe in detail its most advantageous and strategic recommendations for increasing enrollment and retention in the Florida KidCare program utilizing the stated marketing goals and budgeted funds available in this ITN, while highlighting what makes its approach different and potentially more effective than other Respondents;
2. demonstrate knowledge and understanding of Florida KidCare and FHKC, as well as the ability to articulate the difference between the two;
3. provide one brief case study and/or one work product sample that best represents the Respondent's service capability; and,
4. describe methods for tracking results and key metrics for measuring effectiveness.

Respondent may propose other related services beyond those specifically described in Section 2: Scope and Goals of the ITN.

In summarizing the overall Work Plan, the Respondent must also describe:

1. how the Respondent will engage FHKC staff in the planning process;
2. key milestones and general timeframe for delivery of services, including rounds of edits as applicable;
3. the types of detailed reports that the Respondent will provide to FHKC for tracking return on investment and success of marketing activities and in what format and frequency, e.g., weekly, monthly, quarterly, etc.; and
4. account management methods.

#### **Tab E: Pricing Proposals**

Respondents must submit at least one pricing proposal for **each** of the following:

1. Annual Budget. A proposed budget for each year of the Contract term (up to \$500,000 annually) that addresses deliverables set forth in the Work Plan proposed by the Respondent under Tab D.
2. First-Year Budget. A proposed budget for the first year of the Contract that addresses the deliverables set forth in the Work Plan proposed by the Respondent under Tab D (up to \$500,000) plus an additional, non-recurring sum of up to \$400,000 for additional marketing and paid advertising services.

Respondent may present pricing proposals as a fixed monthly retainer / consulting fee; cost plus; deliverable based; hourly rates; project based; or any combination. Each pricing proposal may include an overall project fee, but any such project fee may not exceed 15% of the annual

budget. All services, fees, and related costs, included and not included, must be clearly specified. Estimates are acceptable.

Each pricing proposal must include a standard hourly rate schedule for all primary services including, but not limited to, all levels of proposed account management and account service staff time, copywriting, media placement, and creative services.

FHKC may ask Respondents to restate any or all of their proposals in alternate formats after the initial submission date.

#### **Tab F: Description of HIPAA / HITECH Act Security Standards**

The Respondent(s) selected for Contract award will have access to the protected health information of Florida KidCare enrollees. As such, Respondent must describe the processes and/or framework, with accompanying controls, that Respondent uses or will use to comply with 45 CFR § 164, including the specific administrative, physical, and technical safeguards as specified within §§ 164.308, 164.310, and 164.312. This description should include the security standards specified in [Appendix A to Subpart C of Part 164—Security Standards: Matrix](#).

If available, Respondent must provide a copy of the most recent evaluation showing the extent to which Respondent's security and privacy policies and procedures meet the requirements of 45 CFR § 164.

#### **Tab G: Contract and Proposed Revisions**

If selected to provide services, a Contract will be executed between FHKC and the successful Respondent(s) in substantially the form as Appendix 2: Draft Contract attached hereto.

Respondents selected for only short-term or individual projects may execute project-specific agreements that will be negotiated at a later date.

Revisions to Appendix 2: Draft Contract are not generally accepted; however, the Respondent may include in its proposal any suggested edits. Revisions must be proposed in writing in a strikethrough and underline format of the original document and submitted with the proposal. FHKC reserves the right, in its sole discretion, to consider any or all suggested edits.

FHKC may make awards with no revisions accepted to its standard Contract. Any conflicts between the proposed Contract, this ITN, and the Respondent's proposal will be resolved by FHKC and included in the final Contract that is executed between the Parties.

## **V. EVALUATION PROCESS**

## A. Evaluation of Proposals

The proposals of Respondents that are determined to be Responsive and Responsible will be evaluated as follows:

1. The proposals will be scored based on the scoring process set forth in this section.
2. The maximum points a Respondent's proposal can achieve is 100 points per evaluator.
3. The evaluators' scores for a Respondent's proposal will then be totaled to determine the Respondent's total score.

FHKC will appoint independent evaluators to evaluate and score proposals. Each evaluator will be provided a copy of the proposals eligible for evaluation.

Each evaluator will separately score each Respondent's response as set forth in this subsection.

Evaluators will score each proposal item using the following scale:

**5 = Superior.** The response exhaustively addresses the question and demonstrates Respondent has extraordinary experience in performing the required services related to the question. The response indicates Respondent would provide exceptionally enhanced value to the FHKC. The response demonstrates the ability of the Respondent to exceed FHKC's requirements, provide outstanding quality of service and/or implement innovative ideas to achieve the desired outcome.

**4 = Good.** The response extensively addresses the question and demonstrates exceptional experience in performing the required services related to the question. The response indicates Respondent would provide enhanced value to FHKC.

**3 = Adequate.** The response adequately addresses the question and demonstrates Respondent has sufficient experience in performing the required services related to the question.

**2 = Poor.** The response minimally addresses the question or demonstrates Respondent has nominal experience in performing the required services related to the question.

**1 = Unsatisfactory.** The response inadequately addresses the question or demonstrates Respondent has very limited experience in performing the required services related to the question.

**0 = Inadequate.** The response is blank, does not address the question, or demonstrates Respondent has no experience in performing the required services related to the question.

The following proposal items will be scored by the evaluators using the 0-5 point scale, as

specified below:

## 1. Strategy and Overall Objectives

- a) Respondent's description of its overall ability to implement and execute a variety of marketing, advertising, public relations, and creative services for the Florida KidCare program on an annual basis, including highlighting how it will engage FHKC staff in the planning process; its key milestones and general timeframe for delivery of services and account management methods; and, specific strategies aimed at reducing the number of uninsured children in Florida through started and completed applications via enrollment initiatives and also by retaining existing enrollees. (20 total points available. This item is scored 0-5, and the score will be multiplied by 4.)
- b) Respondent's detailed description for each proposed service in its Work Plan that provides its most advantageous and strategic recommendations for increasing enrollment and retention in the Florida KidCare program. Respondent's description should utilize the stated marketing goals and budgeted funds available in this ITN, while also highlighting how its approach is different and potentially more effective than other Respondents. (15 total points available. This item is scored 0-5, and the score will be multiplied by 3.)
- c) A brief case study and/or work product sample of Respondent that best represents the Respondent's service capability. (5 total points available.)
- d) Respondent's demonstration of its history of successful marketing collaborations involving multiple entities external to their direct influence. (5 total points available.)
- e) Respondent's proposed budget and budget justification for why Respondent's proposal is the most advantageous to FHKC. (15 total points available. This item is scored 0-5, and the score will be multiplied by 3.)

## 2. Experience

- a) Respondent's description of its experience and knowledge in marketing public health, health insurance, financial, or similar services along with its knowledge, experience and understanding in marketing to low-income families with children, minority, and multi-lingual populations. (10 total points available. This item is scored 0-5, and the score will be multiplied by 2.)
- b) Respondent's three references (name and contact information) for marketing/advertising/outreach clients that demonstrate prior experience promoting topic areas relevant to this ITN (e.g., health insurance, Florida KidCare, public benefit programs, federal health programs, immigration assistance programs, etc.). (5 total points available.)

### 3. Reporting & Tracking

- a) Description of how Respondent will track and measure the success and effectiveness of its proposed marketing and advertising tactics. (15 total points available. This item is scored 0-5, and the score will be multiplied by 3.)
- b) Description of Respondent's intended reporting mechanisms for all soft/anecdotal data and hard data for proposed services and elements within its Work Plan. (5 total points available. This item is scored 0-5.)
- c) Respondent's description of how the proposed performance metrics will demonstrate increase enrollment in the Florida KidCare program. (5 total points available. This item is scored 0-5.)

Each proposal will receive a total score of up to 100 points from each evaluator. The total overall points for each Respondent's proposal will then be summed to determine the highest overall score(s).

#### **B. Determination of Respondents that Advance to Negotiations**

Using the results from the overall scores and based on the total number of submissions received, FHKC will determine the Respondents that are reasonably susceptible of award. FHKC will select for negotiations the Responsive and Responsible Respondents.

### **VI. NEGOTIATIONS AND AWARD**

#### **A. Competitive Negotiation Process**

The negotiation phase is a dynamic, competitive process through which the negotiation team can assess, weigh, and test the strengths and weaknesses of Respondents and their proposals and make an award recommendation(s) based on the selection criteria detailed in this section.

FHKC will establish a negotiation team to conduct negotiations with one or more Respondents, assess the final value proposition of Respondents, and make an award recommendation(s) to the FHKC Board of Directors or Executive Committee.

The goal of the negotiation phase is to enable the negotiation team to determine which Respondent(s) offers Best Value to FHKC and to finalize the terms and conditions of the Contract.

