

## Appendix\_2.3.6\_Alternative and Supplemental Contract Terms\_Att B\_Att B.2

### Alternative and Supplemental Contract Terms and Conditions to the Professional Services Contract – Attachment B and Attachment B.2

Optum agrees with all of the mandatory terms and conditions set forth in the Professional Services Contract attached as Attachment B to the RFP and has so indicated in its response to Attachment J that forms part of its Business Proposal.

Consistent with the language permitting bidders to propose alternative or supplemental terms from those set forth in the non-mandatory provisions within Attachment B and in the applicable Attachments B.1 through B.3, Optum is proposing a combination of the following:

1. Alternative contract terms and conditions to some of the non-mandatory provisions of Attachment B and to certain provisions found within Attachment B.2, Platform as a Service Engagements Terms and Conditions; and
2. Supplemental contract terms and conditions the following additional contract terms;

where both (1) and (2) would be incorporated into the eventual Professional Services Contract with the State. Optum has limited its comments on Attachments B.1 through B.3 to only those applicable to Attachment B.2 as the Teradata platform services in the Azure GovCloud that comprise part of Optum's EDW Solution is offered under a Platform as a Service basis only.

Both of these sets of alternative and supplemental terms are based on the following:

- They permit Optum to offer both the type of solution required by the RFP and the pricing set forth in Optum's Cost Proposal;
- They have been accepted by the State in prior contracts, both with Optum and with other vendors;
- For the supplemental terms, they address contract issues raised by the RFP's business scope that are not otherwise addressed in Attachment B or Attachments B.1-B.3; and
- They are consistent with, and enforceable under, Indiana law.

To the extent the State has concerns with respect to the wording of these alternative and/or supplemental contract terms, Optum would be pleased to negotiate mutually acceptable, different language as long as the underlying issue raised by the need for the alternative or supplemental contract term is addressed.

**Alternative and Supplemental Contract Terms and Conditions to the Professional Services  
Contract, Attachment B**

**1. Section 11, Condition of Payment**

Optum proposes to modify this section to create an objective standard for defining satisfactory performance, the State's prerequisite to being obligated to pay the Contractor. The modification set forth below has the following advantages:

- It avoids any inconsistency between the condition for payment and the detailed performance standards that are defined in the Contract, inclusive of Attachment K, Scope of Work;
- It avoids downstream disputes as to whether performance was "satisfactory"; and
- The modification is consistent with language previously agreed upon by the State.

The change would be to add the sentence in bold immediately after the first sentence:

" All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. **For purposes of this Contract, a service shall be considered to have been performed to the State's reasonable satisfaction if it is performed in accordance with the terms and conditions of this Contract and applicable law.**"

**2. Section 12, Confidentiality, Security and Privacy of Personal Information, Subsection (F)(2)(a) and (b), Improper Disclosure, Security Incident, and Breach Notification**

Optum proposes a minor modification to this Section by changing the requirement to provide an initial notice of a Security Incident from twenty-four (24) hours to one (1) business day. The reasons for this change include:

- Doing so leads to more informed reporting while still complying with applicable laws that permit reporting over a much longer period than a single business day;
- It is also language that the State has accepted in past contracts; and
- It is consistent with the one (1) business day notification requirement under Section 12(N) when there is an unauthorized disclosure of Social Security Data.

This change would result in Subsection F(2)(a) and (b) to read as follows with the only changed wording highlighted in bold:

- 2) If a Security Incident occurs or if Contractor suspects that a Security Incident may have occurred with respect to PII in Contractor's safekeeping or as otherwise being legitimately used by Contractor in Contractor's performance of its services under this Contract:
  - a) Contractor shall notify the State of the Security Incident within **one (1) business day** of when Contractor discovered the Security Incident; such notification shall be made to the FSSA Privacy & Security Office in a manner reasonably prescribed by the FSSA Privacy & Security Officer and shall include as much detail as the Contractor reasonably may be able to acquire within the twenty-four (24) hour period.

- b) For the purposes of such Security Incidents, “discovered” and “discovery” shall mean the first day on which such Security Incident is known to the Contractor or, by exercising reasonable diligence, would have been known to the Contractor. Regardless of whether the Contractor failed to exercise reasonable diligence, improperly delaying the notification of discovery beyond the **one (1) business day** requirement, the Contractor will notify the FSSA Privacy & Security Office within **one (1) business day** of gaining actual knowledge of a Security Incident.”

### 3. Section 24, Indemnification

Optum accepts this mandatory term. The RFP permits bidders to propose additional terms. Optum proposes to add the sentence noted below at the end of the Indemnification section for the following reasons:

- It provides a practical capability for Optum to provide the requested indemnity in a manner that minimizes additional costs that may be incurred without such notice and assistance;
- It is language that the State has accepted in prior contracts; and
- It is consistent with applicable State law.

The language Optum proposes to add would read as follows immediately after the end of Section 24:

“With respect to all third party claims and suits that are to be covered by Contractor’s indemnity described in the foregoing paragraph (the “Contractor Indemnified Claims”), the State shall (a) provide Contractor with prompt written notice and reasonable assistance to Contractor related to such Contractor Indemnified Claims, and (b) sole control and authority for Contractor to defend or settle such Contractor Indemnified Claims.”

### 4. Section 28(b)(5), Insurance

Optum proposes a minor modification to the required insurance that is set forth in Section 28(b)(5) as it relates to the requirement that with respect to the Errors and Omissions policy, the Contractor’s insurer must waive its right of subrogation against insureds for the following reasons:

- Many insurers, including Optum’s do not waiver their rights of subrogation against insureds for Errors and Omissions; and
- The State has accepted this exclusion in prior contracts.

The language that Optum proposes to add at the end of Section 28(b)(5) is highlighted in bold:

“The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana **except with respect to the Contractor’s Errors and Omissions liability insurance.**”

### 5. Section 36(A), Ownership of Documents and Materials

Optum agrees with Section 36(A) as title in Work Product that is developed under and paid for by the State must be owned by the State, both under applicable copyright law as well as a condition for enhanced federal funding. Without affecting that ownership, Optum proposes that the State grant a

non-exclusive license back to Optum for Optum to use such Work Products, without any State Data, for its own business purposes. Doing so:

- Is consistent with CMS' encouragement for re-use;
- By virtue of the non-exclusive license to Optum, it is consistent with the license that the State must grant to CMS under 48. CFR 95.617(b); and
- Is consistent with language that the State has accepted in prior contracts.

For these reasons, Optum proposes to add the following sentence at the end of Section 36(A):

"The State hereby grants to Contractor a perpetual, fully paid up license and right to use, modify, market, distribute, create derivative works, sell and support any work made for hire, exclusive of any State data, in connection with Contractor's business."

## 6. Section 37(E), Payment

Optum agrees with the right that the State should ultimately have the right to a prorate refund for maintenance, software or a service as a subscription that is paid in advance should Optum fail to perform under the Contract. We are proposing that prior to invoking that remedy, Optum first be afforded the opportunity to implement a Corrective Action Plan. If ultimately, Optum continues to fail to provide the contractually required service after providing a Corrective Action Plan, Optum agrees with the right for the State to receive a prorate refund. This limited exception is:

- Consistent with the concept of a CAP that is reflected in the Service Level Agreement section of the RFP;
- Consistent with IC § 4-13-2-20(b)(14) in that this statutory provision does not require an immediate prorate refund but rather refers to the need for "appropriate contractual safeguards" for non-performance; and
- Still ultimately provides the State with a prorate refund.

For these reasons, Optum proposes to add the language noted below in bold to Section 37( E):

"E. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, **the State shall require Contractor to first submit a Corrective Action Plan (CAP) subject to the State's acceptance. If the Contractor subsequently fails to institute the agreed upon mitigation measures in the CAP and subsequently fails to perform for three (3) successive months**, then upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance."

## 7. Section 45, Termination for Convenience

Optum generally agrees with the provisions related to Termination for Convenience in Section 45. The one clarification relates to any pricing for annual subscriptions where the pricing for such annual subscriptions has been identified as being lower based upon payment in full of the annual subscription fee even where the State elects to terminate the portion of the Contract for convenience prior to the end of the annual period covered by such annual fee. For those subscriptions, in exchange for the lower price offered by Optum, the State would not be entitled to a prorated refund should the State elect to terminate the Contract prior to the end of the annual period covered by the annual subscription fee.

In order to gain such benefit, Optum proposes to modify the third and fourth sentences of Section 45 by inserting the words in bold below:

“The Contractor shall be compensated for services properly rendered prior to the effective date of termination and for any services whose annual pricing is based upon the non-cancellability of such service during an annual period, the Contractor shall be compensated for the remainder of that annual period. Subject to the foregoing exception, the State will not be liable for services performed after the effective date of termination.”

## 8. Section 50, State Boilerplate Affirmation Clauses

Depending upon the changes to the State provisions that are eventually agreed upon between Contractor and the State, Optum assumes that the State will list those Sections in Section 50 for which there have been modifications or additions.

## 9. Section 52, Limitation of Liability

Optum proposes to add a limitation of liability provision to the Contract that will have the following attributes:

- The State has accepted limitations of liability having the language below in prior contracts
- Optum is able to offer the State the lower pricing by virtue of these limitations
- The exclusion of consequential damages is mutual in nature and therefore beneficial to the State
- The limitations are enforceable under Indiana law.

Based on the above, Optum proposes to add the following new **Section 52, Limitation of Liability**, to the Contract immediately after the existing Section 51 that reads as follows:

“In no event will either the State or Contractor be liable for any special, incidental, indirect or consequential damage, including, without limitation, lost profits, arising out of the Contract or any of the products or services provided hereunder. Notwithstanding anything to the contrary in this Contract, Contractor’s liability arising out of this Contract, whether based in contract, tort or otherwise, will be equal to the State’s actual damages proximately caused by the acts or omissions of Contractor but in no event more than the amount paid by the State to Contractor. The foregoing limitation of liability will not apply to any personal injury, property damage, death, infringement of intellectual property or breach of confidentiality, provided that, in each instance, Contractor has proximately caused the damage incurred by the State.”

