

STATE OF IDAHO

PROVIDER AGREEMENT

Between

THE DEPARTMENT OF HEALTH AND WELFARE

and

A VALUE CARE ORGANIZATION

THIS AGREEMENT FOR FURNISHING SERVICES UNDER THE HEALTHY CONNECTIONS VALUE CARE PROGRAM AS A VALUE CARE ORGANIZATION (“Agreement”) is by and between the **IDAHO DEPARTMENT OF HEALTH AND WELFARE** (“the Department”), and _____ (“Value Care Organization or VCO”), each a “Party” or collectively, the “Parties.”

WHEREAS, the Department desires to establish the Healthy Connections Value Care Program to reduce the overall cost of care in Medicaid while advancing preventive care and promoting better health outcomes;

WHEREAS, the Department was granted authority by the Idaho legislature to enter into agreements with providers that are paid based on healthcare quality and positive impacts to participant health, which was codified at Idaho Code § 56-265(5);

WHEREAS, the terms of this Agreement and Idaho’s State Plan Amendment are subject to review and approval by the Centers for Medicare and Medicaid Services (“CMS”) whose approval is necessary to allow Value Care Organizations (VCO) to coordinate the delivery of health care services pursuant to Section 1905(t) of the Social Security Act;

WHEREAS, VCO is a legal business entity operating as either a healthcare provider, a healthcare facility or a network of healthcare providers and/or healthcare facilities who is or whose Network Providers are authorized by Medicaid to provide covered services to Participants;

WHEREAS, VCO desires to collaborate with the Department to improve the quality of care, reduce healthcare costs and achieve the program goals stated below;

WHEREAS, based on the above-cited authorities, the Department intends to contract with VCO to achieve the following Program goals:

- Triple-aim of better care for patients, better health for communities and lower costs;
- Patient-centered care that is highly coordinated;
- Local governance by those who deliver care;
- Payment methodologies that reward accountability, quality, efficiency and access;
- Low administrative costs; and
- Community involvement through advisory groups and support for community initiatives that advance population health;

WHEREAS, VCO agrees to participate in the Value Based Incentive Payment model measuring VCO’s performance in managing Attributed Participants using a number of quality and cost metrics, attached hereto; and

WHEREAS, the Department contemplates, pursuant to its statutory mandate, that its policies will permit VCOs, and participating providers within the VCOs, to engage in cooperative and interactive conduct that will, at times, displace competition in the provision of healthcare services, the

Department shall exercise ultimate control over the services provided pursuant to the express terms of this Agreement and active Department supervision and review;

NOW, THEREFORE, in consideration of the mutual covenants, representations and warranties contained herein, the Parties agree as follows:

Article I

1.0 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

- 1.1 Assignment/Assigned.** The process by which Medicaid Participants choose or are assigned by the Department to a Healthy Connections Service Locations for purpose of managing and coordinating their health care.
- 1.2 Attribution/Attributed.** The process of attributing Participants to a VCO for purposes of calculating the Total Cost of Care. The Attribution process is further described in Exhibit 1G hereto.
- 1.3. Department.** State of Idaho, Department of Health & Welfare, its divisions, sections, offices, units, or other subdivisions, and its officers, employees, and agents.
- 1.4 Healthy Connections Program.** A Medicaid program charging Primary Care Providers with the task of managing and coordinating the delivery of all care provided to Participants Assigned to them with the goal of improving quality, controlling the cost and improving the outcome of the care. Participation in the Healthy Connections Program requires providers to sign a Healthy Connections Coordinated Care Provider Agreement.
- 1.5 Healthy Connections Value Care Program (“Program”).** A program designed to incentivize VCOs to improve the quality and to control the cost of care provided to Participants. The Program includes a Value Based Incentive Payment model for rewarding improvements and accountability for lack of improvement.
- 1.6 Healthy Connections Service Location.** A medical clinic at one location consisting of at least one Primary Care Provider who is a Medicaid Participating Provider and has an active Healthy Connections Coordinated Care Provider Agreement. A Healthy Connections Service Location may only participate in one VCO at a time. A healthcare provider organization with more than one Healthy Connections Service Location may only participate with one VCO at a time, and all its Healthy Connections Service Locations must participate in the Program.