The negotiation team will make a recommendation of award(s) that provide the Best Value to FHKC based on the following selection criteria:

- Respondent’s articulation of its approach;
- Respondent’s ability to meet FHKC’s needs and the goals, purposes, and requirements of this ITN;
- Respondent’s response to this ITN;
- Respondent’s overall pricing;
- Respondent’s references, track record, and the overall professional experience providing similar proposed services; and,
- Respondent’s ability to provide the services and value-enhancements.

Further, the negotiation team may consider any other factors during the negotiation phase including:

1. Respondent’s compliance status with requirements of regulatory agencies;
2. Respondent’s compliance and performance status with FHKC if a current or previous vendor;
3. Existing or previous litigation or regulatory action by or against the State of Florida, an agency of the State of Florida, the United States Government, an agency of the United States Government, or FHKC;
4. Respondent and its subsidiaries, subcontractors, or agents that would be engaged under this Contract are not de-barred or otherwise prohibited from contracting with FHKC, the State of Florida, or from receiving federal or state funds; and,
5. Respondent’s current and recent (defined as the most recent two-year period) financial status.

The negotiation team will not be bound by evaluation scoring and may consider any additional information that comes to its attention during the negotiation phase. The negotiation team will not engage in any scoring or rescoring of evaluation criteria.

The negotiation team may be supported throughout the negotiation phase by subject matter experts (SMEs), including FHKC staff and any other individuals or organizations with specialized knowledge related to the services or this ITN. SMEs may attend FHKC strategy sessions, attend negotiation sessions with Respondents, question Respondents, and provide information, input, opinions, and insight to negotiators. Negotiators may meet individually with SMEs and any procurement advisors, and the negotiation team may meet with SMEs, FHKC committee members, and any procurement advisors regarding any aspect of the negotiation phase. At FHKC’s discretion, negotiators may be a part of the Issuing Office and/or have permissions to access and use the Issuing Office email account.

The negotiation team reserves the right to require physical attendance at negotiation sessions by representatives of Respondent. At a minimum, the following representatives are to be in attendance, unless otherwise requested by the negotiation team: Respondent's contract manager, executive officer, the implementation manager, and any other individual(s) who will perform a critical role in the day-to-day administration of the Contract. Respondent should limit its negotiation team for any in-person negotiation session to six individuals. The negotiation team will, at its discretion, provide remote call-in information for additional attendees.

Any written summary of presentations or demonstrations provided by Respondents during negotiations must include a list of attendees, a copy of the agenda, and copies of any visuals or handouts, all of which become part of Respondent's proposal. Failure to provide any information requested by the negotiation team during the negotiation process may result in termination of negotiations with Respondent.

During the negotiation phase, the negotiation team may request clarification and revisions to proposals, including best and final offers, until the negotiation team is satisfied Best Value has been achieved.

**Respondent must comply with Section III.G of this ITN for any information considered to be trade secret, confidential, or otherwise exempt from Chapter 119, Florida Statutes; otherwise, all materials will become publicly available in accordance with Chapter 119, and FHKC may release the information in response to a Public Records Request.**

The negotiation team will determine the Respondent(s) that provides Best Value.

#### **B. Negotiation Team's Rights during Negotiations**

The negotiation team reserves the right at any time during the negotiation process to:

1. Negotiate with any or all Respondents for the best combination of prices and services based on the proposals as submitted without any further negotiation with other Respondents.
2. Schedule negotiating sessions with any or all Respondents.
3. Require any or all Respondents to provide additional, revised, or final written proposals or address specified topics or alternative cost proposals.
4. Require any or all Respondents to provide written best and final offer(s).
5. Require any or all Respondents to address services, prices, or conditions offered by any other Respondent.
6. Require any or all Respondents to provide any additional information or Data.
7. Pursue a Contract with one or more Respondents for the services encompassed by this ITN and any additional, revised, or final written proposals or best and final offers.

8. Finalize principal Contract terms with Respondent(s) and terminate negotiations with any or all other Respondents, regardless of the status of, or scheduled negotiations with, such other Respondents.
9. Decline to conduct further negotiations with any Respondent.
10. Re-open negotiations with any Respondent.
11. Take any additional administrative steps deemed necessary in determining the Contract award, including demonstrations; additional negotiations; or fact-finding, assessments, or site visits by the negotiation team or SMEs.
12. Review and rely on relevant information contained in the proposals or other information known to or gathered by negotiators or FHKC, regardless of source.
13. Discuss negotiations and receive input from FHKC committees or committee members.
14. Make a preliminary proposed award(s) prior to making a final recommendation.

The negotiation team has sole discretion in deciding whether and when to take any of the foregoing actions, the scope and manner of such actions, and Respondent(s) affected.

### **C. Award**

The negotiation team will make a recommendation of award(s) that provides the Best Value. In so doing, the negotiation team will not engage in scoring, but will arrive at its recommendation by majority vote.

The negotiation team will make a recommendation of award(s) to the FHKC Board of Directors (“Board”) or Executive Committee for approval. If the Board or Executive Committee approves the negotiation team’s award recommendation(s), FHKC will Post a Notice of Contract Award.

If the Board or Executive Committee does not approve the negotiation team’s award recommendation(s), FHKC may take any other actions that are in the best interests of FHKC, including making additional recommendations of award, re-opening negotiations, or rejecting all proposals.

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## **ITN APPENDICES AND ATTACHMENTS**

Following are the appendices and attachments to this ITN:

1. Appendix 1: Background Information
2. Appendix 2: Draft: Florida Healthy Kids Corporation Services Contract for Marketing, Advertising, Public Relations, and Creative Services
3. Appendix 3: FHKC Board Members, FHKC Committee Members, FHKC Staff, and Organizations as of February 2021
4. Appendix 4: FHKC Procurement Protest Procedures
5. Attachment A: Submission Checklist
6. Attachment B: Proposal Cover Sheet
7. Attachment C: Letter of Intent
8. Attachment D: Certification Regarding Lobbying; Certification for Contracts, Grants, Loans and Cooperative Agreements
9. Attachment E: Conflict of Interest Disclosure Certification
10. Attachment F: Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

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## APPENDIX 1: BACKGROUND INFORMATION

### I. Florida KidCare Partners

The Florida Healthy Kids Corporation (“FHKC”) is a private, non-profit corporation chartered under Florida law to market Florida KidCare and perform other outreach-related activities. FHKC carries out this work in collaboration with three state agency partners – the Florida Agency for Health Care Administration (AHCA), Florida Department of Children and Families (DCF), and Florida Department of Health (DOH).

The following is a brief description of each entity’s primary Florida KidCare duties and functions:

#### 1. Florida Healthy Kids Corporation

- o Florida KidCare marketing, advertising, and public relations
- o Florida KidCare outreach assistance, training, and grants to community-based organizations
- o Application intake (online, by phone, by mail)
- o Operation and maintenance of Florida KidCare and Florida Healthy Kids websites
- o Eligibility determination and annual renewal for Florida Healthy Kids, MediKids, and CMS Health Plan
- o Referrals of children potentially eligible for Medicaid to DCF
- o Customer service call center for Florida KidCare applicants and Florida Healthy Kids enrollees
- o Premium collection for Florida Healthy Kids, MediKids, and CMS Health Plan
- o Procurement and oversight of Florida Healthy Kids health and dental plans

#### 2. Agency for Health Care Administration

- o Procurement and oversight of managed care enrollment broker and contact center for Medicaid and MediKids
- o Procurement and oversight of Medicaid and MediKids health and dental plans
- o Lead agency for all Florida KidCare programs in terms of federal funding and compliance with federal rules

#### 3. Department of Children and Families

- o Application intake through the ACCESS portal (general portal for government benefit programs in Florida)
- o Eligibility determination and annual renewal for Medicaid
- o Intake and processing of applications received from healthcare.gov
- o Electronic referrals of healthcare.gov applications to FHKC
- o Eligibility-related call center

#### **4. Department of Health:**

- o Eligibility screening to identify children with special health care needs for CMS Health Plan
- o Local network of DOH care coordinators who work with families and health care providers
- o Contracting and oversight of health care providers in a managed care model

## **II. Program Eligibility**

To be eligible for any of the subsidized Florida KidCare programs, a child must:

- o Be under age 19
- o Be an American citizen or a legally residing immigrant
- o Reside in Florida
- o Live in a household with a family income that is at or below 200% of the federal poverty level (\$43,440 for a family of three, \$52,404 for a family of four)

Children from families with incomes below 133% of the federal poverty level (\$28,896 for a family of three, \$34,848 for a family of four) qualify for Medicaid. Children with incomes between 133% and 200% of the federal poverty level are subject to two additional subsidy eligibility criteria:

- o Payment of the first month's premium (\$15 or \$20, depending on family income—the breakpoint is 158% of the federal poverty level)
- o Children who are insured at the time of application or whose private coverage was voluntarily cancelled must wait 60 days to enroll, unless an exception under section 409.814(4)(d), Florida Statutes, applies.