## 10. Section 53, Subscription Based License Terms

There are three (3) different portions of the EDW Contractor's scope of work under Attachment K to the RFP that require the EDW Contractor to procure and make available to the State for the State's use as well as maintain certain technology tool sets, commercial off the shelf software (COTS) or cloud hosted environments that are offered only on a subscription basis. These three (3) portions of Attachment K and the corresponding subscription based offerings that form part of Optum's Technical Proposal are as follows:

- (i) Under Section 2.4.1 of Attachment K to the RFP, the EDW Contractor must provide and price the following technology tool sets or COTS software:
  - 1. Informatica Software defined in the Cost Proposal Template under the Informatica tab;
  - 2. Protegrity Software defined in the Cost Proposal Template; and
  - 3. Teradata Software, including Vantage and Query Grid for the Current Cloud environment in the Azure cloud and further defined in the Cost Proposal Template.
- (ii) Under Section 3.6.3 of Attachment K to the RFP, the EDW Contractor must maintain and operate and permit the State to have access to the Azure GovCloud Dev/DR and Azure GovCloud Production instances in which the Teradata production and Teradata development/disaster recovery systems have been installed, where such access is subject to the State needing to agree to certain Teradata Cloud License Terms.
- (iii) Under Section 3.2.3 of Attachment K to the RFP, the EDW Contractor is required to perform certain data analytic work and generate reports that are most efficiently performed using commercial off the shelf software that is also offered only on a subscription basis. In Optum's Technical Proposal, Optum is proposing the use of:
  - 1. Contractor's Symmetry's Episode Treatment Groups (ETG) Software, Symmetry's EBM Connect Software and Symmetry's Episode Risk Groupers (ERG) Software, including, without limitation, the CPT codes embedded therein, all in object code form (the "Symmetry Software") and Contractor's Management and Administrative Reporting Subsystems (MARS) Software in object code form (the "MARS Software") and
  - 2. Certain Healthcare Effectiveness Data and Information Set (HEDIS®) measures and specifications and survey specifications for the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) (the "Data") from the National Committee for Quality Assurance ("NCQA") .

In so far as neither Attachment B nor Attachment B.2 address subscription based licensing terms (where such terms permit the user to enjoy both a license and associated maintenance for a stated term for which a subscription fee has been paid), Optum proposes to add the following **Section 53, Subscription Based License Terms**:

### 53. Subscription Based License Terms

During the Term of this Contract, the following technology tool sets, COTS software and/or Data and access to the Indiana tenant of Azure GovCloud where the Teradata Software is currently installed shall be subject to the Subscription Based License Terms captured in the applicable Appendix noted below:

<u>Technology Tool Set/COTS Software/Data</u>	<u>Subscription Based License Terms Appendix</u>
Informatica Software	1
Protegrity Software	2
Teradata Vantage and Query Grid Software	3
Azure GovCloud (Teradata Cloud License Terms)	4
Symmetry Software, Inclusive of MARS Software	5
NCQA HEDIS Related Data	6

## Appendix 1

### INFORMATICA LICENSE AND SERVICES AGREEMENT

This Informatica License and Services Agreement (the “Agreement”) sets forth the terms and conditions pursuant to which Optum Government Solutions, Inc. (“Optum”) is able to provide to the State of Indiana, Family and Social Services Administration (“Customer”, “You” or “Your”) the Informatica Software described in Optum’s Technical and Cost Proposals for the EDW scope of work dated July 18, 2024 (the “Optum EDW Proposal”) that are submitted in response to Request for Proposal 24-78424 for Enterprise Decision Support Systems, as amended (the “RFP”). By awarding a contract to Optum in response to such Optum EDW Proposal (the “EDW Contract”), the Customer is deemed to have accepted this Agreement as it relates to such Informatica Software based on rights that Informatica, LLC (“Informatica” or “We”, “Us” or “Ours”) have granted to Optum to convey to Customer.

All headings are for ease of reference and are for convenience only, and do not affect interpretation.

#### 1. SCOPE OF USE

##### 1.1 Definitions:

- a. **Software** means Informatica-branded computer programs that may be installed on equipment owned or operated by Customer or a third party on Your behalf.
- b. **Professional Services** and **Educational Services** mean consulting or training services respectively, provided by Us either remotely via the Internet or in person.
- c. **Support Services** means access that Optum has been able to secure to Our help desk and to updates, upgrades, patches and bug fixes from Us for Your benefit.
- d. **Products** means Software and Cloud Services.

1.2 **Transaction Documents.** You can acquire Products and Support Services identified on Your orders issued under the EDW Contract with Optum (“Order”). Each Order is a separate contractual commitment. We or our Affiliates will also honor any legal Order executed by You. “Affiliate” is any corporation or other business entity which controls, is controlled by or is under common control with a party through the ownership of more than fifty percent (50%) of the outstanding voting stock of the controlled corporation or more than fifty percent (50%) of the equity interests of a non-corporate entity.

1.3 **Software.** When You enter into an Order for Software, We grant You a non-exclusive, non-transferable, non-sublicensable license for the Order Term (as defined in Section 3.4 below) set forth in the Order to use, in object code format, the Software identified in the Order and any updates provided under Support Services, subject to the terms of the Agreement as defined in Section 1.4. The number of copies of Software installed by You, including updates made available under Support Services, must correspond to the quantities licensed by You. Except for a reasonable number of backup copies of the Software, You can’t copy the Software. All titles, trademarks and copyright and restricted notices must be reproduced in any copies.

1.4 **Usage Limitations.** Products shall be used solely for Your internal data processing

and computing needs in accordance with the terms of the ILSA, the applicable Order and the applicable provisions in the Informatica Product Description Schedule <http://www.informatica.com/content/dam/informatica-com/global/amer/us/docs/informatica-product-description-schedule.pdf> or Cloud Description Schedule <http://www.informatica.com/content/dam/informatica-com/global/amer/us/docs/informatica-cloud-description-schedule.pdf> current at the time of licensing (collectively “the Agreement”). You shall not (a) make the Products available to unauthorized third parties, (b) use the Products for outsourcing or service bureau purposes or otherwise processing for the benefit of any third party; (c) rent or lease the Products for third-party training or commercial time-sharing; (d) use the Products for any purpose that is illegal or illicit in any geography where the Products are accessed or used from; (e) distribute, sell, sublicense, subcontract or otherwise transfer copies of or rights to the Products or any portion thereof, or (f) use the Products except as expressly permitted. No third-party software that is provided with the Products may be used independently from the Products. Unless otherwise mutually agreed in writing and except to the extent required to obtain interoperability as specified by law, You agree not to adapt, translate, reverse engineer, decompile or otherwise derive the source code for Products or any of the related features of the Products or to allow third parties to do so. You can’t use the Products for benchmarking or other competitive purposes.

- 1.5 **Service Providers.** Customer may allow its external service provider(s), including Optum (“Service Provider(s)”) to use the Products solely for purposes of providing outsourcing services for Your benefit in accordance with the Agreement, and no duplication of the quantities of Products is permitted. You are fully responsible for the Service Provider’s compliance with the Order and this Agreement in its use of the Products.
- 1.6 **Documentation.** You can print a reasonable number of copies of the softbound version of the documentation provided with the Products (“Documentation”) solely for internal use.
- 1.7 **Proprietary Rights.** We own all proprietary rights, including all patent, copyright, trade secret, trademark and all other proprietary rights, in and to the Products and any corrections, bug fixes, enhancements, updates or other modifications and derivatives, including custom modifications, to the Software and all other deliverables. We reserve all rights not expressly granted to You.
- 1.8 **Customer Data.** You own and control all data you process with the Products (“Customer Data”). You and have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property rights in all Customer Data. You will ensure that provision of Customer Data to Us for processing is in compliance with all applicable laws, and you will backup Customer Data. You will comply with all applicable laws, including laws applicable to “protected health information,” as defined under the Health Insurance Portability and Accountability Act or Personal Data as defined under Regulation (EU) 2016/679 (General Data Protection Regulation). References to “You” in this Section include your Service Providers, such as Optum.

**1.9 Usage Information.** Subject to Customer’s opt-out rights, Software will automatically transmit to Informatica information about the computing and network environment in which the Software is deployed including IP address and the data usage and system statistics of the deployment. Cloud Services will automatically collect information about the operation, organization, and use of the Cloud Services, including Metadata as described in the Security Addendum(available at <https://www.informatica.com/content/dam/informatica-com/global/amer/us/docs/legal/online-cloud-and-support-security-addendum.pdf>), but not Customer Data. This information will be used to facilitate Support Services, deployment and usage analysis, usage suggestions, and to improve the customer experience and the Products. Customer may disable Software collection of information by following instructions available upon installation and in the Documentation.

**1.10 Privacy and Security.** We follow the privacy policy available at <https://www.informatica.com/privacy-policy.html>. We will prohibit such subcontractors from using Customer Data for any purpose other than to perform services on Our behalf. We will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data as described in the Security Addendum. Those safeguards will include measures for preventing access, use, modification and disclosure of Customer Data except (a) to prevent or address service or technical problems, (b) as compelled by law or (c) as You may expressly permit in writing. Where Your use of any Support Services includes the processing of personal data by Informatica, the terms of the data processing agreement at <https://www.informatica.com/content/dam/informatica-com/global/amer/us/docs/legal/online-data-processing-agreement.pdf> shall apply to such processing, and are hereby incorporated by reference. We can’t control the jurisdiction where the data originates; and neither We nor our Products is a “data controller” or similar under applicable law with respect to Customer Data. As between You and Us, You are the sole “data controller.”

## **2.SUPPORT SERVICES**

If Optum receives payment of the applicable Informatica Support or subscription fee and in turn, if We receive payment from Optum (“Support Fees”), We will provide the Support Services for the Products as set forth in the Order and the Informatica Global Customer Support Guide valid at the time of signature of the Order and available at <https://network.informatica.com/docs/DOC-3015>. Details of Support Guide may be modified from time to time, but no modification will materially degrade the Support Services during the Term.

## **3. DELIVERY**

The Products, Documentation, and all updates furnished under Support Services shall be delivered electronically.