- 1.7 Medicaid.** A program administered by the Idaho Department of Health and Welfare for providing health care coverage to qualifying Participants. Participation in the Medicaid Program requires providers to have a Medicaid Provider Agreement.
- 1.8 Participant.** A person receiving Medicaid benefits, enrolled in the Healthy Connections Program and not excluded from this Program as defined in Exhibit 1D.
- 1.9 Performance Year.** The successive twelve-month periods of the contract beginning July 1, 2020, as reflected in Exhibits 1A, 1B and 1C used in the Value Based Incentive Payment model as the period of time for evaluating VCO performance and calculating the Total Cost of Care.
- 1.10 Primary Care Provider (“PCP”).** A VCO Network Provider whose area of practice and training is family medicine, internal medicine, obstetrics/gynecology or pediatrics, as well as other affiliated providers including nurse practitioners, physician assistants and certified nurse mid-wives, who has agreed to provide primary care services and to coordinate and manage care. Each PCP must operate under an active Healthy Connections Coordinated Care Provider Agreement.
- 1.11 Provider Handbook.** The Medicaid Provider Handbook, as amended, and any instructions contained in provider information releases or other program notices. The Provider Handbook is available to all providers enrolled in Medicaid and is intended to provide basic program guidelines; however, in any case where the guidelines appear to contradict relevant provisions of Idaho Code or rules, the code, or rules prevail.
- 1.12 Quality Performance Program.** A component of the Value Based Incentive Payment model, as described in Exhibit 1E, for measuring and evaluating the VCO’s performance in improving the quality of care provided to Participants Attributed to the VCO.
- 1.13 Total Cost of Care (TCOC).** A component of the Value Based Incentive Payment model, as described in Exhibit 1 Article III, for measuring and evaluating the VCO’s performance in controlling the cost of care provided to Participants Attributed to the VCO.
- 1.14 Value Based Incentive Payment.** A risk arrangement, as described in Exhibit 1, incorporating the Quality Performance Program and the TCOC calculation for purposes of incentivizing the VCO to control the costs and improve the quality of care provided to Participants Attributed to the VCO.
- 1.15 Value Care Organization (“VCO”).** A legal business entity such as a large medical group, an association of medical groups, a hospital system, an organization consisting of a collaboration of independent medical groups or a provider network such as an Independent Practice Association (IPA) or Physician Hospital Organization (PHO) whose network of health care providers include at a minimum a panel of PCPs large enough to meet the Program requirement stated herein.

- 1.16 VCO Network.** The network of healthcare providers affiliated with the VCO as defined below, and who have agreed to participate in the Program through the VCO. A VCO Network must include at a minimum a panel of Primary Care Providers contracted with the Healthy Connections Program as outlined in Exhibit 1 Article II and may include other types of VCO Network Providers.
- 1.17 VCO Network Provider.** Any licensed health care provider, group of providers, hospital, ancillary provider or other provider entity affiliated with the VCO through employment or contract. A VCO Network Provider must have an active Medicaid Provider Agreement.

Article II

2.0 VCO Minimum Requirements.

- 2.1 Legal Business Entity.** VCO shall be a legal business entity established in its state of operation with an organizational structure capable of performing the duties and obligations of the VCO as described herein.
- 2.2 Provider Panel.** VCO Network must include at a minimum a panel of qualifying Primary Care Providers large enough to fulfill the duties and obligation of the VCO as described herein and any additional requirements listed in Exhibit 1 Article II.
- 2.3 Minimum Participant Assignment.** VCO's participating Healthy Connections Service Locations must have at least the minimum required number of Participants Assigned to its VCO Network as described in Exhibit 1 Article 2.2.
- 2.4 Healthy Connections Service Location.** VCO must provide a roster of the Healthy Connections Service Locations participating in the Program through the VCO to the Department sixty (60) days prior to the effective date of the first Performance Year, except as approved by the Department.
- 2.4.1** For each Performance Year thereafter, the VCO's may change the Healthy Connections Service Locations participating with the VCO. Notice of such changes must be received by the Department sixty (60) days prior to the effective date of the Performance Year.
- 2.4.2** Any changes in participating Healthy Connections Service Locations during a Performance Year must be approved by the Department
- 2.5 Value Based Incentive Payment.** As part of this Agreement, the VCO must participate in a Value Based Incentive Payment risk arrangement, terms of which are defined in Exhibit 1.