Once determined eligible, a child remains eligible for 12 continuous months. Two months prior to the expiration of this period, FHKC or DCF (depending on whether the child is on Medicaid or one of the other three programs) mails a renewal form. Families attest to any eligibility-sensitive changes.

## **III. Benefits**

All four Florida KidCare programs provide comprehensive health care benefits. Each child enrolled in Florida KidCare receives:

- o Age-appropriate screenings and vaccinations
- o Doctor and specialist visits
- o Outpatient care and diagnostic testing
- o Emergency room visits

- o Prescription drugs
- o In-patient hospital services
- o Mental health and substance use services
- o Emergency transportation
- o Maternity and newborn care
- o Medically necessary therapy
- o Transplants
- o Vision services, including corrective lenses
- o Preventive and therapeutic dental services

They are also subject to nominal copays for most outpatient non-preventive services (for example, \$5 for doctor's visits and prescription drugs).

#### **IV. Delivery of Health Care Services**

Florida KidCare services are provided by managed care plans with medical services coordinated by a primary care doctor that is selected by the family. Health care services are provided through a network of primary care doctors, specialists, hospitals, pharmacies, and other providers. Networks are periodically reviewed to confirm that sufficient access to primary care providers and specialists is available and that travel distance and appointment timeliness standards can be met. In general, children enrolled in Florida KidCare may only receive their services from a health care provider that is "in network."

#### **V. Member Services and Communication**

The health plans (insurance companies) under contract with Medicaid, Florida Healthy Kids, MediKids and Children's Medical Services (CMS) Health Plan are responsible for educating new Florida KidCare enrollees about their benefits, how to access services and the importance of preventive care. These insurers typically distribute new member materials, including a member handbook and identification card upon enrollment and regularly communicate with the enrollee during the enrollment lifecycle.

**APPENDIX 2:  
DRAFT FHKC CONTRACT FOR MARKETING, ADVERTISING, PUBLIC RELATIONS, AND CREATIVE SERVICES**

This Contract is entered into between **Florida Healthy Kids Corporation (“FHKC”)**, a Florida not-for-profit corporation, pursuant to Chapter 617, Florida Statutes and (**“Vendor”**) (collectively, the “Parties”) to provide public relations and creative services.

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**

- 1-1 “AHCA” means the State of Florida’s Agency for Health Care Administration.
- 1-2 “Applicant” means a parent or guardian of a child or a child whose disability of nonage has been removed under Chapter 743, who applies for determination of eligibility for health benefits coverage under ss. 409.810-409.820 F.S.
- 1-3 “Enrollee” means an individual who meets FHKC standards of eligibility and has been enrolled in the Program.
- 1-4 “Florida Statutes” (F.S.) means the Florida Statutes as amended from time to time by the Florida Legislature during the term of this Contract.
- 1-5 “Program” means the program administered by FHKC as created by and governed under section 624.91, F.S. and related state and federal laws.

**Section 2 - Term of this Contract**

The initial term of the Contract is July 1, 2021, through June 30, 2026. The Contract may be renewed for a period(s) of up to three years, at FHKC’s sole discretion.

**Section 3 - Fees and Costs**

- 3-1 FHKC agrees to pay VENDOR for the services detailed in VENDOR’S response to ITN 2021-01 in amounts not to exceed the following:

**[INTENTIONALLY LEFT BLANK / TO BE NEGOTIATED]**

- 3-2 VENDOR agrees to bill FHKC monthly for all time and charges incurred in meeting the obligations of this Contract, including but not limited, to a breakdown of total hours. Such bills will include the specificity required by this section of the

Contract.

- 3-3 FHKC will make payment to VENDOR within thirty (30) calendar days of receiving an invoice from VENDOR 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 the detail or clarification.
- 3-4 In the event FHKC disagrees with or questions any amount due under an invoice, FHKC agrees to pay the amount not in disagreement in accordance with the terms of this Contract and communicate such disagreement to VENDOR in writing.
- 3-5 VENDOR 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. VENDOR shall return any such funds to FHKC within forty-five (45) days of identification by FHKC or the VENDOR.
- 3-6 VENDOR agrees to use any advanced funds only for the purposes identified under this Contract.
- 3-7 During the first year of the Contract, FHKC will provide VENDOR with an additional sum(s) of up to \$400,000 for additional marketing and paid advertising services to highlight the benefits of, and enrollment in, the Florida KidCare Program
- 3-8 VENDOR 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.

#### **Section 4 – Deliverables**

- 4-1 VENDOR shall provide the following deliverables to FHKC:

**[INTENTIONALLY LEFT BLANK / TO BE NEGOTIATED]**

Additionally, for any projects associated with FHKC's website at [healthykids.org](http://healthykids.org), VENDOR will coordinate with FHKC's contracted web services vendor. FHKC shall be included in any calls, correspondence or communications between VENDOR and the web services vendor.

- 4-2 VENDOR shall develop a calendar in consultation with FHKC for the deliverables under this Contract within thirty (30) calendar days of execution of this Contract and

annually thereafter.

- 4-3 VENDOR must provide to FHKC the following by the 15<sup>th</sup> of each month:
- Monthly invoice with a detailed listing of expenses incurred and fees (including supporting receipts and documentation) expended during the prior month.
  - Monthly report detailing all services provided for the prior month, including pictures of all marketing and advertising ads, run dates for advertising, analytical data showing effectiveness of ads, tactics used during that month, web traffic statistics, started and completed application statistics, and other information or data as requested by FHKC or performed under this Contract.
- 4-4 By June 18 of each year, VENDOR shall provide a comprehensive report of all deliverables and activities performed under this Contract along with a proposed Work Plan for the following Contract year. A meeting to discuss this Work Plan will be scheduled in August of each year.

## **Section 5 - General Terms and Conditions**

- 5-1 Records Retention and Accessibility
- 1) VENDOR 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.
  - 2) VENDOR 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.
  - 3) VENDOR 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.

- 4) Additionally, VENDOR agrees to provide to FHKC, by July 1st of each year, an audited financial statement for VENDOR'S preceding fiscal year. If such is not customarily available in the ordinary course of VENDOR'S business, then a written statement from an accountant verifying the financial stability of VENDOR'S shall be submitted and be subject to the approval of the FHKC Board of Directors.
- 5) VENDOR shall include all the requirements of this subsection in all approved subcontracts and assignments and VENDOR agrees to require subcontractors, affiliates, and assignees to meet these requirements. VENDOR'S failure to substantially comply with this provision or such failure by VENDOR'S subcontractors, assignees, or affiliates performing under this Contract constitutes a breach and renders this Contract subject to unilateral cancellation by FHKC.

#### 5-2 Use of Subcontractors or Affiliates

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

- 1) VENDOR identified the subcontractor or affiliate in its response to the procurement document for services covered by this Contract.
- 2) VENDOR has provided FHKC with a copy of the current contract or other written agreement and any amendments for services under this Contract between VENDOR and the subcontractor or affiliate. FHKC shall have the right to withhold its approval of any such contracts, agreements, or amendments.
- 3) VENDOR'S contract with the subcontractor or affiliate fully complies with all terms and conditions of this Contract between VENDOR and FHKC.
- 4) VENDOR notifies FHKC in advance of the termination of any contract or agreement with a subcontractor or affiliate.
- 5) VENDOR provides FHKC with advance notice of VENDOR'S intent to contract with any subcontractors or affiliates. Prior to execution, VENDOR shall forward for FHKC's review and approval any proposed agreement for services with subcontractors or affiliates.

- 6) By April 1<sup>st</sup> (first) each year, VENDOR provides FHKC with an annual report listing, for the previous calendar year, all subcontractors or affiliates that performed services under this Contract for VENDOR and attaches a copy of VENDOR'S executed contracts with such subcontractors and affiliates.

All agreements between VENDOR and its subcontractor or affiliate to provide services under this Contract shall be reduced to writing and shall be executed by both parties. All such agreements shall also be available to FHKC within seven (7) business days of request for production.

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

#### 5-3 Indemnification

VENDOR 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:

- 1) Negligence, intentional torts, or breach of contract by VENDOR or its subcontractors or affiliates;
- 2) Any claims or losses attributable to the acts of any subcontractor, affiliate, person or entity performing or furnishing services, materials, or supplies on behalf of VENDOR in connection with the performance of this Contract whether or not known to FHKC; or
- 3) any failure of VENDOR, its officers, employees, subcontractors, or affiliates to observe the requirements of applicable Florida or federal law, regardless of whether FHKC knew or should have known of such failure.

