

THIRD MODIFICATION TO THIRD PARTY ADMINISTRATIVE (TPA) SERVICES FOR FLEXIBLE SPENDING ACCOUNTS (FSAs)-HEALTHCARE AND DEPENDENT CARE

THIS THIRD MODIFICATION AGREEMENT is made this 15th of October 2013 by and between ConnectYourCare, LLC (Contractor) and the State of Maryland, acting through the Department of Budget and Management.

WHEREAS, on January 17, 2013, the Department of Health and Human Services (“DHHS”) issued a final rule that implemented a number of provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, to strengthen the privacy and security protections for health information established under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Covered entities and business associates are required to comply with the applicable requirements of the final rule by September 23, 2013.

IN CONSIDERATION of the promises and the covenants herein contained, the parties agree to modify the Contract for the third modification to Third Party Administrative (TPA) Services for Flexible Spending Accounts (FSAs)-Healthcare and Dependent Care dated January 21, 2010, as amended by a First Modification dated May 5, 2012, and a Second Modification dated May 10, between the Contractor and the State of Maryland, acting through the Department of Budget and Management as follows:

1. Definitions

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

- 1.1 “Contract” means the Contract for Third Party Administrative (TPA) Services for Flexible Spending Accounts (FSAs)-Healthcare and Dependent Care between the Contractor and the State of Maryland acting through the Department of Budget and Management dated January 21, 2010.
- 1.2 “Contractor” means ConnectYourCare, LLC.
- 1.3 “Department” means the Maryland Department of Budget and Management.
- 1.4 “HIPAA” means the Health Insurance Portability and Accountability Act, enacted August 21, 1996 as amended from time to time and including changes made under the Health Information Technology for Economic and Clinical Health Act (HITECH).
- 1.5 “HITECH” means the Health Information Technology for Economic and Clinical Health Act, enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 and as amended from time to time.
- 1.6 “Modification” means this Modification Agreement.

- 1.7 “PHI” means Protected Health Information, as the phrase is defined in 45 CFR §164.501.
- 1.8 “RFP” means the Request for Proposals for Third Party Administrative (TPA) Services for Flexible Spending Accounts (FSAs)-Healthcare and Dependent Care, No. F10B9200027, dated June 30, 2009 and as amended through September 25, 2009.
- 1.9 “State” means the State of Maryland.
- 1.10 “Technical Proposal” means Contractor’s Technical Proposal ConnectYourCare, LLC dated August 25, 2009 as supplemented and revised by the Contractor’s subsequent responses to questions, requests for cure, and Best and Final Offer (BAFO) submissions through September 29, 2009.

2. Scope of Modification

This Modification amends the Contract specifically as described herein. Except as specifically revised by the terms of this Modification, all of the terms of the Contract shall remain in full force and effect and shall apply to this Modification.

3. HIPAA Compliance

The Compliance Checklist (CC) of the Contract, included as Attachment G-5 in the Technical Proposal and RFP, is amended as follows to comply with changes to the privacy and security rules of HIPAA:

- **CC-22(d) is amended to now read:** In compliance with 45 CFR 164.308(b), Contractor agrees to ensure, through written contract, that any agent, including a subcontractor, to whom Contractor provides electronic PHI agrees to implement reasonable and appropriate safeguards, including the same restrictions and conditions that apply to Contractor with respect to such PHI.
- **CC-23(f) is amended to now read:** In compliance with 45 CFR § 164.504(e)(5), Contractor shall ensure, through written contract, that any agent, including a subcontractor, to whom it provides PHI received from, created by, or received by Contractor agrees to the same restrictions and conditions that apply to Contractor with respect to such information. This obligation shall apply in connection with PHI created, retained, used, disclosed, or transmitted in connection with the health FSA plan administered by Contractor.
- **CC-23(w) is amended to now read:** Contractor shall comply with the prohibitions against remuneration in exchange for PHI pursuant to 45 CFR 164.508(a)(4) and §13405(d)(1) and (2) of the HITECH Act as if it were a covered entity in connection with the benefit plan administered by Contractor pursuant to this RFP and Contract. Contractor shall prohibit its business associates, agents and subcontractors who receive,

use, disclose, create, retain, maintain, or transmit PHI from receiving remuneration in exchange for PHI on the same terms.

- **CC-23(x) is amended to now read:** Contractor shall comply with the limitations on marketing and fundraising communications provided in 45 CFR 164.508(a) (3) and §13406 of the HITECH Act in connection with the health FSA plan.
- **CC-27.1 is now added to read as follows:** A breach shall be treated as discovered in the terms described in 45 CFR §164.410.
- **CC-27.2 is now added to read as follows:** Notice to the Department

(1) The Contractor shall promptly notify the Department of a breach of unsecured PHI in its possession following the first day on which Contractor (or Contractor's employee, officer, agent or subcontractor) knows of such breach or following the first day on which Contractor (or Contractor's employee, officer, agent or subcontractor) should have known of such breach. Such notice shall occur without unreasonable delay and in no event more than 30 days following discovery of the breach. Such notice shall occur even if the breach is not of a Member of the State's Plan.