#### 4. CONFIDENTIALITY

- 4.1 For purposes of this Agreement, the party disclosing Confidential Information is referred to as the “Disclosing Party” and the party receiving Confidential Information is referred to as the “Receiving Party”. “Confidential Information” means the Products (including both object and source code versions of Software), the accompanying Documentation and all related technical and financial information (including the terms of this Agreement) and any information, technical data or know-how, including, without limitation, that which relates to computer software programs or Documentation, specifications, source code, object code, research, inventions, processes, designs, drawings, engineering, products, services, customers, company structure/ownership, markets and finances of the Disclosing Party which (i) has been marked as confidential; (ii) is identified as confidential at the time of disclosure either orally or in writing; or (iii) due to its character and nature, a reasonable person under like circumstances would understand to be confidential. All Our software, computer code, product development and marketing plans, and non-public financial and human resources data, materials and information are deemed to be Confidential Information.
- 4.2 Confidential Information shall not include information which (a) Receiving Party can demonstrate was rightfully in its possession, without confidentiality obligations, before receipt; (b) is or subsequently becomes publicly available without Receiving Party’s breach of any obligation owed the Disclosing Party; (c) is disclosed to Receiving Party, without confidentiality obligations, by a third party who has the right to disclose such information; or (d) Receiving Party can demonstrate was independently developed without reliance on any Confidential Information of the Disclosing Party, provided that if only part of any Confidential Information falls within one or more of the exceptions set out in this Section 4.2, the remaining part of the Confidential Information shall continue to be subject to the restrictions set forth in this Agreement.
- 4.3 Both parties agree that: (a) Receiving Party may use Confidential Information solely for the purposes of this Agreement; (b) Receiving Party shall instruct and require all of its employees, agents, and contractors who have access to the Confidential Information of the Disclosing Party to maintain the confidentiality of the Confidential Information; (c) Receiving Party shall exercise at least the same degree of care, but not less than reasonable care, to safeguard the confidentiality of the Confidential Information as Receiving Party would exercise to safeguard the confidentiality of Receiving Party’s own confidential property; (d) Receiving Party shall not disclose the Confidential Information, or any part or parts thereof, except on a “need to know” basis to those of its employees, agents, and contractors who are bound to confidentiality obligations at least as protective of the Confidential Information as those set forth in this Agreement; and (e) Receiving Party may disclose the Disclosing Party’s Confidential Information to the extent required by a valid order by a court or other governmental body or by applicable law, provided, however, that Receiving Party will use all reasonable efforts to notify Disclosing Party of the obligation to make such disclosure in advance of the disclosure so that Disclosing Party will have a reasonable opportunity to object to such disclosure and further provided the Receiving Party shall otherwise continue to treat such Confidential Information in accordance with this Agreement. The Receiving Party’s obligations shall also be applicable to

Confidential Information disclosed by the Disclosing Party to the Receiving Party prior to the execution of this Agreement. The Receiving Party will return any tangible materials containing Confidential Information, and any copies or reproductions thereof, to the Disclosing Party within ten (10) days after the Disclosing Party's written request. Receiving Party agrees to undertake whatever action is reasonably necessary to remedy any breach of Receiving Party's confidentiality obligations or any other unauthorized disclosure or use of the Confidential Information by Receiving Party, its employees, its agents, or contractors. The Receiving Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that the Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction without the necessity of posting any bond.

## **5. PROFESSIONAL SERVICES AND EDUCATIONAL SERVICES – Not Applicable**

## **6. WARRANTY**

- 6.1 **Product Warranty:** We warrant that the Software will operate in conformity with the then current standard Documentation (except for minor defects or errors not material to the core functionality of the Software under normal use and circumstances) for a period of ninety (90) days from the date of initial delivery of the Software. If the Product does not perform in accordance with the foregoing warranty during the Warranty Period, You must tell Us so in writing during the applicable warranty period and, assuming We can verify such nonconformity, We will use reasonable efforts to correct any deficiencies in the Product or replace it so that it will perform in accordance with the warranty. Your sole and exclusive remedy, and Our sole obligation in the event of nonconformity of the Product with the foregoing warranty will be the correction of the condition making it nonconforming. Your obligation is to provide all information reasonably requested to enable Us to cure the nonconformity. The above warranty specifically excludes defects resulting from accident, abuse, unauthorized repair, modifications, misapplication, or use of the Product that is otherwise materially inconsistent with the Documentation.
- 6.2 EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE PRODUCTS AND SERVICES PROVIDED UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION ALL INFORMATICA CONTENT, ARE PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, RELIABILITY, AVAILABILITY, QUALITY, SUITABILITY, ACCURACY, COMPLETENESS, OR INTEROPERABILITY ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY INFORMATICA AND ITS LICENSORS.

## **7. INTELLECTUAL PROPERTY INDEMNIFICATION**

- 7.1 If a third party sues You claiming that the Product infringes the third party's patent, copyright, or trade secret, then subject to the provisions below we will indemnify You

and defend and hold You harmless from any fees, fines, costs, liens, judgments or expenses actually awarded or incurred arising from that third party claim. Our obligation to indemnify You is contingent on the following: (a) We must be given prompt written notice of and all available information about any such claim; (b) We have the right to control and direct the defense and any settlement of such claim provided however that no such settlement requires admission of wrongdoing or payment of damages on the part of You (and if You wish you can participate but not control the defense of the claim and have Your own Counsel); and (c) you reasonably cooperate with Informatica in such defense.

- 7.2 We won't indemnify You and we have no responsibility for any third party action that arises in any way out of any of the following: (a) any modification of the Products (b) Your failure to deploy updates to the Products as supplied by Us to customers current under Support Services; (c) the combination, operation, or use of the Products with non- Informatica programs, data or documentation, if such action would have been avoided by the use of the Products without such combination, operation or use; (d) any use of the Products that is not expressly permitted under this Agreement; (e) Your continued use of infringing Products after termination or after We supply modified or replacement non-infringing Products as contemplated under 7.3(a) below, or (f) materials developed by Us in accordance with Your instructions.
- 7.3 If We think that the Products are likely to or do become the subject of a claim of infringement, then We may at Our sole option and expense do one of the following: (a) modify the Products to be non- infringing while preserving substantially equivalent functionality; (b) obtain for You at Our expense a right to continue using the Products; or (c) terminate this Agreement and the rights granted hereunder, accept return of the Products and refund a pro rata portion of the applicable fee paid for that portion of the Products which is the subject of the claim to Optum who in turn will do the same for You. For perpetual licensed Software the refund will be based on a straight-line amortization over a five (5) year term beginning on the date of initial delivery of the Products. For Cloud Services and subscription Software, the refund will be the prepaid and unearned fees covering the remainder of the Order Term).
- 7.4 THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATION OF INFORMATICA, AND YOUR SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THE PRODUCT, OR ANY PART THEREOF, OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT.

## **8.TERM, TERMINATION; EFFECTS OF TERMINATION**

- 8.1 Product Term. Unless otherwise stated in the Order, the Order Term for each Software subscription is: the time period specified in the applicable Order, commencing on the date of delivery and any renewal terms.
- 8.2 Either party has the right to terminate this Agreement and any and/or all rights granted under this Agreement upon written notice to the other party if the other party: (a) is in default of any obligation hereunder which default is incapable of being cured, or which, being capable of being cured, has not been cured within thirty (30) days

after receipt of written notice of such default; or (b) becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or has been liquidated, voluntarily or otherwise.

- 8.3 Immediately upon termination, all rights hereunder and rights to use shall terminate, and You must stop using the Products. Within five (5) days after termination You or Your Service Provider, Optum, will de-install the Software and all copies and (a) return the Software and all copies or (b) destroy the Software and all copies, and certify in writing that they have been destroyed.
- 8.4 If you terminate the Agreement, You still must pay all fees which remain payable under an Order.
- 8.5 Sections 3, 4, 6.2, 7.2, 7.3, 7.4 and 8 through 10 shall survive termination of this Agreement.

## 9. LIMITATION OF LIABILITY

- 9.1 EXCEPT FOR LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED AS A MATTER OF LAW, BREACH OF, OR INDEMNITY FOR INFRINGEMENT OF, INTELLECTUAL PROPERTY RIGHTS (A) IN NO EVENT WILL EITHER PARTY OR INFORMATICA'S LICENSORS OR RESELLERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) THE LIABILITY OF US AND OUR LICENSORS OR RESELLERS TO YOU ARISING FROM THIS AGREEMENT OR THE USE OF THE PRODUCTS, OR SERVICES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, INCLUDING CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER TORT, SHALL NOT EXCEED TWELVE (12) MONTHS FEES PAID FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE APPLICABLE LIABILITY.
- 9.2 EACH PARTY ACKNOWLEDGES THAT THE FEES, EXCLUSIONS, DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE NEGOTIATED AND AGREED UPON ESSENTIAL COMPONENTS OF THIS AGREEMENT AND NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT WITHOUT SUCH WARRANTY DISCLAIMERS AND LIMITATIONS ON ITS LIABILITY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THESE DISCLAIMERS AND LIMITATIONS ARE NOT UNCONSCIONABLE AND THESE DISCLAIMERS AND LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 10. GENERAL

- 10.1. Unless you notify us within ten days of acquiring the Product, We can include Your name in a public list of current customers who use Our products, provided that (a) Your name is not highlighted and does not stand out in comparison to the names of other customers; and (b) We don't make any representation or attribute any endorsements to You without prior written consent.
- 10.2. We will maintain insurance during the term of this Agreement in an amount

satisfying applicable laws. Upon request, We will provide You with proof of all applicable insurance coverages.

- 10.3. A party is not liable for non-performance of obligations under this Agreement, if the non-performance is caused by events or conditions beyond that party's control, the party gives prompt notice and makes all reasonable efforts to perform. In no event will this provision affect a party's obligation to make payments under this Agreement.
- 10.4. All terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. We can assign, novate or otherwise transfer Our rights and obligations under this Agreement to an Affiliate or incorporate an Affiliate as a party to this Agreement or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Our assets or voting securities or for bona fide restructuring purposes. You can assign this Agreement with Our prior knowledge and consent.
- 10.5. This Agreement shall be governed by Indiana law. In the event that either party brings an action, proceeding or arbitration to enforce the provisions of this Agreement, the prevailing party shall be entitled to collect all reasonable attorneys' fees and expenses incurred in connection therewith. The Parties acknowledge and agree that the Uniform Commercial Code is not applicable to transactions under this Agreement.
- 10.6. The waiver or failure of a party to exercise in any respect any rights provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.
- 10.7. If Customer is a branch or agency of the U.S. Government, use, duplication or disclosure of the Products is subject to the restrictions set forth in this Agreement except that this Agreement shall be governed by federal law. Any additional rights or changes desired by the U.S. Government shall be negotiated with Informatica consistent with Section 10.10.
- 10.8. Each party acknowledges its obligation to comply with all applicable laws, rules, statutes and regulations, including specifically but not limited to export laws including Bureau of Export Administration restrictions and anti-corruption legislation. Each party warrants that, to the best of its knowledge no money or other consideration of any kind paid or payable under this Agreement or by separate agreement is, has been or will be used for unlawful purposes, including purposes violating anti-corruption laws, including making or causing to be made payments to any employee of either party or anyone acting on their behalf to assist in obtaining or retaining business with, or directing business to, any person, or securing any improper advantage.
- 10.9. We are an independent contractor and Our personnel are not and shall not be

considered employees or agents of Your company for any purpose whatsoever.

- 10.10. This Agreement, the applicable Order and the Product and Cloud Description schedules and any exhibits entered into by the parties constitute the entire agreement between the parties with respect to the Products and Services, which supersedes and replaces any prior or contemporaneous understandings, or written and all other communications between the parties, including provisions in a Customer Purchase Order and which may not be amended except by a writing signed by both parties. You acknowledge that You have not relied upon the availability of any future version of the Products or any product as part of agreeing to the terms in this Agreement.

Appendix 2  
Protegrity Subscription License Terms

This subscription software end-user license and services agreement (“Agreement”) is made effective as of the January 1, 2026 by and between Protegrity USA, Inc., a Delaware corporation (“Licensor”), with its principal office at 333 Ludlow Street, South Tower, 8th Floor, Stamford CT 09602, USA and the Indiana Family and Social Services Administration (“Licensee”) with offices at 100 N. Senate Ave., Rm. N200, Indianapolis, IN 46204.