#### 5-4 Insurance

VENDOR shall not commit any work in connection with the Contract until it has obtained the following insurance coverages, each in an amount that provides reasonable financial protections to VENDOR and/or FHKC under the Contract: workers' compensation, commercial general liability, professional indemnity, and cyber liability. Within ten (10) days after Contract execution, VENDOR shall provide FHKC proof of coverage of insurance by a certificate of insurance. Continuing evidence of insurance coverage must be provided to FHKC by July 1<sup>st</sup> 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 VENDOR 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.

#### 5-5 Lobbying Disclosure

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

#### 5-6 Materials Developed Under this Contract

All materials and deliverables developed under this Contract for FHKC belong to and are the property of FHKC. VENDOR shall transfer the ownership and content of any websites, domain names, trademarks, contests, materials, or other promotional items created under this Contract to FHKC or its designee upon the completion of the deliverable or upon a date mutually agreed upon by the parties, but not later than the end date of this Contract.

### **Section 6 – Miscellaneous Terms and Conditions**

#### 6-1 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's VENDOR to that effect.

#### 6-2 Assignment

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

#### 6-3 Incorporation of Documents and Order of Precedence

The following documents are incorporated herein:

- 1) ITN 2021-01, including all addenda, in reverse order of posting by date on the Florida Healthy Kids website;
- 2) VENDOR'S revised Best and Final Offer to ITN 2021-01; and
- 3) VENDOR'S response to ITN 2021-01.

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

- 1) Attachment A: Business Associate Agreement;
- 2) This Contract document;
- 3) Other Attachments to this Contract document;
- 4) ITN 2021-01 including all addenda, in reverse order of posting by date on the Florida Healthy Kids website;
- 5) VENDOR'S revised Best and Final Offer to ITN 2021-01; and
- 6) VENDOR'S response to ITN 2021-01.

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

#### 6-4 Attorney's 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 VENDOR 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.

#### 6-5 Bankruptcy

FHKC shall have the absolute right to elect to continue or terminate this Contract, at its sole discretion, in the event VENDOR 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. VENDOR 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.

## 6-6 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 VENDOR or any of its approved subcontractors. VENDOR 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.

## 6-7 Confidentiality and Public Records

### A. Confidentiality

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

VENDOR shall not use or disclose any protected health information, personally identifiable information, or other identified information obtained through its performance under this Contract, except as allowed under this Contract and Florida and federal laws, including HIPAA; Sections 624.91 and 409.821, Florida Statutes; and Chapter 119, Florida Statutes. Such information shall not be disclosed without the written consent of FHKC, the Applicant, or the Enrollee, except as otherwise required under Florida or federal law.

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

The Parties agree to maintain the integrity of the other Party's confidential, trade secret, or proprietary information to the extent provided under the law and this Contract. Neither Party will disclose or allow others to disclose the other Party's confidential, trade secret, or proprietary information except as provided by law or this Contract.

### B. Redacted Copies of Confidential Information

Records produced or used in relation to the performance of this Contract may be subject to Chapter 119, Florida Statutes. If VENDOR considers any portion of any documents, data, or records submitted to FHKC to be confidential, proprietary, trade secret, or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority ("Confidential Information"), VENDOR must simultaneously provide FHKC with a separate, redacted copy of the information it claims as exempt and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory

citation for such exemption. This redacted copy shall contain the Contract name and number and shall be clearly titled "Redacted Copy." The redacted copy should only redact those portions of material that VENDOR claims are confidential, proprietary, trade secret, or otherwise not subject to disclosure. The following methods of redacting are not sufficient for designating information as confidential, proprietary, trade secret, or otherwise not subject to disclosure:

- a. Statements to the effect that the record "may" contain confidential, trade secret, proprietary, or exempt information;
- b. Designations outside the body of the record such as in an electronic document title or in the body of an email providing the record; or
- c. Placement or formatting that interferes with FHKC's ability to access the information such as using an opaque watermark.

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

Records in which the sole Confidential Information is protected health information or personally identifiable information are excluded from this redaction requirement.

#### C. Request for Confidential Information

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

#### D. Indemnification

VENDOR shall protect, defend, and indemnify FHKC for any and all claims arising from or relating to VENDOR'S determination that the redacted portions of records are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

E. VENDOR as Agent

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

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

- a) Keep and maintain public records required by the public agency to perform the service.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if VENDOR does not transfer the records to the public agency.
- d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the VENDOR or keep and maintain public records required by the public agency to perform the service. If VENDOR transfers all public records to the public agency upon completion of the Contract, the VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Contract, VENDOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- e) **IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE EMAIL ADDRESS AND MAILING ADDRESS PROVIDED FOR THE FHKC CONTACT IN SECTION E OF THIS CONTRACT.**

#### 6-8 Conflicts of Interest

VENDOR 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 VENDOR is obligated or from which VENDOR benefits. Further, VENDOR 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.

Within ten (10) days of Contract execution VENDOR 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.

#### 6-9 Gift Prohibitions

VENDOR shall not provide any FHKC Board Member, committee member, or employee with any gift, including but not limited to, any meal, service or item of value, even *de minimus*.

#### 6-10 Non-Solicitation

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

#### 6-11 Entire Understanding

This Contract with all Attachments 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.

#### 6-12 Force Majeure

Neither party shall be responsible for delays of 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, government regulations or statutory amendments adopted following the date of execution of this Contract, fire communication line failure, power failure or shortage,

fuel shortages, hurricanes or other natural disasters.

#### 6-13 Governing Law

This Contract shall be governed by applicable state and federal laws and regulations, as such may be amended during the term of the Contract, whether or not expressly included or referenced in this Contract. VENDOR 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 American 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 laws, regulations, guidelines, and standards as are now or may be lawfully enacted or adopted.
- K. The Immigration Reform and Control Act of 1986 prohibits employers

from knowingly hiring illegal workers. VENDOR 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. VENDOR 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 VENDOR, during the term of this Contract, to perform employment duties within Florida; and,
- All persons, including subcontractors, assigned by VENDOR to perform work pursuant to this Contract.

- L. Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164, and Attachment A, Business Associate Agreement.

VENDOR agrees that compliance with this subsection constitutes a condition of continued receipt of or benefit from funds provided through this Contract and such compliance is binding upon VENDOR, its successors, transferees and assignees for the period during which services are provided. VENDOR 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 VENDOR’S refusal or failure to substantially comply with this section or such failure by VENDOR’S subcontractors or anyone with whom VENDOR affiliates in performing under this Contract shall constitute a breach and renders this Contract subject to unilateral cancellation by FHKC.

#### 6-14 Venue

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

#### 6-15 Independent Contractor

The relationship of VENDOR 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.

#### 6-16 Notice and Contact

All notices required under this Contract 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:

Ryan West  
Chief Executive Officer  
Florida Healthy Kids Corporation  
1203 Governors Square Blvd., Suite 400, Tallahassee, FL 32301  
850-224-5437 (Phone)  
850-224-0615 (Fax)  
[westr@healthykids.org](mailto:westr@healthykids.org)

For VENDOR:

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.

#### 6-17 Severability

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

#### 6-18 Venue

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

## 6-19 Cooperation with Inspector General

Pursuant to section 20.055(5), Florida Statutes, VENDOR and its subcontractors shall cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

## 6-20 Survival

The provisions of the following sections survive termination or expiration of this Contract: Records Retention and Accessibility; Attorney Fees; Indemnification; Confidentiality and Public Records; Conflicts of Interest; Non-Solicitation and Governing Law; Venue; and Cooperation with Inspector General.

## 6-21 Termination of Contract

### A. 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 VENDOR notice of termination and include a termination date of not less than thirty (30) calendar days from the date of the notice.

### B. Termination for Lack of Payment

If FHKC fails to make payments in accordance with the schedule included in this Contract, VENDOR may suspend work and pursue the appropriate remedies for FHKC's breach of its payment obligations. VENDOR must 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.

### C. Termination for Lack of Performance or Breach

The continuation of this Contract is contingent upon the satisfactory performance of the VENDOR and corresponding evaluations by FHKC. If VENDOR 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 VENDOR to cure any performance deficiencies prior to termination.

FHKC further reserves the right to immediately terminate this Contract by written notice to the VENDOR for breach of any provision of the Contract by the VENDOR, for the VENDOR'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.

D. Termination upon Revision of Applicable Law

FHKC and VENDOR 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 VENDOR notice of termination and include a termination date of not less than thirty (30) calendar days from the date of notice.