Article III

- 3.0 Participant Attribution Methodology.** The Value Based Incentive Payment risk arrangement will measure and evaluate the VCO's performance in controlling the costs and improving the quality of care provided to Participants Attributed to the VCO. Participants will be Attributed to the VCO according to the methodology set forth in Exhibit 1G

Article IV

4.0 Advisory Committees.

- 4.1 Regional Care Collaborative (RCC).** An RCC will be established by the Department as a venue for the Department and the VCOs in the region to monitor and evaluate the performance of the Program in meeting its goals and objectives. The RCC will also provide a forum for raising concerns and recommending solutions regarding issues that may arise in the delivery of healthcare to Participants in the region. RCC participation will include representatives of the Department and representatives of each VCO in the region. The Department may, at its discretion, include representatives from other regional healthcare entities. The Department will facilitate meetings, manage agendas and establish topics for discussion.

- 4.2 Community Health Outcome Improvement Coalition (CHOICE).** The Department shall establish a Community Health Outcome Improvement Coalition (CHOICE) for each region. The CHOICE will help identify opportunities to improve health and wellness, create health equity and address the social determinants of health in their communities, among other activities. CHOICE may also address the behavior-change aspects of health and wellness necessary to bridge the gap between care delivered through the VCO Networks in the region and community initiatives that improve population health. CHOICE will provide a venue to address the gaps between physical medicine and the social determinants that impact clinical outcomes.

CHOICE participants will include representatives of the VCO, Department and community stakeholders within the region such as community leaders, non-medical service providers, public health agencies, foundations and others engaged in enhancing healthcare and long-term services and supports for Medicaid Participants. In regions in which a CHOICE advisory group has already been established, the Department shall consider designating the existing body for purposes of this Article 4.2 provided the existing CHOICE meets the above-described objectives and goals

Article V

5.0 Duties of VCO.

- 5.1 Operational Activities.** VCO shall possess expertise in the following areas and comply with the operational requirements established in this Agreement. VCO shall comply with reasonable requests by the Department to audit VCO's records and/or processes to ensure that VCO's operations remain in compliance with this Agreement.
- 5.2 Clinical Activities.** VCO shall maintain an organizational structure and programs designed to improve and integrate systems of care delivery and coordination between providers, promote evidence-based care and yield improved clinical outcomes.
- 5.3 Data Management.** VCO shall comply with reasonable requests from the Department for data and information necessary for the Department to fulfill its duties and obligations under this Agreement. These terms and conditions shall be set forth in the Data Use Agreement, with the current version attached and subject to revision upon mutual written agreement of the Parties.
- 5.4 VCO Network Management.** VCO shall develop clinical and operational processes to enhance the performance of the VCO Network in achieving the quality, cost and outcomes goals and objectives of the Program including the following tasks:
- 5.4.1** Communicate to VCO Network Providers the goals and objective of the Program and their duties and responsibilities. Educate VCO Network Providers on VCO's clinical and operational processes (the "clinical model").
 - 5.4.2** Monitor VCO Network Providers in the execution of VCO's clinical model and hold them accountable for the goals and objectives of the Program, including improving quality and outcomes and reducing costs. VCO shall develop a process for rewarding clinical improvement and holding those accountable for lack of improvement.
- 5.5 VCO Network Provider Obligations.** VCO will ensure VCO Network Providers are contractually obligated to comply with the terms of this Agreement. VCO shall notify the Department of any requirements in the participation agreement between the VCO and VCO network Providers that conflicts with either this Agreement or the Healthy Connections Coordinated Care Agreement. The parties agree to use best efforts to resolve the conflict.
- 5.6 VCO Changes to Policies and Procedures.** In coordination with the VCO's clinical model, the VCO may, with the prior written approval of the Department, modify current Medicaid or Healthy Connections Program policies and procedures. VCO modifications may require the VCO to assume additional responsibilities and duties which would be listed in an addendum to this Agreement.