**ANY AND ALL USE OF PROTEGRITY’S SOFTWARE AND SERVICE PROVIDED UNDER THIS AGREEMENT ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS WHICH ARE BINDING UPON LICENSEE UPON LICENSEE ENTERING INTO A WRITTEN AGREEMENT WITH OPTUM GOVERNMENT SOLUTIONS, INC. (“Contractor”) CONTAINING THIS AGREEMENT. THIS AGREEMENT IS ENFORCEABLE BY LICENSOR AS A THIRD PARTY BENEFICIARY AS IF LICENSOR WAS A SIGNATORY HERETO:**

**1. Grant of Subscription License**

Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable Subscription License as identified in the respective Exhibit A to the Software stated in the respective Exhibit A, for use in Licensee’s internal operations during the Subscription Term in accordance with the license metrics and usage metrics set forth in the respective Exhibit A and for deployment within the designated Licensed Site(s) set forth in the respective Exhibit A.

Any and all use of the Software is subject to the terms and conditions of this Agreement, any exhibits and appendices hereto, and Licensee’s compliance thereto.

**2. Purchase of Additional Subscription Licenses – Intentionally Omitted**

**3. Restrictions**

Licensee agrees not to make and shall not cause to make any unauthorized copies, modify reverse-engineer, decompile or disassemble any Software or Deliverables or create or cause to create any derivative works thereof. Licensee shall not remove or obscure and shall retain in the Software and any copy thereof, any copyright, trademark, patent or other proprietary rights notice that appears thereon. Licensee is not authorized to: use any Software or Deliverables as an application service provider, service bureau or otherwise make any Software available for use by third parties, except for service providers used by Licensee solely in connection with outsourced operations for the sole benefit of Licensee in compliance with this Agreement, or embed or integrate the Software or any of its features and functionalities in Licensee’s products and/or applications for sale or licensing to third parties, or to be operated anywhere else than in Licensee’s internal systems. For the avoidance of doubt, the Software or Deliverables shall not be made available for resale, sublicensing or distribution or service offerings which provide the Software (including its tokens, encryption keys or de-identified data etc.) or Deliverables on a standalone basis to third parties.

Each Subscription License is restricted to Licensee’s operations (“Licensee’s Operations”) (i) as it exists on the effective date of the respective Exhibit A and (ii) changes to exist as a result of unlimited organic growth of Licensee’s Operations.

**4. Software Dependencies**

Licensee understands and acknowledges that use of third party developed software, hardware, virtual hardware, or other devices, including but not limited to servers, operating systems and database software, may be required for use of the Software, Deliverables or services provided by Licensor. Licensee further acknowledges that Licensor does not provide such third party products and that Licensor is not responsible for acquisition, deployment, installation, and/or configuration and/or maintenance and/or support for such third party products.

## **5. Security and Reports**

Licensee agrees to take all reasonable steps to prevent unauthorized access to and use of any Software, services and Deliverables. Licensee agrees to allow Licensor, through a third party, to audit Licensee's compliance with these license terms, during normal business hours no more than once per year and without unreasonable disturbance to Licensee's operations. Additionally, during the Subscription Term, Licensee agrees that upon Licensor's request, Licensee shall produce report(s) which include the license metrics and usage metrics of the Software deployed by Licensee and shall confirm Licensee's compliance with the terms of this Agreement and any respective Exhibits.

## **6. Delivery of Software**

Software will be delivered solely by means of making it available to Licensee via electronic provisioning.

## **7. Ownership of Intellectual Property**

Licensor and its licensor, Protegrity Corporation, retain full ownership of all Software, services and its Deliverables and all intellectual property therein and provided in connection with this Agreement. This Agreement does not provide Licensee any rights or licenses to Licensor's and its licensor's intellectual property beyond the use of the Software, services and Deliverables "As is" and in accordance with this Agreement.

## **8. Professional Services – Intentionally Omitted**

## **9. Maintenance and Support Service**

Maintenance and Support is included in the annual license fees for the Subscription License. Maintenance and Support is subject to Licensor's standard terms and conditions for such service prevailing at the beginning of each respective annual period included in the Subscription Term. Licensor's standard Maintenance and Support terms as these prevail as of the Effective Date are attached hereto as Exhibit B.

## **10. Fees - Intentionally Deleted**

## **11. Taxes – Intentionally Deleted**

## **12. Limited Warranty**

### **12.1 Software Warranty**

For each License, for a period of three (3) months from the initial start date of the respective Subscription License, Licensor warrants that the Software will function substantially in accordance with the Documentation. In the case of a reproducible verified breach of the warranty, Licensor shall repair or replace the defective module of the Software ("Software Warranty").

### **12.2 General Warranty**

TO THE EXTENT PERMITTED BY LAW, LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE SOFTWARE, SERVICES AND DELIVERABLES ARE LICENSED AND/OR PROVIDED "AS IS", WITHOUT ANY WARRANTIES OTHER THAN THE LIMITED WARRANTIES EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.

### **13. Indemnity**

Subject to Licensee having a valid License in effect for the respective Software, Licensor will defend and indemnify Licensee for legal claims brought by a third party against Licensee alleging that the Software, any part thereof, infringes any patents, copyright, trademark or trade secret of a third party in effect in the country where the Licensed Site is located. Licensee agrees to reasonably cooperate with Licensor in the defense or settlement of such claims and to allow Licensor to assume sole control over all actions needed for defending Licensee against such claims. Licensee shall have the right to participate in such claim at its sole cost and expense. The foregoing indemnity is conditioned upon Licensee notifying Licensor promptly in writing of such claim, provided, however, that the failure of Licensee to give Licensor such written notice will not relieve Licensor of its obligations hereunder except to the extent such failure materially prejudices (or results in material prejudice to) Licensor's defense of such claim.

If the Software is held by a court of competent jurisdiction to constitute infringement and its use is enjoined, Licensor shall at its sole discretion either promptly procure the right for Licensee to continue using the Software or promptly replace or modify the infringing Software so that it becomes non-infringing.

Licensor's liability is limited to the extent that there is (i) a modification of the Software by anyone other than Licensor or without Licensor's prior written consent where, but for such modification, there would be no infringement; (ii) a combination of the Software with any third party software or hardware where such combination is the cause of such infringement and such combination is not pursuant to Licensor's guidance; or (iii) use of a version of Software other than the then current version if infringement would have been avoided with the use of the then current version.

### **14. LIMITATION OF LIABILITIES**

LICENSOR (AND ITS LICENSOR) SHALL NOT BE LIABLE TO LICENSEE IN CONNECTION WITH THIS AGREEMENT FOR (A) LOSS OF ACTUAL OR ANTICIPATED PROFIT, (B) LOSSES CAUSED BY BUSINESS INTERRUPTION, (C) LOSS OF GOODWILL OR REPUTATION, (D) LOSS OF OR CORRUPTION OF DATA, OR (E) ANY INDIRECT, PUNITIVE, EXEMPLARY, MULTIPLE, SPECIAL, OR CONSEQUENTIAL COST, EXPENSE, LOSS OR DAMAGE, EVEN IF SUCH COST, EXPENSE, LOSS OR DAMAGE WAS REASONABLY FORESEEABLE OR MIGHT REASONABLY HAVE BEEN CONTEMPLATED BY THE PARTIES AND WHETHER ARISING FROM BREACH OF CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE.

THE MAXIMUM LIABILITY OF LICENSOR (AND ITS LICENSOR) UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL IN AGGREGATE BE LIMITED TO THE LOWER OF (A) THE AMOUNT OF FEES FOR THE RESPECTIVE EXHIBIT A OR SOW OR (B) ONE MILLION U.S. DOLLARS.

NOTWITHSTANDING THE ABOVE, LICENSOR SHALL NOT BE LIABLE TO LICENSEE TO THE EXTENT THAT A CLAIM ARISES FROM LICENSEE'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

## **15. Confidentiality**

The parties hereby acknowledge and agree that each party may be provided with or given access to the other party's Confidential Information. The Recipient shall employ the same degree of care in preventing the disclosure of the Confidential Information to a third party (or parties) as it uses with regard to its own Confidential Information of similar importance, provided that in no event shall the Recipient employ less than a reasonable degree of care. The Recipient shall disclose Confidential Information of the other party only to employees and consultants who have a need to know the Confidential Information for purposes of performing or exercising the rights granted under this Agreement and shall use Confidential Information of the other party only for such purposes, provided however, that in each case, the Recipient shall ensure that every person to whom such disclosure is made is bound by obligations of confidentiality that are materially no less restrictive than those set forth in this clause and is liable for any unauthorized use or disclosure. Confidential Information shall not include, and neither party shall have any obligation of confidentiality with respect to information to the extent that it (a) is in, or comes into the public domain (except as a result of a breach of this provision); (b) is received without obligation of confidentiality by the Recipient from a third party not under an obligation of confidentiality with respect thereto; or (c) is independently developed by the Recipient without access to the Confidential Information of the Discloser. Recipient may, if ordered to do so by a regulatory authority with jurisdiction over it or if it is required to be disclosed by the Recipient under operation of law, court order, or other valid legal process, disclose the Confidential Information of the Discloser to such regulatory authority or other recipient, provided sufficient written notice is given to the Discloser prior to such disclosure to enable Discloser to seek an order limiting or precluding such disclosure.

Promptly upon termination of this Agreement, or at any time upon Discloser's request, Recipient shall promptly, at Discloser's option, either return or destroy all or any part of the Confidential Information, and all copies thereof and other materials containing such Confidential Information, and Recipient shall, upon Discloser's written request, certify in writing its compliance with the foregoing. Notwithstanding the foregoing, Recipient may keep a copy of Discloser's Confidential Information to comply with applicable law, rules and regulatory purposes, and/or for archival purposes, so long as such retained Confidential Information remains subject to the obligations of confidentiality set forth herein for as long as such Confidential Information is retained.

The parties acknowledge that in the event of a breach of this section, damages may not be an adequate remedy and either party shall be entitled to seek injunctive relief to restrain any such breach, threatened or actual, in addition to any other rights and remedies available to such party under this Agreement or at law or in equity.

## **16. Assignments**

The Licenses, Deliverables, and services and this Agreement are not assignable without the prior written approval of Licensor. Licensor may assign this Agreement and its respective Exhibits and/or SOWs to an affiliate of Licensor, or in the event of a merger of Licensor, acquisition of the majority of Licensor's voting stock, or sale of substantially all of Licensor's assets without Licensee's written consent.

## **17. Amendments**

All changes to these terms and conditions of this Agreement shall be made in written amendments signed by both parties.

## **18. Entire Agreement**

This Agreement, including its exhibits, comprise the entire agreement between the parties on the subject matter. No additional terms in a separate order form or any other documents shall have any effect, unless set forth in a written agreement executed by the parties.