E. 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.

F. Termination for Convenience

FHKC may terminate for convenience the Contract, in whole or in part, upon thirty (30) calendar days' notice to VENDOR when FHKC determines, in its sole discretion, that it is in its interest to do so. VENDOR shall not provide any services after the date of termination, except as necessary to complete the continued portion of the Contract, if any.

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

**FOR  
FLORIDA HEALTHY KIDS CORPORATION:**

Signed: \_\_\_\_\_  
Name: Ryan West  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

**FOR  
[XXXXXXXXXXXXXXXXX]:**

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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## DRAFT FHKC CONTRACT ATTACHMENT A: BUSINESS ASSOCIATE 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”) (collectively referred to as the “Parties”), and is incorporated in the [Contract] between FHKC and BA (hereby referred to as the “Contract” for purposes of this Agreement).

### **Section 1. HIPAA Compliance**

FHKC and BA agree to comply with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, codified at 42 U.S.C. §1320d through d-9, as amended from time to time (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”). BA recognizes and agrees that it is directly obligated by law, through the Contract, and through any other written agreement and this Agreement to comply with the provisions of HIPAA and HITECH applicable to BA pursuant to its performance of Services.

### **Section 2. Definitions for Use in this Agreement**

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

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

### **Section 3. Obligations and Activities of BA (Privacy Rule)**

#### **3.1 Operation on Behalf of FHKC**

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

#### **3.2 Compliance with the Privacy Rule**

BA agrees to fully comply with the requirements under the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E (“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.

To the extent BA is to carry out one or more of FHKC's obligations under the Privacy Rule, BA agrees to comply with the requirements of the Privacy Rule that apply to FHKC in the performance of such obligations. Except as otherwise allowed in this Agreement and under HIPAA, BA shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless the Individual has provided a valid authorization compliant with HIPAA and state law.

### **3.3 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, this Agreement, or any other agreement(s) or as required by law.

### **3.4 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 resulting from Access, acquisition, 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.

### **3.5 Privacy Obligations regarding Breaches and Security Incidents**

#### **3.5.1 Privacy Breach**

BA will report to FHKC, immediately following discovery and without unreasonable delay, any Access, acquisition, Use, or Disclosure of FHKC's PHI not permitted by HIPAA, the Contract, this Agreement, or in writing by FHKC. In addition, BA will report, immediately following discovery and without unreasonable delay, but in no event later than five (5) Business Days following discovery, any Breach of Unsecured Protected Health Information, notwithstanding whether BA has made an internal risk assessment and determined that no notification is required. BA shall cooperate with FHKC in investigating the Breach and in meeting FHKC's obligations under HIPAA and any other security breach notification laws. In the event of a Breach, BA and FHKC will work together in good faith to comply with any required regulatory filings due to the Breach.

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, Used, or Disclosed during such Breach. BA will make the report to FHKC's Privacy Officer not more than five (5) Business Days after BA discovers such non-permitted Access, acquisition, Use, or Disclosure.

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

BA shall track all Breaches and shall periodically report such Breaches in summary fashion as may be requested by FHKC, but not less than annually within sixty (60) days of each anniversary of this Agreement.

### **3.5.2 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 such PHI to FHKC in order for FHKC 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 in compliance with 45 CFR § 164.524 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 hard copies as the regulations shall permit. If requested, BA shall provide electronic copies as required by law.

### **3.5.3 Recording of Designated Disclosures of PHI**

BA agrees to maintain and make available information required to provide an accounting of disclosures to FHKC as necessary to satisfy FHKC's obligations under 45 CFR § 164.528. BA agrees to provide to FHKC, within fifteen (15) days and in a secure manner, information collected in accordance with this provision, to permit FHKC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 and applicable state law.

### **3.5.4 Requests to Make an Amendment to the PHI**

BA agrees to make any amendments to PHI maintained by BA in a Designated Record Set as agreed to by FHKC pursuant to 45 CFR § 164.526 or take other measures as necessary to satisfy FHKC's obligations under 45 CFR § 164.526.

### **3.5.5 Security and Privacy Compliance Review upon Request**

HHS Inspection BA shall make its internal practices, books, and records relating to the Access, acquisition, Use, and Disclosure of PHI available to the HHS for purposes of determining Covered Entity's compliance with HIPAA. 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.

### **3.5.6 FHKC Inspection**

Upon written request, BA agrees 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 Electronic Protected Health Information ("E PHI") 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.

## **Section 4. Obligations and Activities of BA (Security Rule)**

#### **4.1 Compliance with Security Rule**

BA shall ensure compliance with the HIPAA Security Standards for the Protection of EPHI, 45 C.F.R. Part 160 and Part 164, Subparts A and C (the "Security Rule"), with respect to EPHI covered by the Contract and this Agreement.

#### **4.2 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 EPHI 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 include:

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

#### **4.3 Security Provisions in Business Associate Contracts**

In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BA shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of BA agree in writing to the same restrictions and conditions that apply to BA with respect to such information.

#### **4.4 Reporting Security Incidents and Breaches to FHKC**

BA shall track all Security Incidents 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.

The BA shall expediently notify FHKC's Privacy Officer of any Security Incident, including any Breach of Security under section 501.171, Florida Statutes, in a preliminary report within two (2) Business Days, with a full report of the incident within 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 Access or 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 within 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.

When reporting any Security Incident or Breach, BA shall use the "Notification to FHKC of Security Incident or Breach of Protected Health Information" form attached hereto.

#### **4.5 Unsecured Protected Health Information**

For all Unsecured PHI maintained or transmitted by BA or BA's subcontractors, BA shall notify each Individual whose Unsecured PHI has been Accessed, acquired, Used, or Disclosed in a manner not permitted under the HIPAA Privacy Rule which compromises the security and privacy of the PHI, except when law enforcement requires a delay pursuant to 45 CFR § 164.412. If BA cannot identify the specific Individuals whose Unsecured PHI may have been Accessed, BA shall notify all persons whose Unsecured PHI reasonably may have been Accessed.

On behalf of FHKC, BA shall notify such Individuals without unreasonable delay, and in no case later than sixty (60) days after discovery of the Breach. The Notice required under HIPAA shall be made as follows:

By written Notice in plain language including, to the extent possible:

- o A brief description of what happened, including the date of the Breach and the date of the discovery of the breach, if known;
- o A description of the types of Unsecured PHI involved in the Breach (including but not limited to items such as whether full name, social security number, date of birth, home address, Family Account number, diagnosis, disability code, or other types of information were involved);
- o Any steps Individuals should take to protect themselves from potential harm resulting from the breach;
- o 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
- o 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).

Further, BA must provide Notice to the media when required under 45 CFR 164.406 and to HHS pursuant to 45 CFR 164.408.

BA also agrees to comply with any similar state laws, such as section 501.171, Florida Statutes, that govern breaches.

BA agrees to pay all costs of notification and any associated mitigation as a result of a Breach or breach of state law, including the provision of, at a minimum, two years of credit monitoring and identity theft protection for such affected Individuals. FHKC, in its sole discretion, shall determine if the Breach or breach of state law is significant enough to warrant such measures and the length of time such mitigation measures shall be offered to the affected Individuals.

In the event of the unpermitted Access, acquisition, Use, or Disclosure of Unsecured PHI, BA shall pay for and maintain a prompt mechanism on the existing toll-free telephone line, email link, and fully functioning web page to respond to any Enrollee's or Applicant's concerns about security, Breach, unauthorized Access, acquisition, Use, or Disclosure, or any credible allegations or suspicions of the above.

#### **4.6 Additional Consumer Protections**

For purposes of this paragraph, the terms and definitions set forth in section 501.171, Florida Statutes, govern over any other conflicting definitions specified in this Agreement. BA understands that FHKC or its customers may be a Covered Entity (as may be BA) under the terms of section 501.171, and that in the event of a Breach of Security, the BA shall indemnify and hold FHKC harmless for expenses and/or damages related to the Breach of Security. Such obligation shall include, but is not limited to, the mailed notification to a governmental agency and any individual in Florida whose Personal Information is reasonably believed to have been Accessed as a result of the Breach of Security. In the event that the BA discovers circumstances requiring notification of more than one thousand (1,000) persons at one time, BA shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(p), of the timing, distribution and content of the Notices. Substitute Notice, as specified in section 501.171(4)(f), 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 501.171 and agree that BA's responsibilities under this paragraph shall include all PHI or EPHI. BA agrees to pay all costs of any associated mitigation as a result of a Breach of Security, including the provision of, at a minimum, one (1) year of credit monitoring and identity theft protection for such affected individuals. FHKC, in its sole discretion, shall determine if the Breach of Security is significant enough to warrant such measures and the length of time such mitigation measures shall be offered to the affected individuals.

#### **Section 5. 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 EPHI 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.