- 5.7 Advisory Committee Participation.** VCO will designate representatives to serve as participants of the applicable region’s RCC and CHOICE.
- 5.8 Participant Information.** VCO must make available to Participants, upon request, information regarding VCO’s participation in the Program. At a minimum, this information must:
- be pre-approved by the Department;
 - include a high-level overview of the VCO’s program; and
 - include the impact on the Participant’s care, if any, as a result of the VCO participation in the Program.
 - .
- 5.9 VCO Reporting to the Department.** VCO shall report to Department or make available for the Department’s inspection data and information sufficient for monitoring quality and cost performance including any data needed to complete the calculation of the Value Based Incentive Payment Program. The terms and conditions of the VCO’s reporting requirements will be set forth in the Data Use Agreement and mutually agreed to by the Parties. Data and information provided to the Department will be held in confidence in accordance with the terms in Section 9.14.
- 5.10 VCO Reporting to VCO Network Providers.** VCO shall be responsible for reporting to VCO Network Providers the annual results of the Value Based Incentive Payment. The distribution or recovery of funds shall be in accordance with the VCO’s internal process.
- 5.11 Participant Grievances.** VCO will cooperate with the Department in responding to grievances filed by Participants with the Department, including appearing at fair hearings as reasonably requested by the Department.

Article VI

6.0 Quality Measures.

- 6.1** The quality measure, benchmarks, methods and formulas (the “Quality Performance Program”) used to evaluate VCO’s performance are defined in Exhibit 1E.
- 6.2** Department will meaningfully engage VCOs and applicable stakeholders in reviewing and making recommendations for annual modifications to the Quality Performance Program.
- 6.3** Department shall notify VCO at least one hundred twenty (120) days prior to the beginning of a Performance Year of any changes to the Quality Performance Program.

Article VII

7.0 Duties of the Department.

- 7.1 Medicaid and Healthy Connections Program.** The Department will continue to administer the Medicaid and the Healthy Connections Program under the current policies and procedures and may amend these policies and procedures from time to time in accordance with the provisions of those programs.
- 7.2 Monthly Reporting Obligations.** Beginning in April 2020, the Department shall provide to the VCO on a monthly basis and on a day of the month mutually agreed to by the Parties:
- 7.2.1** A roster of Participants currently and previously Assigned to Healthy Connections Service Locations participating with VCO. The report shall include an interim Attribution designation when applicable.
 - 7.2.2** Monthly claims files for all Participants Assigned to the VCO as further defined in the Data Use Agreement (DUA). VCO shall receive claims data for all claims with a Date of Service incurred during the Performance Year and for a period of time prior to the Performance Year as agreed to by the Parties and defined in the DUA for Participants Assigned to the VCO for the entire Performance Period and for Participants Assigned to the VCO for a portion of the Performance Year but determined to be Attributed to the VCO as defined in this Agreement. The content and method of communicating the claims data are set forth in a separate Data Use Agreement.
- 7.3 Quarterly Reporting Obligations.** For the second, third and fourth quarters of each Performance Year, the Department shall provide to the VCO on a quarterly basis and on a day of the month mutually agreed to by the Parties:
- 7.3.1** A report reflecting the risk score for each Participant Assigned to the VCO for purposes of identifying the relative healthcare risk of each Participant. The content of the risk score report and the method of its communication are set forth in the separate Data Use Agreement.
 - 7.3.2** An interim update of the VCO's TCOC calculation containing the data elements set forth in Exhibit 1 Article III.
 - 7.3.3** An interim update of the VCO's quality performance containing the data elements set forth in Exhibit 1E.
- 7.4 Annual Reporting Obligations.** The Department shall provide to the VCO at the completion of each Performance Year:
- 7.4.1** Within forty-five (45) days following the end of the Performance Year a report showing the Participants Attributed to the VCO for the Performance Year. The report shall reflect the total number of months each Participant

was Attributed to the VCO and the total number of months the Participant was enrolled in the Healthy Connections Program during the Performance Year.