## **19. Severability**

If any provision of this Agreement is found to be illegal or unenforceable, such portion will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remainder of this Agreement will remain in full force and effect.

## **20. Publicity**

Neither party will make any press release or other public announcement regarding this Agreement without the other party's express prior written consent, except as required under applicable law or by any governmental agency and reference, in which case the party required to make the press release or public disclosure shall use commercially reasonable efforts to obtain the approval of the other party as to the form, nature and extent of the press release or public announcement prior to issuing the press release or making the public announcement; however, Licensor may use Licensee's name and logo in its sales presentations and marketing vehicles and activities. Upon execution of this Agreement, the parties hereby agree to work together to publish a written case study, the terms of which shall be mutually agreed by the parties.

## **21. Governing Law**

Unless expressly agreed in a document signed by authorized representatives of each party to this Agreement, the Licenses, services and Deliverables shall be governed by the laws of the state of Indiana and Licensee consents to the exclusive jurisdiction and venue in either the state or United States federal courts in the state of Indiana.

## **22. Export Laws & Compliance with Laws**

The Software and Deliverables granted to Licensee are subject to the export laws and regulations of the United States and all import regulations of such other countries where the authorized Licensed Sites are located. Licensee shall comply with all applicable export laws and regulations as well as import obligations laws and duties in connection with its use of the Software and/or Deliverables. Licensee further represents and warrants that it is not and will not be owned or controlled by any person or entity identified on the U.S. Department of Commerce Bureau of Industry ("BIS") Entity List, BIS Denied Parties List, or the Specially Designated Nationals List administered by the U.S. Department of Treasury Office of Foreign Assets Control, and Licensee warrants that the Software and Deliverables will be not be used in any end-use prohibited under the Export Administration Regulations, including without limitation, in the design or manufacture of chemical, biological, nuclear weapons (weapons of mass destruction) or missile systems. Licensee further agrees to comply with all such applicable laws and regulations regarding the Software, services and Deliverables.

Both parties agree it shall, and shall be responsible for ensuring that its affiliates, directors, officers, employees, agents, or representatives, including without limitation independent attorney's financial advisers, analysts and independent accountants ("Representatives") and subcontractors shall, perform all of their obligations under this Agreement in compliance with all labor and employment laws applicable to that party in the jurisdictions in which it or its Representatives, or subcontractors conduct business including without limitation those that address child labor, forced labor, slavery, human trafficking, equal pay and nondiscrimination in the workforce. Both parties shall not engage in or encourage others to engage in human trafficking or the use of child labor, forced labor or slavery. If a party becomes aware of

a breach of this obligation, it shall promptly notify the other party in writing. Violation of this section will be considered a material breach of the Agreement resulting in immediate termination. Both parties represent and warrant that at the date of this Agreement and during the pendency of the Agreement that neither party, its Representatives, or subcontractors have (1) been convicted of any offence involving slavery or human trafficking; and (2) to the best of its knowledge, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

## **23. Termination**

### **23.1 End of Term**

Licensee's right and license to use the Software and Deliverables licensed under a respective Exhibit A shall end upon expiration of the Subscription Term for the respective Exhibit A. Upon such expiration Licensee shall discontinue use of any and all respective Software except for decryption and/or detokenizing any data encrypted and/or tokenized during the Subscription Term.

### **23.2 Termination for Material Breach**

Each party shall have the right to terminate this Agreement, SOW or an Exhibit A with immediate effect on giving written notice to the other party if the other party breaches any material provision of the terms and conditions of this Agreement, and that material breach is either not capable of being remedied, or the party fails to remedy within thirty (30) days after receiving written notice of such breach.

- (a) If Licensor terminates this Agreement, a respective Exhibit A, and/or a SOW as a result of a material breach by Licensee, Licensee shall upon such termination discontinue all use of the respective Software, and/or the Deliverables immediately, and permanently remove all copies from its systems and destroy all copies of the respective Software and/or Deliverables.
- (b) Should the material breach be due to Licensor, subject to Licensee's compliance with the terms and conditions of this Agreement, Licensee shall (1) be permitted to continue to use the Software and Deliverables until the end of the Subscription Term subject to Licensee's continued payment of the agreed license fees and its compliance with the terms and conditions of this Agreement if material breach is related to the License; or (2) continue to allow Licensor to perform the remaining services set forth in a respective SOW if the material breach is related to the SOW.

## **24. Conflict**

If there is a conflict between this Agreement and any Exhibit A and/or SOW, the terms of the respective Exhibit A and/or SOW shall govern.

## **25. Survival**

Those clauses intended to survive shall survive termination of this Agreement.

## **26. Non-Solicitation**

During the term of this Agreement and for a one (1) year period thereafter, Licensee will not directly or indirectly solicit for employment or hire as an independent contractor any employee or independent contractor of Licensor, or any former employee or independent contractor of Licensor within a one (1) year period following termination of employment or status as an independent contractor. The foregoing restrictions shall not apply to general solicitations by means of non-targeted searches (i.e. the advertisement of employment opportunities on internet sites).

## 27. Definitions

**“Confidential Information”** means information which is disclosed verbally, in writing or in other tangible form, that is proprietary and confidential to the party including, without limitation, information relating to a party’s software, documentation, technology, management, business operations and plans, organizational structure, policies, procedures, business relationships and clients.

**“Deliverable”** means any work product produced and delivered under the Professional Services.

**“Discloser”** means the party disclosing the Confidential Information.

**“Documentation”** means the configuration, installation, technical specification and user manuals made available to Licensee by Licensor.

**“License” or “Subscription License”** means a license to use the Software for the designated subscription identified and further supplemented in the respective Exhibit A.

**“Licensed Site”** means the site(s) where Licensee may install the Software, which is designated in the respective Exhibit A.

**“Maintenance and Support”** means the maintenance and support services provided by Licensor to Licensee to maintain and support the Software.

**“Professional Services”** means Licensor’s consulting and training services provided to Licensee.

**“Recipient”** means the party receiving the Confidential Information.

**“Software”** means Licensor’s software products for which Licensee has a valid license and is set forth in a respective Exhibit A, which consist of the executables, objects, configuration files, libraries, scripts and byte codes in such form as made available for downloading or electronically provisioned to Licensee by Licensor.

**“Software Warranty”** has the meaning set forth in Section 14.

**“Statement of Work” or “SOW”** means the terms and conditions relating to the respective Professional Services engagement.

**“Subscription Term”** means the term during which Licensee may use the Software and/or Deliverables which is set forth in the respective Exhibit A.

## Exhibit A

### LICENSED PRODUCTS AND SERVICES

This Exhibit A is entered into as of the Effective Date by and between the Indiana Family and Social Services Administration (“Licensee”) and Protegrity USA, Inc. (“Licensor”), and is made pursuant to the Subscription Software End User License and Services Agreement entered into by these parties on the Effective Date (hereinafter, the “Agreement”).

The terms and conditions of the Agreement are incorporated herein as if fully set forth below.

Except as set forth in this Exhibit A, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Exhibit A and the Agreement the terms of this Exhibit A will prevail. Any such modification to the Agreement set forth in this Exhibit A shall apply solely to this Exhibit A.

The terms of this Exhibit A are as follows:

#### **A. Software License**

Licensor hereby grants to Licensee a Subscription License for a term that continues through February 28, 2031 (“Subscription Term”), beginning on the Effective Date, to deploy, install and use the below named software (collectively the “Software”) within Licensee’s internal operations at the Licensed Site(s) set forth below.

<b>Product</b>	<b>License Metric</b>	<b>License Quantity</b>
Data Warehouse Protector: Teradata	Node	7
Protegrity Enterprise Security Administrator	Server	1

#### **B. Licensed Sites**

<b>Site Description</b>	<b>Country</b>
Licensee’s Data Centers	U.S.

Licensee shall have the right to transfer, add and/or remove locations, which are Licensee data centers, in its discretion at any one or more times, provided that any additional locations of the Software is within the U.S.

For clarity, Licensee’s data centers include Licensee’s on-premise data centers and Microsoft Azure GovCloud hosted environments, all of which are for use for the sole benefit of Licensee. Such cloud hosted environments include those environments for which the Subscription Software is made commercially available for distribution on such environments and such Software is supported by Licensor.

#### **C. Maintenance and Support**

Maintenance and Support is included in the annual Subscription License fee.

Maintenance and Support Plan	Period	Total Price
(24x7)	Subscription Term	Included

**D. Fees**

D.1 Total Fees - See Cost Schedule

D.2 Payment Terms – See payment terms in the Contract

**E. Reports**

Licensee shall provide, and Licensor will review annual reports during the Subscription Term to identify the deployed Software, including the product, version, operating system, quantity of Subscription Software products, Licensed Sites where the Software is installed, and Licensee’s compliance with the terms of this Exhibit A and the Agreement.

**F. Registration/Billing Specifications – Not Applicable**

**G. Email Notification Recipients**

They will receive an email when the Subscription Software is loaded on a protected site and ready for download

<u>Name:</u>	<u>Company:</u>	<u>Email Address:</u>
Eric Gilbert	Optum Government Solutions, Inc., acting on behalf of the Indiana Family and Social Services Administration	Eric.gilbert@optum.com

## Appendix 3

### Teradata Vantage and Query Grid Software Subscription Terms

#### 1. License of Software

Optum agrees to license on a Subscription-Based License basis the Teradata Vantage and Teradata Query Grid Software described in Optum's Technical and Cost Proposals for the EDW scope of work dated July 18, 2024 (the "EDW Contract") that are submitted in response to Request for Proposal 24-78424 for Enterprise Decision Support Systems, as amended (the "RFP") (the "Teradata Software") commencing January 1, 2026 and continuing until Contract expiration or termination.

- 1.1. Optum grants the State a non-exclusive, non-transferable, worldwide license for the period of time stated above ("License Term") to use Teradata Software in object code form and to permit the State to use the Teradata Software but solely in connection with the Contract services offering from Optum ("Subscription-Based License").
- 1.2. At the end of the License Term, the State will promptly destroy the Teradata Software and all copies thereof, and if requested by Optum, the State will certify such destruction in writing, or the State will have the option to renew or purchase a subsequent SubscriptionBased License for the terminating Teradata Software under a separate agreement.
- 1.3. Subscription-Based Licenses in this Order include (a) Teradata's Premier and Essential Services' offering to meet the requirements of remedial maintenance services, including defect resolution, as outlined in the RFP and (b) Teradata Software Upgrade License. "Teradata Software Upgrade License" means an entitlement to receive copies of new updates and/or upgrades for specified Teradata Software during a paid coverage period corresponding to the term during which FSSA has paid Optum the applicable subscription fee during the License Term. For Teradata Software covered by a Software Upgrade License, the State is permitted to receive, at no additional charge, any major or minor releases that Teradata makes generally commercially available for such Teradata Software, if any, provided that the State has paid all applicable subscription fees due at the time such new update or upgrade becomes generally commercially available.
- 1.4. Subscription-Based License(s) will conform to Teradata's standard software warranties during the License Term, where such warranties shall be no less than those set forth in the Contract but if Teradata's standard software warranties exceed those in the Contract, then the State shall be entitled to such greater warranties. Optum shall provide the State with a copy of such standard warranties with the State's annual order for the Subscription Based License. If Optum fails to conform the Subscription-Based Licenses to their warranties within a reasonable time after receiving the State's warranty claim, the State may return the non-conforming Subscription-Based Licenses to Optum, and after they are returned to Optum, the State shall then be entitled to receive a refund of the prepaid fees for the Subscription-Based Licenses pro-rated as of the date the State provided notice of the non-conformity.