## **Section 6. Permitted Uses and Disclosures by BA – General Use and Disclosure Provisions**

### **6.1 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 and this Agreement, provided that such Use or Disclosure would not violate HIPAA if done by FHKC or other policies and procedures of FHKC. BA may Use or Disclose PHI as required by law.

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.

### **6.2 No Offshoring**

Except as may be expressly authorized in the Contract between FHKC and BA, BA and any of its subcontractors and agents are prohibited from (a) performing any services under the Contract or this Agreement outside of the continental U.S.; (b) sending, transmitting, or maintaining PHI or Individually Identifiable Health Information outside of the continental U.S.; or (c) allowing PHI or Individually Identifiable Health Information to be Accessed from or maintained outside the continental U.S.

## **Section 7. Permitted Uses and Disclosures by BA – Specific Use and Disclosure Provisions**

### **7.1 Proper Management and Administration of BA**

BA may use PHI for the proper management and administration of BA or to carry out BA’s responsibilities under the Contract and/or this Agreement.

### **7.2 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 or to carry out the legal responsibilities of 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 within five (5) Business Days from the time it became aware of the incident.

### **7.3 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 § 164.504l(2)(i)(B).

## **Section 8. Provisions for FHKC to Inform BA of Privacy Practices and Restrictions**

### **8.1 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.

### **8.2 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.

### **8.3 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

## **Section 9. Term and Termination**

### **9.1 Term**

The Term of this Agreement 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.

### **9.2 Termination for Cause**

FHKC has 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.

### **9.3 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 Individually Identifiable Health Information received from FHKC or created or received by BA on behalf of FHKC. This provision applies to all Individually Identifiable Health Information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other Individually Identifiable Health Information in the possession of subcontractors 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 Individually Identifiable Health Information, and shall notify FHKC in writing when such destruction is complete. If PHI or Individually Identifiable Health Information 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 PHI or Individually Identifiable Health Information with such additional detail as requested. In the event BA determines that returning or destroying the PHI and Individually Identifiable Health Information received by or created for FHKC at the end or other termination of this BAA is not feasible, BA shall provide to FHKC notification of the conditions that make return or destruction not feasible, and BA shall:

- a) Retain only that PHI and Individually Identifiable Health Information that is necessary for BA to continue its proper management and administration or to carry out its legal responsibilities;
- b) Return to FHKC (or, if agreed to by FHKC, destroy) the remaining PHI that the BA still maintains in any form;
- c) Continue to use appropriate safeguards and comply with the Security Rule with respect to EPHI to prevent use or disclosure of the PHI and Individually Identifiable Health Information, other than as provided for in this section, for as long as BA retains the PHI;
- d) Not use or disclose the PHI or Individually Identifiable Health Information retained by BA other than for the purposes for which such information was retained and subject to the same conditions set out under "Permitted Uses and Disclosures by BA – Specific Use and Disclosure Provisions" which applied prior to termination; and
- e) Return to FHKC (or, if agreed to by FHKC, destroy) the PHI and Individually Identifiable Health Information retained by BA when it is no longer needed by BA for its proper management and administration or to carry out its legal responsibilities.

## **Section 10. Miscellaneous**

### **10.1 Breach of Agreement**

BA's failure to perform the obligations in this Agreement shall be a breach of this Agreement and/or the Contract and will entitle FHKC to recover any damages it incurs arising from a failure to perform

the obligations in this Agreement, including any actual out-of-pocket expenses incurred by FHKC to investigate and remediate the violation, reimbursement for any assessments against FHKC by AHCA due to BA's failure, and/or to pursue injunctive relief.

## **10.2 Severability**

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

## **10.3 Cooperation**

The Parties agree to cooperate and to comply with procedures mutually agreed upon to facilitate compliance with HIPAA, including procedures designed to mitigate the harmful effects of any improper Access, acquisition, Use, or Disclosure of PHI.

## **10.4 Regulatory Reference**

Any reference in this Agreement to a section in the HIPAA regulations means those provisions currently in effect or as may be amended in the future.

## **10.5 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 HIPAA and applicable state law.

## **10.6 Survival**

The respective rights and obligations of BA under "Term and Termination" of this Agreement shall survive the termination of this Agreement and the Contract.

## **10.7 Interpretation**

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

## **10.8 No Third-Party Rights/Independent Contractors**

The Parties to this Agreement do not intend to create any rights in any third parties. The Parties agree that they are independent contractors and not agents of each other, except nothing herein affects whether BA is an "agent" for purposes of compliance with 42 CFR § 1001.952(d).

### **10.9 State Law**

BA acknowledges and agrees that it has implemented and will maintain appropriate privacy and security measures to protect personal information consistent with state laws and regulations to the extent those state laws and regulations are applicable to the PHI. The confidentiality obligations hereunder are independent of and do not limit or otherwise affect the Parties' other confidentiality obligations under this Agreement.

### **10.10 Governing Law**

To the extent not preempted by federal law, this Agreement shall be governed and construed in accordance with the State of Florida without regard to conflicts of law provisions that would require application of the law of another state.

### **10.11 Assignment, Binding Nature, and Benefits**

This Agreement binds and benefits the Parties, their respective successors, and their permitted assigns. BA may not assign or subcontract rights or obligations under this Agreement without the express written consent of FHKC. FHKC may assign its rights and obligations under this Agreement under this Agreement to any successor or affiliated entity.

### **10.12 Counterparts**

This Agreement may be executed in multiple counterparts, which shall constitute a single agreement, and by facsimile or PDF signatures, which shall be treated as originals.

**REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK  
SIGNATURE PAGE TO FOLLOW**

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

**FOR  
FLORIDA HEALTHY KIDS CORPORATION:**

**FOR  
[XXXXXXXXXXXXX]:**

Signed:

Signed:

\_\_\_\_\_

\_\_\_\_\_

Name: Ryan West

Name:

Title: Chief Executive Officer

\_\_\_\_\_

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

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

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**BUSINESS ASSOCIATE AGREEMENT  
 NOTIFICATION TO FHKC OF SECURITY INCIDENT OR  
 BREACH OF 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 Security Incident or Breach of Protected Health Information (collectively referred to as a "Breach" for purposes of this Notification) that Business Associate has used or has had access to under the terms of the Business Associate Agreement, as described in detail below:

Detail of the Security Incident or Breach	
Date of Security Incident or Breach	Date of Discovery of Security Incident or Breach
Information about the Breach or Security Incident	
Type of Breach or Security Incident: 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 or Security Incident	

Types of Protected Health Information involved in the Breach or Security Incident (such as Full Name, SSN, Date of Birth, Address, Family Account Number, Disability Code, etc.)

Personal Information: Name Address Date of birth Social Security number Driver's 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
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What steps are being taken to investigate the Security Incident or Breach, mitigate losses, and protect against any further Security Incidents or Breaches?

List any law enforcement agencies you've contacted about the Security Incident or Breach

Number of Individuals Impacted	If over 500, do individuals live in multiple states?	
	Yes	No

Breach or Security Incident Notification

Have you made the Security Incident or Breach public?	If YES, when did you make it public	
Yes	No	

Have you notified the people whose information was Breached or impacted?

YES. We notified them on:

Attach a copy of the letter to this form. Don't include any Individually Identifiable Health Information, other than your own contact information.

NO. Our investigation isn't complete.

Comments

--

Submitted By:

\_\_\_\_\_

Date of Submission:

\_\_\_\_\_

## APPENDIX 3:

### FHKC BOARD MEMBERS, FHKC COMMITTEE MEMBERS, FHKC STAFF AND ORGANIZATIONS\*

#### **Board of Directors**

##### **Officers**

- Stephanie Haridopolos, M.D.: Chief Financial Officer Designee, Chair
- Peter Claussen, D.D.S.: Florida Dental Association, Vice-Chair
- Philip Boyce: Florida Hospital Association, Secretary/Treasurer

##### **Members**

- Jose Armas, M.D.: Child Health Policy Expert Representative, MCCI Medical Group
- Paul O. Burns, Ed.D. – Deputy Chancellor of Educator Quality, Department of Education
- Dave Eggers: Commissioner, Florida Association of Counties
- Andrea Gary.: Director, Office of Children’s Medical Services, Department of Health
- Shevaun Harris: Secretary, Department of Children and Families
- Robert Karch, M.D., M.P.H., FAAP.: Deputy Secretary for Children’s Medical Services, Department of Health
- Simone Marstiller: Secretary, Agency for Health Care Administration
- TBD: Medicaid Program Representative, Agency for Health Care Administration
- Amra Resic, M.D., FAAFP: Family Physician, BayCare Medical Group
- Tommy Schechtman, M.D.: Florida Pediatric Society