- 7.4.2** Within one hundred-fifty (150) days of the end of the Performance Year, the final results of the VCO's TCOC calculation containing the data elements set forth in Exhibit 1.
- 7.4.3** Within one hundred-fifty (150) days of the end of the Performance Year, the final results of VCO's performance in the Quality Performance Program. The report will contain the data elements set forth in Exhibit 1E.
- 7.4.4** Within one hundred-fifty (150) days of the end of the Performance Year a report reflecting the final MARA Risk Score for each Participant Attributed to the VCO.
- 7.4.5** Within one hundred-fifty (150) days of the end of the Performance Year a draft of the Value Based Incentive Payment Program settlement.
- 7.5 Online Portal Access.** The Department intends to develop an online portal to provide VCO access to quality performance data. To the extent that such data is not readily accessible to VCO online, the Department shall provide the same to VCO in a format mutually agreed upon by the Parties.
- 7.6 Regional Advisory Groups.** The Department will designate representatives to participate in the RCCs and CHOICE.
- 7.7 Grievances.** The Department shall continue to administer its system to accept and respond to grievances filed by Participants pursuant to the Medicaid program policies and procedures.
- 7.8 Customer Service.** The Department will continue to administer the Medicaid Program and Healthy Connections Program with respect to physical locations, phone centers and other contact methods allowing Participants to inquire about eligibility for benefits, claims payments and other Medicaid and Healthy Connections Program issues.
- 7.9 Notice of Proposed Changes.** The Department will follow standard protocol including the Medicaid Newsletter as a means of communication to inform Medicaid Providers of any Medicaid or Healthy Connections Program changes. The Department will make best efforts to directly notify the VCO ninety (90) days prior to the effective date of any changes that may materially impact the VCO's performance in the Program.

Article VIII

8.0 Term, Renewal and Termination

- 8.1 Term of this Agreement.** The initial term of this Agreement begins on January 1, 2020 and shall continue in effect until June 30, 2023.
- 8.2 Termination Without Cause.** Either Party may terminate this Agreement without cause only at the end of each Performance Year. The terminating Party must provide written notice at least thirty (30) days prior to the end of the Performance Year. The Parties may not terminate this Agreement without cause with an effective date other than the end of a Performance Year.
- 8.3 Immediate Termination.** Either party may terminate this Agreement immediately upon written notice if at any time:
- 8.3.1** Judicial interpretation of federal or state laws, regulations, or rules renders fulfillment of this Agreement infeasible or impossible;
 - 8.3.2** VCO's license or certification required by law is suspended, not renewed, or is otherwise not in effect at the time service is provided; or
 - 8.3.3** VCO, or a person with an ownership or controlling Interest in VCO, is debarred, suspended, determined ineligible or excluded from participation in a government healthcare program.
- 8.4 Termination for Cause.** Either Party may terminate for cause if the other Party is in default in the performance of any material obligation imposed under this Agreement including obligations to provide timely and compliant data and reports as set forth herein and in the separate Data Use Agreement and the default has not been substantially cured to the satisfaction of the non-defaulting party within thirty (30) days following receipt by the defaulting party of written notice of default. The right of cure under this section shall not apply to a repeat default, defined as a circumstance in which the Party had received notice of default of the same material obligation.
- 8.5 Termination for Material Change.** Either party may terminate this Agreement upon thirty (30) days' written notice in the event of a material change in law, policies, procedures, rate schedules, gross targets, actuarial assumptions use in setting the gross targets or other aspects of the Medicaid Program or the Value Care Program that has a substantial adverse impact on either party's ability to perform its obligations under this Agreement.
- 8.6 Effect of Termination on Performance Year Settlement.** In the event there is an immediate termination, a termination for cause or a termination for material change during a Performance Year, the Department will complete a settlement of the Value Based Incentive Payment Program as described in Exhibit 1, Article II for the portion of the Performance Year prior to the effective date of the termination.
- 8.7 Continuing Duties in the Event of Termination.** Upon termination of this Agreement, unless otherwise specified herein, the Parties are obligated to perform those duties which by their terms survive termination of this Agreement.