#### 2. Delivery/Installation

The Teradata Software Optum currently deployed on the applicable servers within the Optum Provided Azure GovCloud Tenant Space shall continue to be made available to FSSA both with respect to the production and Test/DR instances.

### 3. Portability

The Subscription-Based Licenses for the Teradata Software may be used by the State on any systems supported by Teradata in the cloud. The State's usage on a system other than the one that it was originally licensed for does not constitute a cancellation of this subscription license, provided that at all time, the State's use of the Teradata Software must be in conjunction with Optum's Enterprise Data Warehouse Solution and associated services.

Appendix 4  
Teradata Cloud License Terms

Optum shall provide FSSA with a license to use the Azure GovCloud Dev/DR and Azure GovCloud Production instances in which the Teradata Software is installed and described in Optum's Technical and Cost Proposals for the EDW scope of work dated July 18, 2024 (the "Optum EDW Proposal") that are submitted in response to Request for Proposal 24-78424 for Enterprise Decision Support Systems, as amended (the "RFP") based on these Teradata Cloud License Terms and associated Teradata Cloud Services that are provided as a Platform as a Service offering (the "Teradata Cloud License Terms").

**1. TERADATA CLOUD SERVICE.**

**1.1) PROVISION OF TERADATA CLOUD SERVICE.**

Teradata shall provide Optum and the State of Indiana, Family and Social Services Administration (the "Customer") access to the Teradata Cloud Service, subject to the terms and conditions set forth in these Teradata Cloud License Terms and as described further in the Teradata Cloud Service Description. Teradata grants to Customer a nonexclusive, nontransferable worldwide right to access the Teradata Cloud Service solely for Customer's internal use during the Teradata Cloud Service Term. Optum (in its capacity as a contractor to the Customer) and other persons acting on behalf of Customer may use the Teradata Cloud Service for the internal use of Customer. Customer will not license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Teradata Cloud Service available to any third party, except as set forth in the preceding sentences. Other than as expressly set forth in these Teradata Cloud License Terms, no license or other rights in or to the Teradata Cloud Service or Teradata intellectual property rights are granted to Customer, and all such licenses and rights are hereby expressly reserved.

**1.2) RESTRICTIONS.**

The Teradata Cloud Service will be limited (e.g., available data space, processing power, number of concurrent users) as set out in the Optum EDW Proposal. Customer shall not (i) modify, copy or create derivative works based on the Teradata Cloud Service or Teradata intellectual property, (ii) exceed the limitations set forth in the Optum EDW Proposal unless otherwise agreed to by the parties in writing, or (iii) disassemble, reverse engineer, or decompile the Teradata Cloud Service, or access it with the intent to build a competitive product or service, or copy or substantially copy any ideas, features, functions or graphics of the Teradata Cloud Service.

**1.3) MODIFICATIONS.**

Teradata may modify the Teradata Cloud Service Description from time to time and will make the most current version thereof available through the Teradata Cloud Service portal. Teradata will make any modified version available at least 30 days prior to its effective date. If a modification to the Service Description materially reduces the features or functions of the Teradata Cloud Service on a general basis, then Teradata will allow Customer to cancel the relevant Order issue to Optum and receive a pro-rated refund of the fees for Teradata Cloud Service covered by those Orders from Optum. Teradata may make modifications to the Teradata Cloud Service Description immediately if a modification is required by applicable law, or to improve security or reliability of the Teradata Cloud Service.

**2) TERADATA RESPONSIBILITIES.**

In addition to its other responsibilities set forth in this Appendix, Teradata agrees that it shall comply with all local, state, federal, and international laws, regulations and government orders applicable to

Teradata services including export controls, privacy, and security applicable to operating the Teradata Cloud Service.

### **3) CUSTOMER RESPONSIBILITIES.**

Customer is responsible for the activities of and effects caused by anyone who Customer allows to use the Teradata Cloud Service. Customer is also responsible for ensuring that its users comply with this Appendix and the Teradata Cloud Service Description with respect to use of the Teradata Cloud Service. Customer shall provide secure connectivity to access or transfer data to the Teradata Cloud Service. Unless otherwise specifically covered in the Teradata Cloud Service Description or this Agreement, Customer is solely responsible for: determining whether the Teradata Cloud Service ordered will meet its business requirements, data integration; providing standard extracted, transformed, cleansed data for loading into the Teradata Cloud Service; business intelligence development, support and operations; logical and physical data modeling; application development, support and operations; application performance; data quality; having reasonable security processes, tools and controls for systems and networks interacting with the Teradata Cloud Service; making its own elections regarding backup storage and alternative computing capabilities and business processes in the event that the Teradata Cloud Service is unavailable; and reporting incidents via The Teradata Cloud Service Management portal either itself or for those areas within Optum's scope of responsibility, acting through Optum. In addition, Customer shall ensure that the security capabilities in the Teradata Cloud Service, and Customer's use of such security capabilities, fully meet its business needs and its obligation or requirements to protect its data (including encrypting columns containing sensitive information), and shall comply with all local, state, federal, and international laws, regulations, and government orders applicable to Optum's and Customer's use of the Teradata Cloud Service including those regarding export controls, privacy, and security.

### **4) USE GUIDELINES.**

Customer shall use the Teradata Cloud Service solely for its internal business purposes as contemplated by this Appendix and shall not: (i) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including spam, material harmful to children or violative of third party privacy rights, (ii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs, (iii) knowingly interfere with or disrupt the integrity or performance of the Teradata Cloud Service; or (iv) attempt to gain unauthorized access to the Teradata Cloud Service or its related systems or networks. Teradata may remove any material or content that it reasonably believes violates this section upon notice to Customer.

### **5) RESERVED.**

### **6) SUSPENSION OF SERVICE.**

In addition to any other rights or remedies of Teradata, Teradata may immediately discontinue access to or suspend Teradata Cloud Service in order to protect the Teradata Cloud Service from hacking or other cyber-attack or other material adverse impact to the Teradata Cloud Service or other systems or data. The Customer may incur mutually agreed upon charges to reactivate services that have been suspended due to the Customer's fault.

### **7) AVAILABILITY REQUIREMENT.**

Teradata shall use commercially reasonable efforts to have the Teradata Cloud Service platform achieve the Availability Requirement set forth in Exhibit A.

## **8) WARRANTIES.**

**8.1)** Each party warrants that it will use reasonable efforts to meet its responsibilities set out in this Appendix. Teradata warrants that: (i) it owns or otherwise has sufficient rights to the Teradata Cloud Service to grant the rights granted herein and (ii) the Teradata Cloud Service will substantially conform to the Teradata Cloud Service Description. Claims under this warranty must be made in a writing detailing the nature of the breach within 30 days of breach.

**8.2)** Customer's exclusive remedies for breach of the warranties in this Section shall be as follows: Teradata shall have 30 days to cure the breach by repairing or replacing the Teradata Cloud Service. If repair or replacement of the Teradata Cloud Service is not possible within such period, Customer may terminate its access rights to the defective Teradata Cloud Service by providing written notice of termination to Teradata. Customer shall then be entitled to receive a refund of the prepaid fees from Optum for the Teradata Cloud Service pro-rated as of the date Customer provided notice of the breach with a corresponding refund right accruing to Optum with respect to fees paid to Teradata.

**8.3)** TERADATA MAKES NO WARRANTY THAT THE TERADATA CLOUD SERVICE WILL BE UNINTERRUPTED, AVAILABLE AT ANY PARTICULAR TIME, ERROR-FREE, FREE OF HARMFUL COMPONENTS, OR THAT ANY DATA, INCLUDING CUSTOMER'S DATA OR THIRD-PARTY DATA, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT AS EXPRESSLY PROVIDED HEREIN, TERADATA MAKES NO REPRESENTATIONS, PROMISES OR WARRANTIES RELATED TO THE TERADATA CLOUD SERVICE OR TO TERADATA'S PERFORMANCE UNDER THIS APPENDIX. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED HEREIN, TERADATA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE REGARDING MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. TERADATA DOES NOT WARRANT THAT THE TERADATA CLOUD SERVICE WILL YIELD ANY PARTICULAR BUSINESS OR FINANCIAL RESULTS, OR THAT DATA, REPORTS OR ANALYSIS WILL BE TOTALLY ACCURATE.

## **9) RESERVED.**

## **10) RESERVED.**

## **11) INDEMNIFICATION.**

### **11.1) TERADATA INDEMNIFICATION.**

Teradata will defend Customer and Optum against any claim, demand, suit or proceeding made or brought against Customer or Optum by a third party: (i) alleging that the Teradata Cloud Service infringes or misappropriates such third party's intellectual property rights, or (ii) to the extent caused by a breach by Teradata of its obligations under Sections 2, 15.2, and 15.7 of this Appendix that results in an unauthorized disclosure of Customer Data (each, a "Claim Against Customer"), and will indemnify and hold harmless Customer from Teradata's share of any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Teradata in writing of, a Claim Against Customer. Customer must promptly give Teradata written notice of the Claim Against Customer; give Teradata sole control of the defense and settlement of the Claim Against Customer (except that Teradata may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability); and give Teradata all reasonable assistance, at Teradata's expense.

a) In handling any claim relating to infringement of intellectual property, Teradata may obtain, at no additional charge to Customer, the right for Customer to continue using the Teradata Cloud Service at issue or replace or modify it so that it becomes non-infringing. If Teradata is unable to reasonably secure those remedies, and if Customer must discontinue use of an infringing Teradata Cloud Service then, in addition to providing the defense and indemnification set forth above, Optum shall refund to Customer any unused prepaid fees for the infringing Teradata Cloud Services and Teradata will also refund any unused prepaid fees for the infringing Teradata Cloud Service to Optum.

b) Teradata's indemnification in Section 11.1(i) does not apply to the extent that the alleged infringement is caused by: use of a Teradata Cloud Service in connection with goods, computer code, or services not furnished as part of, the Teradata Cloud Service; or Teradata's compliance with Customer-specific designs or specifications. Section 11.1 represents Teradata exclusive liability and Customer's sole remedy for third party claims related to infringement of intellectual property rights by the Teradata Cloud Service.