##### **Ad Hoc Members**

- Jeffrey Brosco, M.D., Ph.D.: Developmental-Behavioral Pediatrics
- Steve Freedman, Ph.D.: University of South Florida Health
- Paul Whitfield: Director of Accounting & Auditing, Department of Financial Services

#### **Committees**

##### **Community Outreach and Marketing Committee**

- Dr. Stephanie Haridopolos, M.D.: Board Certified Family Practitioner, Chair
- Paul O. Burns, Ed.D.: Deputy Chancellor of Educator Quality, Department of Education
- Shevaun Harris: Secretary, Department of Children and Families
- Taylor Hatch: Assistant Secretary, Office of Economic Self-Sufficiency, Department of Children and Families
- Pat Smith: Community Relations Director, Department of Children and Families
- Amra Resic M.D., FAAFP: Family Physician, BayCare Medical Group
- Melanie Hall, *nonvoting member*: Executive Director, Family Healthcare Foundation
- Jodi Ray, *nonvoting member*: Director, Florida Covering Kids & Families, University of South Florida
- Angela Wiggins, *nonvoting member*: CHIP Program Analyst, Agency for Health Care Administration

### **Finance and Contracting Committee Members**

- Philip Boyce: Florida Hospital Association, Chair
- Paul Whitfield: Director of Accounting & Auditing, Department of Financial Services, Vice-Chair
- Ray Berry: Chief Executive Officer, Health Business Solutions
- Dave Eggers: Commissioner, Florida Associations of Counties
- Roz Ingram: Director of State Purchasing, Department of Management Services
- Celeste Pullen: Associate Director, Finance & Administration, Florida State University

### **Operational Efficiency & Quality Committee Members**

- Jeffrey Brosco, M.D., Ph.D.: Developmental-Behavioral Pediatrics, Chair
- Peter Claussen, D.D.S.: Florida Dental Association, Vice Chair
- Jose Armas: Child Health Policy Expert Representative, MCCI Medical Group
- Michael Aubin: Hospital President, Wolfson Children's Hospital
- Steve Freedman, Ph.D.: University of South Florida Health
- William Martinez: Director of Data Analytics & Technology, Department of Children & Families
- Tommy Schechtman, M.D.: Florida Pediatric Society
- Rachel LaCroix, *nonvoting member*: AHC Administrator, Agency for Health Care Administration

### **FHKC Staff**

Ryan West, Chief Executive Officer  
Gavin Burgess, Chief Legal Officer  
Ashley Carr, Chief Marketing Officer  
Jeff Dykes, Chief Financial Officer  
Austin Noll, Chief Operating Officer  
Hugh Black, Accountant  
Amy Bogner, Public Affairs Advisor  
Ginger Harris-Ducher, Director of Accounting  
Katie Fuller, Plan Manager  
Suzetta Furlong, Director of Plan and TPA Management  
Jena Grignon, Community Engagement Advisor  
Maiya Hinton, OPS TPA Analyst  
Ariana Howell, OPS Front Desk  
Brock Juarez, Director of Corporate and Strategic Initiatives  
Claire Johnson, Plan Manager  
Laura Kreps, Director of Administration  
Gabi Lara, Outreach Specialist  
Lindsay Lichti, Deputy Director of Plan and Quality Management  
Romy Marques, Quality Manager  
Cesar Marquez, Business Intelligence Manager

Jack McDermott, Director of Corporate Research  
Heather Napolitano, Event Coordinator and Executive Office Liaison  
Tiffany Nelsen, Operations Support Manager  
Debbie Shoup, TPA Call Center Manager  
Alex Villota, TPA Analyst

**Organizations**

Throughout the procurement process, FHKC intends to rely on legal, actuarial, consulting, and/or network access analyses services performed by the Dean Mead law firm.

*\*Information as of February 2021*

**APPENDIX 4:**  
**FHKC PROCUREMENT PROTEST PROCEDURES**

**A. STANDARDS FOR PROTEST**

1. A submission that amends or supplements a Respondent's proposal after FHKC announces its Notice of Contract Award, intent to reject all proposals, or withdraw the solicitation will not be considered by FHKC in a protest.
2. The protesting party has the burden of proof based on the preponderance of the evidence standard.
3. The protesting party must prove the FHKC Intended Decision was illegal, arbitrary, dishonest, or fraudulent. Additionally, the protesting party must prove:
  - (a) In the event of a protest to an FHKC Intended Decision to issue procurement specifications, addenda, or any other procurement document, that the FHKC Intended Decision is contrary to FHKC's governing statutes, rules, or regulations;  
or
  - (b) In the event of a protest to the FHKC Notice of Contract Award, that the FHKC Intended Decision materially deviated from the specifications of the ITN.

**II. PROTEST PROCEDURES**

**1. PROTESTING PARTY PROCEDURES**

- o A party that seeks to challenge an FHKC Intended Decision must electronically File a written notice of intent to protest within 72 hours after the Posting of the FHKC Intended Decision, excluding weekends and FHKC-observed holidays<sup>1</sup>. A party must have standing to challenge the FHKC Intended Decision.
- o The protesting party must electronically File a formal written protest within five Business Days after the date of the notice of intent to protest is Filed. For all protests other than a protest to the specifications, the formal written protest must be accompanied with a protest bond in the amount of 1 percent of the contract amount. The bond shall be conditioned upon the payment of all FHKC's attorneys' fees, costs, and charges in the event the protesting party does not prevail in the protest process set forth in this ITN, any administrative or circuit court proceedings, and/or any subsequent appellate court proceedings. In lieu of

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<sup>1</sup> For 2021: April 2, May 31, July 5

a bond, FHKC will accept a cashier's check, official bank check, or money order. An original cashier's check, official bank check, or money order must be Filed in the same fashion as a protest bond.

- o The formal written protest must state, with particularity, the facts and law upon which the protest is based. The issues to be addressed in any proceeding conducted pursuant to subsections II.2 and II.3 are limited to those timely raised in any formal written protest.
- o The notice of intent to protest, formal written protest, and any required bond or other security must be timely Filed with the issuing office at [COMSIssuingOffice@healthykids.org](mailto:COMSIssuingOffice@healthykids.org).
- o The protesting party shall be responsible for all costs associated with the impartial decision maker.
- o A Respondent or potential Respondent may intervene in the protest proceedings by Filing a notice to intervene within three Business Days of the Posting of the initial notice of the protest by FHKC. An intervening party is subordinate to, and therefore does not have the rights granted to, FHKC or a protesting party that has Filed a timely notice of protest, written notice of intent to protest, and any required bond or other security.

## 2. FHKC PROCEDURES

FHKC must take the following steps:

- (a) Post the notice of intent to protest in the same manner as the solicitation specifications and/or the Notice of Contract Award were Posted.
- (b) Provide an opportunity to resolve the protest by mutual agreement between FHKC and the protesting party(ies) within seven Business Days of the Filing of the formal written protest. If the protest is not resolved by mutual agreement within the timeframe set forth in this paragraph or within an extended timeframe as mutually agreed upon by the parties, a protest proceeding must be conducted with the impartial decision maker as set forth in subsection II.3 below.
- (c) Engage an outside, impartial decision maker, such as a mediator, to hear the protest if the protest is not resolved in accordance with subsection II.2(b).

The Filing of a notice of intent to protest or a formal written protest shall not stop the procurement process or award process, unless FHKC determines that doing so is in the best interest of FHKC. Upon the Filing of a notice of intent to protest, the cone of silence

set forth in subsection 3.C of this ITN is modified to allow FHKC employees and agents to have contact with the protesting party's representatives to resolve the protest or complete the protest proceeding set forth in subsection II.3. of Appendix 4: FHKC Procurement Protest Procedures.

### 3. PROTEST PROCEEDING

- (a) If the protest is not resolved pursuant to subsection II.2(b) above, the impartial decision maker must commence a protest proceeding within 15 Calendar Days of receipt of FHKC's decision to commence a protest proceeding. The provisions of this subsection may be waived only upon stipulation by FHKC and the non-intervening protesting party(ies).
- (b) The impartial decision maker must render a written decision within 30 Calendar Days of the commencement protest proceeding. The provisions of this paragraph may be waived only upon stipulation by FHKC and the non-intervening protesting party(ies).
  - 1. The impartial decision maker's written decision must include findings; based on these findings, the impartial decision maker may affirm or reject the FHKC Intended Decision.
  - 2. If rejecting an FHKC Intended Decision, the impartial decision maker must issue a recommendation to FHKC supported by findings of fact and conclusions of law.
  - 3. FHKC may either accept or reject the impartial decision maker's recommendation.
    - a. If FHKC rejects the impartial decision maker's recommendation, FHKC must Post the recommendation and resolution within five Business Days after receipt of the recommendation, in the same manner as the solicitation specifications and/or the Notice of Contract Award were Posted, and set forth the reason(s) for rejecting the recommendation. FHKC may restart the procurement process, continue the procurement process, or proceed with the FHKC Intended Decision consistent with its reason or reasons for rejecting the impartial decision maker's recommendation.
    - b. If FHKC accepts the impartial decision maker's recommendation, FHKC must Post the recommendation and resolution within five

Business Days after receipt of the recommendation, in the same manner as the solicitation specifications and/or the Notice of Contract Award were Posted.