(2) In the event that Contractor determines that there is no risk of an unauthorized access, acquisition, use, or disclosure compromises the security or privacy of the PHI of a Participant, Contractor shall promptly notify the Department of the event and the basis for that determination. Such notice shall occur as soon as is reasonable but in no event more than 30 days following discovery of the unauthorized access, acquisition, use or disclosure of PHI of a Participant. Such determination shall be in writing and signed by an appropriate officer or employee of Contractor.

(3) Contractor's notice to the Department pursuant to this section concerning breaches shall include, at a minimum:

(i) the number of individuals overall affected by the breach and the number of Participants in the State's Plan affected by the breach;

(ii) if applicable, the identification of each State Plan Participant whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or otherwise the subject of the breach;

(iii) a description of what happened, the date of the breach, if known, and the date of the discovery of the breach;

(iv) a brief description of the types of unsecured PHI that were involved in the breach (such as name, social security number, date of birth, claims or health care services information, etc.);

(v) identification of an individual who can provide additional information concerning the breach; and

(vi) a brief description of the steps Contractor is taking to mitigate the breach, investigate the breach, and to protect against further breaches.

(4) Contractor's notice to the Department pursuant to this section may be provided on a rolling basis, with information provided to the Department as it becomes available.

- **CC-27.3 is now added to read as follows:** Notice to Participants.

(1) Contractor shall provide notice to affected members and to the media in the form, content, manner, method, and timing required to meet the requirements of §§13400-13402 of the HITECH Act and 45 CFR §§164.404 and 164.406, applied as if Contractor were a covered entity in connection with the FSA plan administered by Contractor pursuant to the Underlying Agreement.

(2) The notice(s) required by this section may not be issued until the Department has reviewed and approved the notice(s). Such approval may not be unreasonably delayed or withheld.

- **CC-27.4 is now added to read as follows:** Contractor may delay the notice(s) required pursuant to sections 164.404(b) and 164.406(b) only if permitted pursuant to 45 CFR §164.412.

- **CC-27.5 is now added to read as follows:** In the event of an unauthorized use or disclosure of PHI or a breach of Unsecured PHI, Contractor shall use reasonable efforts to mitigate any harmful effects of said disclosure that are known to it.

- **CC-27.6 is now added to read as follows:** Notices to DHHS.

(1) In the event of a breach described in 45 CFR §164.408(b), Contractor shall provide to Department all information required by that subsection to be submitted to the Secretary of DHHS. The information shall be provided without unreasonable delay and in no event more than 30 days following discovery of the breach. Upon request, Contractor shall submit the required breach notice to the Secretary of DHHS on behalf of the Department, the State, the group plan(s), and the Program.

(2) Contractor shall maintain a log of breaches described in 45 CFR §164.408(c) and that affect members and the group plan(s) administered by Business Associate pursuant to the Underlying Agreement.

- **CC-27.7 is now added to read as follows:** In fulfilling its obligations pursuant under this Contract in connection with 45 CFR §164.530, Contractor shall address the

provisions of 45 CFR Part 164, subpart D in the manner provided in 45 CFR §164.414, as if Contractor were a covered entity in connection with the benefits plan administered by the Contractor pursuant to this Contract and RFP.

- **CC-27.8 is now added to read as follows:** Contractor agrees to review any guidance from DHHS specifying the technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals. Contractor further agrees, to the extent practical, appropriate and reasonable, to incorporate such guidance into its administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI.
- **CC-27.9 is now added to read as follows:** Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by the Contractor, agrees to provide notice of a breach and the information necessary for the Contractor to comply with its notice requirements in sections (a) through (h) above.

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

CONTRACTOR:
ConnectYourCare, LLC

STATE OF MARYLAND:
DEPARTMENT OF BUDGET AND
MANAGEMENT

Rose Seaman CFO
Print name and title

[Redacted Signature]

By:

10/11/13
Date

Witness

[Redacted Signature]

By: T. Eloise Foster, Secretary

10/15/13
Date

Witness

[Redacted Signature]

GUARANTOR:
EXPRESS SCRIPTS, INC.

(SEAL)

By: [Redacted Signature]

October 4, 2013.
Date

[Redacted Signature]
Witness

APPROVED FOR FORM AND LEGAL SUFFICIENCY

THIS *2nd* DAY OF *October*, 2013.

[Redacted Signature]
ASSISTANT ATTORNEY GENERAL