Article IX

9.0 Additional Requirements and Provisions

- 9.1 Joint Operating Committee (JOC).** In order to facilitate the successful implementation and ongoing operational performance, the key management staff from the Department and VCO agree to meet at least every quarter or earlier upon the request of either party to discuss topics such as the VCO's performance, address claims or payment issues and identify topics that should be escalated.
- 9.2 Audits.** The Department, CMS, the Office of the Inspector General, the Comptroller General, and their designees may, at any time, inspect and audit any records or documents of the VCO, or its subcontractors related to participation in the Program. The right to audit under this section exists for five (5) years from the final date of the Agreement period or from the date of completion of any audit, whichever is later.
- 9.3 Assignment.** Each Party's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior written consent of the other party. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of the either Party's rights and obligations approved by the other Party shall be subject to the provisions of this Agreement.
- 9.4 Records.** The VCO shall maintain for a period of five (5) years books, records, and documents necessary (1) to demonstrate performance of obligations of this Agreement and (2) to certify the nature and cost of the services performed relevant to this Agreement. This Section shall not require the VCO to maintain records reflecting a VCO Network Provider's financial or clinical records.
- If an audit, litigation or other action involving records is initiated before the five (5) year period has expired, the VCO shall maintain records until all issues arising out of such actions are resolved.
- 9.5 Binding Effect of Federal Regulations and Idaho State Plan Amendment.** This Agreement is subject to the provisions of any relevant federal regulations and any relevant provisions of agreements between the State of Idaho and the United States, including but not limited to State Plans, in effect at the time this Agreement is executed. Such regulations and agreements are on file in the Central Office of the Department and are available for inspection by the VCO during regular business hours.
- 9.6 Federal and State Audit Exceptions.** If a federal or state audit indicates the VCO fails to comply with provisions of this agreement or applicable federal or state laws, rules or regulations, the VCO shall refund and pay to the Department any compensation paid to VCO arising from such noncompliance, plus civil and monetary penalties as indicated.

9.7 HIPAA. The VCO acknowledges that it may have an obligation, independent of this Agreement, to comply with the Health Insurance Portability and Accountability Act (HIPAA), Sections 262 and 264 of Public Law 104-191, 42 USC Section 1320d, and federal regulations at 45 CFR Parts 160, 162 and 164. If applicable, the VCO shall comply with all amendments to the law and federal regulations made during the term of this Agreement.

9.8 Lobbying. The VCO certifies that none of the compensation under this Agreement has been paid or will be paid by or on behalf of the VCO to any person for influencing or attempting to influence an officer or employee of any governmental agency, a Participant, officer or employee of Congress or the Idaho Legislature in connection with the awarding, continuation, renewal, amendment, or modification of any contract, grant, loan, or cooperative agreement.

If any funds, other than funds provided by this Agreement, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any governmental agency, a Participant, officer or employee of Congress or the State Legislature in connection with this Agreement, the VCO shall complete and submit Standard Form LL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and submit a copy of such form to the Department.

9.9 Dispute Resolution. The Parties agree to meet and confer in good faith to resolve any problems or disputes that may arise under this Agreement prior to initiating legal proceedings. To the extent the Parties are unable to resolve the dispute through informal, good-faith negotiations, senior executives of both Parties shall meet in person to resolve the dispute. If further negotiations are unsuccessful, the Parties shall participate in non-binding mediation prior to initiating legal action.