#### **11.2) MITIGATION.**

The party seeking indemnification under this Appendix shall have a duty to use reasonable efforts to mitigate damages and other costs and losses.

### **12) TERM AND TERMINATION.**

#### **12.1) TERM.**

This Appendix commences on the Service Availability Date and continues for the twelve (12) month term for which Customer has paid an annual fee that includes the provision of the Teradata Cloud Service. Customer may renew the Teradata Cloud Service Term for additional 12-month period(s) at the pricing set forth in the Contract between Optum and Customer.

#### **12.2) TERMINATION FOR BREACH.**

Either Customer or Teradata may terminate an Order as a result of a material breach of this Appendix by the other party: if (i) such party provides written notification to the other party of the material breach, and (ii) such material breach is not cured or resolved within 30 days of notification. Either party may terminate this Appendix if the other party is adjudged bankrupt, placed in receivership, becomes insolvent, or is unable to carry on business in the normal course and is unable to cure the foregoing within 30 days.

#### **12.3) EFFECT OF TERMINATION.**

In the event of termination of an Order for any reason, Customer's access and use of Teradata Cloud Service and Customer's rights under this Appendix shall cease 45 days following termination and Teradata will cooperate with Optum and Customer in good faith to work out a schedule and the associated costs to transition the Customer Data to Customer or another service, at Customer's option, during such time, and, following such transition, will promptly destroy all remaining Customer Data on the Teradata Cloud Service (or such Customer Data applicable to the terminated Order, if other Orders remain). If Customer terminates an Order for breach, Customer shall then be entitled to receive a refund of any unused amount for monthly service fees to the Customer and a pro-rata portion of the prepaid, one-time setup fee corresponding to the unused months, with Optum having a corresponding right vis a vis Teradata. Sections 8, 9, 10, 11, and 14 through 23 shall survive any expiration or termination of this Appendix.

#### **13) RESERVED.**

#### **14) FORCE MAJEURE.**

Neither party will be responsible for any failure or delay in its performance under this Appendix due to acts of God or government, civil commotion, military authority, war, riots, terrorism, strikes, fire, or other causes beyond its reasonable control.

#### **15) DATA PROTECTION.**

##### **15.1) RIGHT TO PROCESS DATA.**

Customer represents and warrants that it owns or otherwise controls all the rights to Customer Data; that use of Customer Data does not violate any provision herein and will not cause injury to any person or entity.

##### **15.2) PROTECTION.**

Each party receiving or having access to Confidential Information of the other party agrees to use reasonable efforts to prevent the disclosure of the other's Confidential Information to third parties and its employees who do not have a need to know it, but may disclose it for confidentiality-protected financial, legal, security, compliance and/or tax reviews, advice, disclosures and audits. Each party will protect the Confidential Information of the other party with the same degree of care it exercises relative to its own Confidential Information, but not less than reasonable care. The disclosing party will use reasonable efforts to mark or otherwise designate information as confidential prior to disclosure. Customer's data values stored in or processed by computers, personal individually identifiable information, customer records/lists, financial/account records, employee records, medical/health records, business plans, pricing, software in human-readable form (e.g., source code), logical data models, and any other information that reasonably should be understood by the receiving party to be confidential will be considered Confidential Information whether or not marked as such. Upon the disclosing party's written request, the receiving party will destroy all full or partial copies of Confidential Information that it has in its control.

##### **15.3) TERM.**

Confidentiality obligations under this Appendix with respect to Customer Data stored in or processed by computers, personal individually identifiable information, customer records/lists, financial/account records, employee records, medical/health records, business plans, security information, software in human-readable form (e.g., source code), and data models, will continue indefinitely. Otherwise, confidentiality obligations under this Appendix will end 2 years after termination of this Appendix.

##### **15.4) EXCLUSIONS.**

The obligations of the parties in respect of the Confidential Information of the other party shall not apply to any material or information that: (i) is or becomes a part of the public domain through no act or omission by the receiving party, (ii) is independently developed by employees or consultants of the receiving party without use or reference to the Confidential Information of the other party, or (iii) is disclosed to the receiving party by a third party that, to the receiving party's knowledge, was not bound by a confidentiality obligation to the other party. Personally identifiable information shall not lose its status as Confidential Information because it may be in the public domain. In addition, the above confidentiality obligations shall not apply if and to the extent the Customer receives a Freedom of Information Act ("FOIA") request under Indiana law where no exemption from disclosure under that law applies.

If Confidential Information is demanded by a lawful order from any court or lawful authority, the recipient agrees (to the extent permitted by such order):(i) to notify the discloser promptly of the receipt of any such order, (ii) provide the other with a copy of such order, (iii) and to provide reasonable assistance to the discloser (at the disclosing party's expense in the case of reasonable out-of-pocket expenses) to object to such disclosure.

**15.5) CONTRACTORS.**

Each party may disclose Confidential Information to its Affiliates subject to the confidentiality terms of this Appendix, and to its contractors (such contractors which may include the hosting partner(s) of Teradata), who have a need to know the Confidential Information related to performance under this Appendix, and which agree in writing to confidentiality obligations consistent with this Appendix. Each party is responsible for any breach of these provisions by such Affiliates and contractors to which it provided the other party's Confidential Information.

**15.6) OTHER AGREEMENTS.**

This Section shall control and supersede the terms of any non-disclosure or confidentiality agreement executed between the parties for Confidential Information concerning, related to, or stored in the Teradata Cloud Service.

**15.7) RESERVED.**

**16) DATA SECURITY.**

**16.1) GENERAL.**

Teradata will have in place throughout the term of this Appendix security measures consisting of administrative, physical, and technical measures for: (i) maintaining industry standard firewall protection for the Teradata Cloud Service systems, (ii) applying, on a reasonable schedule after release, patches to the Teradata Cloud Service system, (iii) employing commercially reasonable efforts to scan the Teradata Cloud Service systems for viruses and malware, and (iv) limiting employee and subcontractor access to the Teradata Cloud Service systems and facilities to authorized individuals who have a need- to know and whose access privileges shall be revoked promptly upon their termination by Teradata.

**16.2) DATA BREACH.**

Either party will inform the other as soon as practicable upon learning of a data breach on the Teradata Cloud Service involving Customer's data. The parties shall coordinate with each other to investigate the data breach and Teradata agrees to reasonably cooperate with Customer in Customer's handling of the matter, including, without limitation, assisting with any investigation and making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards. Each party will use best efforts to prevent a recurrence of any data breach as soon as practicable.

**16.3) AUDIT.**

On an annual basis, the Teradata Cloud Service will undergo an AICPA Service Organization Controls (SOC 2) review, statement on Standards for Attestation Engagements No. 16 (SSAE16) SOC 1 review, PCI DSS, a HIPAA audit, and an ISO 27001:2013 audit of its Information Security Management System (ISMS), as well as an independent penetration test. Auditor and penetration test findings will be addressed in accordance with Teradata's policies. Upon customer request, Teradata will share the most

recent SOC1 report, SOC 2 report, ISO 27001:2013 certification, PCI DSS 3.2 Attestation of Compliance(AOC), and HIPAA Security Assessment reports. The scope of these audits and assessments is detailed in the Cloud Service Description.

**17) EXPORT CONTROL.**

Each party agrees to comply with all applicable United States and foreign laws and regulations, including without limitation export and re-export control laws and regulations, including without limitation the U.S. International Traffic in Arms Regulation (“ITAR”) and Export Administration Regulations (“EAR”) maintained by the United States Department of Commerce. Customer covenants that it shall not directly or indirectly sell, export, re-export, transfer, divert, or otherwise dispose of any information, products, software, or technology (including information or products derived from or based on such technology) received from Teradata under this Appendix to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. If Customer intends to disclose to Teradata technical data or information that are controlled by the ITAR, the EAR, or that Customer otherwise would be prohibited from disclosing to persons who are not citizens or permanent residents of the United States, Customer shall: (i) provide written notice to Teradata of such intended disclosure, (ii) mark any documents containing such information with an obvious restrictive legend to such effect, and (iii) not disclose such information by use of any electronic mail system.

**18) RESERVED.**

**19) NOTICES.**

Notice to the other party to this Appendix shall be in writing (including email sent to a designated address or number) and sent by personal delivery or commercial courier and shall be deemed provided on first receipt. Notices shall be sent to the address in the signature block of this Agreement. Notices to Teradata shall also have a copy sent to 17095 Via del Campo, San Diego, CA 92127, Attn: General Counsel/Notices.

**20) ASSIGNMENT.**

Neither party may assign, transfer, or delegate any of its rights, duties, or obligations hereunder, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Appendix to an Affiliate, or in connection with a merger, reorganization, reincorporation, consolidation or other transfer to such Affiliate.

**21) GOVERNING LAW; DISPUTES.**

Indiana law will govern the interpretation and enforcement of this Appendix and Orders under it.

**22) RESERVED.**

**23) GENERAL.**

If any provision of this Appendix or of an Order is held to be illegal, invalid, or unenforceable, it will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remaining provisions will remain in full force and effect. Terms intended by the parties to survive termination of this Appendix or of an Order will survive termination. Failure to enforce any provision of this Appendix

or of an Order shall not constitute a waiver of future enforcement of that or any other provision. This Appendix and any exhibits or documents referenced, or related orders constitute the entire understanding between the parties solely with respect to Teradata's provision of Cloud Services. Any modifications to this Appendix must be in writing and signed by both parties. With respect to execution of this Appendix and any order, Customer and Teradata agree that a facsimile or electronic copy of either party's signature shall be considered a binding, original signature of each party. This Appendix shall bind the parties, their successors, heirs, and assigns to the extent permitted hereunder. In all matters relating to this Appendix Customer and Teradata shall act as independent contractors. Teradata may use contractors, resellers and/or suppliers to fulfill its Order obligations, but in such event, Teradata will assure that they are bound to the same obligations as Teradata to the same extent as Teradata would be if it had provided the service at issue directly to Customer.

## **24) DEFINITIONS.**

**Affiliate:** Any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity.

**Confidential Information:** All proprietary information disclosed by one party to the other related to the disclosing party, this Appendix, Teradata's products or services, or an Order, including, without limitation, technologies, methodologies, business plans, business records, requests for proposals ("RFPs"), requests for information ("RFIs"), responses to RFPs and/or RFIs, bids, pricing, and discussions regarding potential future business between the parties.

**Customer Data:** All data supplied by Customer to Teradata through the Teradata Cloud Service, including but not limited to Customer's data values stored in or processed by computers.

**Order:** One or more orders under which Teradata provides access to Teradata Cloud Service.

**Service Availability Date:** The date that under which the Teradata Cloud Service is being provided to FSSA under the new Contract awarded to the winning bidder in response to the RFP.