- (c) The impartial decision maker may permit the parties to submit proposed findings of fact, conclusions of law, draft orders, or memoranda.
- (d) A default must be entered against a party who fails to appear at a protest proceeding as directed by the impartial decision maker, unless at least one of the following conditions exists:
  - 1. Illness of a party, witness, or attorney that would prevent attendance at the protest proceeding;
  - 2. An act of God that would prevent attendance at the protest proceeding;
  - 3. A designated threat to public safety that would prevent attendance at the protest proceeding; or
  - 4. Any other circumstance in the opinion of the impartial decision maker that would warrant a continuance of the protest proceeding.

An entry of default against a party is deemed the final decision of the impartial decision maker.

### **III. GENERAL PROVISIONS**

- 1. Failure of a party to File a notice of intent to protest, a formal written protest, or a bond or other security as set forth in this appendix shall constitute a waiver of any right to contest an FHKC Intended Decision.
- 2. Venue for any meeting, protest proceeding, court proceeding, appellate proceeding, administrative proceeding, or deposition shall be in Leon County, Florida. FHKC, in its sole discretion, may waive any requirement under this paragraph in whole or in part.

The procedures in chapters 120 and 287, Florida Statutes, do not apply to this ITN process.

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**ATTACHMENT A: SUBMISSION CHECKLIST**

This form must be printed, completed, and included as the first page of your proposal submission. Check each applicable statement:

I certify that all elements of this proposal are completed as requested and have been organized and tabbed accordingly:

- Tab A: Introduction
- Tab B: Minimum Qualifications
- Tab C: Profile of Respondent (includes C-1 through C-7)
- Tab D: Work Plan
- Tab E: Pricing Proposals
- Tab F: Description of HIPAA | HITECH Act Security Standards
- Tab G: Contract and Proposed Revisions
- Respondent's Appendices (optional)

I have included a copy of my organization's Commercial General Liability insurance certificate.

By my signature, I certify that the checked statements above are included in \_\_\_\_\_ (Organization's Name) proposal submission.

I hereby certify as owner, officer, or authorized agent, that I have read the ITN in its entirety and agree to abide by all requirements and conditions contained therein. I further certify that this proposal constitutes my formal proposal in its entirety.

I understand that, should the organization I own or represent be awarded a contract resulting from this ITN and fail to adhere to the terms and conditions of this ITN, that FHKC may determine, in its sole discretion, to cease the contract execution process or withhold funds under the resulting contract.

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

**Signed By:** \_\_\_\_\_  
(Signature Above)

**Print Name:** \_\_\_\_\_

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

**ATTACHMENT B: COVER SHEET**

[Company Logo, optional]

**Proposal for the Florida Healthy Kids Corporation**

**Invitation to Negotiate 2020-01 for Marketing, Advertising, Public Relations, and Creative Services**

[Date Submitted]

[Total Number of Pages Including this Page]

[Official Company Name and d/b/a, if applicable]

[FEID Number]

[Type of Business (e.g., corporation, LLC, partnership, etc.)]

[Name of Person Submitting This Proposal]

[Street Address]

[City, State and ZIP Code]

[Phone Number]

[Toll-free Number, if available]

[Email Address]

[Fax Number]

I attest that, to the best of my knowledge, the data, documentation, and information provided in [Respondent]'s response to ITN 2020-01 for Marketing, Advertising, Public Relations, and Creative Services is accurate, complete, and truthful. I acknowledge the receipt of any and all addenda to this ITN.

I certify that this proposal is made without prior understanding, agreement, or connection with any other entity submitting a proposal and is, therefore, in all respects fair and without collusion or fraud. I agree to abide by all conditions of this proposal and certify that I am authorized to sign this proposal for Respondent and that Respondent is in compliance with all requirements of the Invitation to Negotiate, including but not limited to, certification requirements.

\_\_\_\_\_  
Signature of Individual Authorized to Bind Respondent Date

\_\_\_\_\_  
Printed Name Title

I have attached a copy of [Respondent]'s current organization chart and, if the attestation is signed by a person other than the chief executive officer or chief financial officer, written documentation of delegated authority.

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by (Officer/Affiant), who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

**RESPONDENT CONTACTS:** Complete the contact information below for the official contact and an alternate. These individuals must be available to be contacted by telephone or attend meetings as may be required.

<b>PRIMARY CONTACT:</b>	
<b>Title:</b>	
<b>Address:</b>	
<b>Phone Number:</b>	
<b>Email Address:</b>	
<b>Fax Number:</b>	

<b>SECONDARY CONTACT:</b>	
<b>Title:</b>	
<b>Address:</b>	
<b>Phone Number:</b>	
<b>Email Address:</b>	
<b>Fax Number:</b>	

**ATTACHMENT C: LETTER OF INTENT**

**INVITATION TO NEGOTIATE 2021-01**  
 MARKETING, ADVERTISING, PUBLIC RELATIONS AND CREATIVE SERVICES

<b>Organization Name</b>		
	<b>Main Contact</b>	<b>Alternate</b>
Name:		
Street Address:		
Main Office: Direct Line, if applicable: Cell Phone:		
Fax Number:		
E-Mail:		
<b>Proposed Services (Non-Binding)</b> <i>Please indicate all services that apply.</i> <i>Refer to Section II: Scope of ITN for general description.</i>		

- \_\_\_\_\_ **Strategic planning**
- \_\_\_\_\_ **Analytics**
- \_\_\_\_\_ **Marketing creative**
- \_\_\_\_\_ **Paid advertising**
- \_\_\_\_\_ **Direct marketing**
- \_\_\_\_\_ **Social media**
- \_\_\_\_\_ **Media relations**
- \_\_\_\_\_ **Promotions and partnerships**
- \_\_\_\_\_ **Other marketing and communications consultation, please describe:**  
 \_\_\_\_\_



**ATTACHMENT E: CONFLICT OF INTEREST DISCLOSURE NOTIFICATION**

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

To respond to this solicitation, Respondents have the burden to diligently investigate, disclose, and timely challenge any real, apparent, or potential conflict of interest pertaining to any person or entity identified in Appendix 3: FHKC Board Members, FHKC Committee Members, FHKC Staff, and Organizations (“Appendix 3”).

**RESPONDENT’S DISCLOSURE OF CONFLICT OF INTEREST**

If Respondent has a real, apparent, or potential conflict of interest with any person or entity identified in Appendix 3, Respondent must disclose the conflict of interest in the table below, adding rows as necessary. For purposes of this Attachment E: Conflict of Interest Certification, a “conflict of interest” arises when any person or entity identified in Appendix 3; any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in, or a tangible personal benefit from, Respondent.

<b>Type of Relationship (Business, Personal)</b>	<b>Name of Entity or Individual</b>	<b>Status of Entity or Individual (Current Contractor, Board Member, Enrollee, etc.)</b>	<b>Term of Relationship</b>

If Respondent does not have a real, apparent, or potential conflict of interest pertaining to any person or entity identified in Appendix 3, Respondent must agree to the following statement and check the box:

- To the best of my knowledge, no real, apparent, or potential conflict of interest exists between Respondent and any individual or entity identified in Appendix 3.

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**ATTACHMENT F: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

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 Respondent whose Contract/Subcontract equals or exceeds \$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 the signer knowingly rendered an erroneous certification, the federal government may pursue available remedies, including suspension and/or debarment.
- C. **[Respondent Name]** shall provide immediate written notice to the contract manager at any time Respondent learns 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. **[Respondent Name]** may contact the contract manager for assistance in obtaining a copy of those regulations.
- E. **[Respondent Name]** 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. **[Respondent Name]** further agrees by submitting this certification that it will require each Subcontractor of this Contract/Subcontract whose payment will equal or exceed \$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 **[Respondent Name]** that it is not debarred, suspended, ineligible, or voluntarily excluded from contracting/subcontracting unless it knows the certification is erroneous.



**Any party that has standing to challenge an FHKC Intended Decision must file a written notice of intent to protest, formal written protest, and any required bond or other security as set forth in Appendix 4 of this Invitation to Negotiate. Failure to timely file a notice of intent to protest, formal written protest, or any required bond or other security shall constitute a waiver of proceedings.**