9.10 Qualification. The VCO certifies to the best of its knowledge and belief that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from performing the terms of this Agreement by a government entity (federal, state or local);

Have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or been convicted of criminal violation of federal or state antitrust statutes. Are not presently indicted for or otherwise criminally charged by a government entity (federal, state or local) with commission of any of the above-stated offenses.

9.11 Faith-Based Organization. If any VCO Network Provider operates in accordance with specific ethical and religious directives that VCO Network Provider shall not be

required to perform or otherwise participate in any service or procedure that are inconsistent with the medical ethics or precepts as defined in the applicable directives. At the request of the Department, the VCO Network Provider shall provide information on such directives.

9.12 Tribes. If the VCO is a Tribe, the VCO and Department recognize that services performed pursuant to this Agreement by the VCO and all approved subcontractors within reservation boundaries are subject to applicable laws, ordinances and regulations of the Tribe. Nothing in this Agreement should be construed as a waiver of sovereign immunity.

9.13 Conflict of Interest. No official or employee of the Department and no other public official of the State of Idaho or the United States government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall, prior to the termination of this Agreement, voluntarily acquire any personal interest, direct or indirect, in this Agreement or proposed Agreement.

The VCO covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. The VCO further covenants that in the performance of this Agreement, no person who has any such known interests shall be employed.

9.14 Confidentiality. Pursuant to Idaho Code section 74-101, *et seq.*, information or documents received from the VCO may be open to public inspection and copying unless exempt from disclosure. If the parties agree that data or information required to monitor quality and cost performance or any other data or information includes confidential or proprietary information not generally known to the public, the VCO shall clearly designate individual documents as “exempt” on each page of such documents and shall indicate the basis for such exemption. The Department will not accept the marking of an entire document as exempt. In addition, the Department will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. The VCO shall indemnify and defend the Department against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the VCO’s failure to designate individual documents as exempt. The VCO’s failure to designate as exempt any document or portion of a document that is released by the Department shall constitute a complete waiver of any and all claims for damages caused by any such release.

9.15 Headings. The captions and headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

- 9.16 Marketing.** If VCO engages in Marketing, it must not use any marketing and or other activities which result in selective recruitment and enrollment of individuals with more favorable health status.
- 9.17 Indemnification.** VCO shall indemnify, defend and save harmless the Department, its officers, agents and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever, caused by, arising out of, or relating to, the activities of the VCO or its officers, employees, subcontractors, or agents under this Agreement, or arising from the VCO, it's officers, employees, subcontractors, or agents' failure to comply with any applicable state, federal, local law, statute, rule, regulation or act. This duty to indemnify, defend and hold harmless, shall encompass any claims that include or allege negligence of the VCO, its agents, officers or employees, other than claims which arise solely out of negligence on the part of the Department, and this duty shall survive the termination or expiration of this Agreement. Nothing in this provision shall extend VCO's indemnification of the Department beyond the liability of the Department provided in the Idaho Tort Claims Act, Idaho Code 6-901 et seq.
- 9.18 Sovereign Immunity.** Nothing contained herein shall be deemed to constitute a waiver of the Department's sovereign immunity, which immunity is hereby expressly reserved.
- 9.19. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Idaho and the Parties hereto consent to the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to this Agreement.
- 9.20 Notices.** Any notice under this Agreement shall be in writing and be delivered in person, by public or private courier services (including U.S. Postal Service Express Mail), or by certified mail with return receipt requested. All notices shall be addressed to the Parties at the notice addresses below or at such other addresses as the Parties may from time to time direct in writing.

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery; or (b) the date of mailing by certified mail.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives upon the date written below.

DEPARTMENT:

By _____

Signature

Name _____

Print

Title _____

Effective Date _____

Notice Address

Notice Attention

Notice Email

VALUE CARE ORGANIZATION:

By _____

Signature

Name _____

Print

Title _____

Notice Address

Notice Attention

Notice Email