**Teradata Cloud Service Description:** Teradata's standard description for the Teradata Cloud Service in effect at the time of the Order or as modified from time to time as set out in Section 1.3.

**Teradata Cloud Service:** Customer's electronic access to a data warehouse system and related Teradata software and services as specifically described in the applicable Order entered into by Optum and the Customer and the Teradata Cloud Service Description.

**Teradata Cloud Service Term:** The period agreed to in an Order from Optum during which Teradata will provide access to Teradata Cloud Service to Customer.

**Exhibit A**  
**Availability Service Level Agreement**

**Availability:**

Availability Requirement: Teradata shall make the Teradata Cloud Service available, as measured over the course of each calendar month during the Teradata Cloud Service Term (each such calendar month, a "Service Period"), at 99.99%, excluding only the time the Teradata Cloud Service is not Available solely as a result of one or more Exceptions (the "Availability Requirement"). "Available" (and correlative term "Availability") means the Teradata Cloud Service is available and operable for access and use by Customer over the Internet in conformity with the specifications.

Exceptions: No period of Teradata Cloud Service inoperability will be included in calculating Availability to the extent that such downtime is due to any of the following ("Exceptions"):

- (a) Customer's or any of its Representatives' use of the Teradata Cloud Service in breach of the Exhibit;
- (b) failures of Customer's or its Representatives' internet connectivity;
- (c) internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by Teradata; or
- (d) "Scheduled Downtime" which is defined as all scheduled outages of the Teradata Cloud Service including planned maintenance, major upgrades, and system resize (growth or reduction).

Teradata will make available the schedule for Scheduled Downtime on the Teradata Cloud Service Portal for Customer reasonably in advance of such Scheduled Downtime, but in no event, less than 5 business days prior to such Scheduled Downtime. Scheduled Downtime shall not exceed four (4) hours in any Service Period and shall occur during the weekend hours from 12:00 a.m. Sunday to 4:00 a.m. Sunday (Eastern Time) or as otherwise agreed to in writing.

**SLA Calculations:**

The "Monthly Uptime Percentage" is calculated as follows:

$$\text{Availability (\%)} = \frac{\text{Total Minutes of Operation} - \text{Unplanned Service Downtime}}{\text{Total Minutes of Operation}} \times 100$$

"Total Minutes of Operation" is the Total Number of Minutes in each calendar month minus any Scheduled Downtime during such month. "Total Number of Minutes" will be considered 7 days per week, 1440 minutes per day. Therefore, the Total Number of Minutes in a calendar month will be the number of days in the calendar month multiplied by 1440 minutes per day.

"Unplanned Service Downtime" commences when Teradata is informed that the Teradata Cloud Service is unavailable or otherwise becomes aware of such unavailability and will continue until Customer is able to access the Teradata Cloud Platform. Unplanned Service Downtime shall not include Excused Downtime and, therefore, is the total minutes of downtime minus Excused Downtime.

"Excused Downtime" is the actual amount of time the Teradata Cloud Service is unavailable as a result of an Exception.

**Reporting:**

Service Availability Reports: Within ten (10) days after the end of each Service Period, Teradata shall provide to Customer a written report describing the Availability of the Teradata Cloud Service during preceding calendar month as compared to the Availability Requirement. The report shall be in electronic or such other written form as Customer may approve in writing and shall include, at a minimum: (a) the Availability of the Teradata Cloud Service relative to the Availability Requirement; and (b) if Availability has failed in any respect to meet or exceed the Availability Requirement during the reporting period, a detailed description regarding the root cause of such failure and the corrective actions the Teradata has taken and shall take to ensure that the Availability Requirement are fully met.

## Appendix 5

### Symmetry and Management and Reporting Subsystems (MARS) Software Subscription License Terms

The subscription license terms set forth in this Appendix 5 (the “License Terms”) shall apply to (a) Contractor’s Symmetry’s Episode Treatment Groups (ETG) Software, Symmetry’s EBM Connect Software and Symmetry’s Episode Risk Groupers (ERG) Software, including, without limitation, the CPT codes embedded therein, all in object code form (the “Symmetry Software”) and (b) Contractor’s Management and Administrative Reporting Subsystems (MARS) Software in object code form (the “MARS Software”), where the Symmetry Software and MARS Software is hereinafter referred to as the “Software”):

#### A. License of Software.

As of January 1, 2026, Contractor hereby grants to the Indiana Family and Social Services Administration (the “State”) a non-exclusive, non-transferable right and license to use the Software solely for its internal business purposes and solely during the Term of this Agreement subject to the rights and limitations set forth below:

1. **Internal Business Purposes and Grouping Claims.** The State may use the Software at the sites where the Software is already installed for its internal business purposes and, in the case of the Symmetry Software, for the purpose of grouping of claims for which the State is the payer or third party administrator (TPA) (unless otherwise permitted below) and using any Software output for the internal business activities of the State or the State’s payer or TPA customers, including use of the output for the purposes of medical cost containment and treatment analysis, and provider network analyses and management.
2. **Value Added Reports.** The State may use the Symmetry Software to create Value Added Reports. “Value Added Reports” means the State’s written analysis and interpretation of the results generated by processing any of the State’s own claims (if the State is a payer) or any one group’s claims through the Symmetry Software. Value Added Reports may be in the form of reports or analysis, paper or electronic, and may include the grouped data and identifiers generated by the Symmetry Software. The State may deliver Value Added Reports only to the employer group, other group or association, physicians, physician groups, or consumers whose claims were processed for such report.
3. The State shall not have any right to further manipulate, use or disclose the Symmetry Software output or the Value Added Reports.
4. In the event that the State wishes to use a third party as its agent to access the Software or a database of State Data produced through use of any Software, such third party must sign an appropriate nondisclosure agreement with the State agreeing to protect the confidentiality of such information and limiting such third party’s use to the support of the State as its agent. It is acknowledged and agreed that Contractor, in its role of acting as the Contractor for the Maintenance and Operation of the State’s Enterprise Data Warehouse to the State shall also have the right to use the Software. The State, however, remains responsible for protecting the confidentiality of the Software and Services it obtains from Contractor. Except as permitted by these License Terms, the State shall have no right to allow any other person or entity to access the Software directly or indirectly in any way.

5. The State shall not (i) copy, reproduce, modify, or excerpt any of the Software for any purpose other than as expressly permitted under these License Terms; (ii) distribute, rent, sublicense, share, transfer or lease the Software to any other person or entity, or use the Software to provide service bureau or similar services to third parties; or (iii) attempt to reverse engineer or otherwise obtain copies of the source code for the Software or the identity of individual patients or members, persons, payers, or providers reflected in any data products.
  6. Contractor shall furnish to the State access and use rights to only those updates to or new versions of Software that Contractor furnishes, without charge, to all other licensees of the Software.
- B. Proprietary Rights. State understands that the ETG Software (a component of the Symmetry Software) and data values derived from the ETG Software are protected under copyright laws and are the subject of United States patents. State agrees to mark all Value Added Reports that contain Software output data values and other reports generated using the ETG Software with the following:
- “Portions of the Software and data values derived thereof are protected under United States Patents #5,835,897 and #6,370,511, and U.S. and foreign patents pending. Recipient of this information may not disclose, permit to be disclosed, or otherwise resell or transfer all or any portion of this information to any third party.”
- C. Informational Tool. The Software is provided to the State for informational purposes only. The State acknowledges that the Software is a tool that State may use in various ways in its internal business. Any reliance upon, interpretation of and/or use of the Software by the State is solely and exclusively at the discretion of the State. The State’s determination or establishment of an appropriate treatment plan, reimbursement level or fee is solely within the State’s discretion, regardless of whether the State uses the Software. Contractor is not engaged in the practice of medicine and does not determine, on the State’s behalf, the appropriate fee or reimbursement levels for State and its business. The State shall not use the Software to perform medical diagnostic functions, set treatment procedures or substitute for the medical judgement of a physician or qualified health care provider.
- D. State Data: The State shall be responsible for the accuracy of any State Data delivered to Contractor. The State agrees that the State Data it provides to Contractor (if any) contains true and accurate data and information, to the best of the State’s knowledge. Contractor shall not be responsible for errors in the State Data or data entry done by the State or the Data Sources, or for errors in services, programs, hardware, data files, or output Contractor provides to or maintains for the State, if those Contractor errors result from errors in the State's or the Data Sources’ input data, or from the State's failure to comply with these provisions. The State is responsible for obtaining, prior to furnishing any data or information to Contractor, any necessary permissions, consents, or releases, including entering into business associate agreements as applicable, which are required by applicable federal, state or local laws and/or regulations for the delivery of the State Data to Contractor and for Contractor to use and disclose such the State Data as set forth under these License Terms or required by law.
- E. Collected Data: The following provisions shall apply solely with respect to the Symmetry Software:

1. Definition of Collected Data. "Collected Data" is defined as the State's health care claims and/or health care encounter data in a format containing identifiers from the Symmetry Software, including but not limited to the ETG number, ETG subclass identifier; the episode number; the cluster number; the episode type; risk markers, and Symmetry Software version.
2. Confidentiality of Collected Data. The State agrees not to disclose, permit to be disclosed, or otherwise resell or transfer, with or without consideration, all or any portion of the Collected Data to any third party, except that the State may disclose the Collected Data, at no additional charge to the State, to its consultants or agents for the sole purpose of assisting or advising the State in the conduct of the State's internal business activities. Prior to such disclosure, the State's consultants and agents and other permitted third parties shall execute a nondisclosure agreement, in a form consistent with the language contained herein, which will prohibit such consultants or agents from using such Collected Data (other than to assist or advise the State), from disclosing such the Collected Data to any third party, and from aggregating the State's Collected Data with data from any other sources. If the State is required to disclose the Collected Data by law or by regulatory agencies or other entities with legal authority to examine the Collected Data, the State shall deliver prompt written notice to Contractor of such potential examination, allowing Contractor the opportunity to interpose all objections to the proposed disclosure.

- F. Consortium Measures: The EBM Connect Software contains measures that are owned by the American Medical Association ("AMA") and/or the Physician Consortium for Performance Improvement (the "Consortium"). "Measure" shall mean the consortium measures and documentation posted on the Consortium's website) that includes the AMA's copyright notice, including Measure definitions, numerator and denominator statements, inclusions/exclusions, clinical and technical specifications and algorithms necessary to construct each Measure from health care data and to report measure results. Measures do not include any computer object, application or any type of programming or relational data tables.

The State agrees to the terms of the AMA and Consortium Measures End User Agreement attached as Schedule 1.

- G. Covered Lives: The pricing set forth in the Contractor's Cost Proposal that is part of the Optum EDW Proposal assumes and the license grant set forth above is based on a limitation that the Symmetry Software will be used solely to support up to 2,999,999 Covered Lives. "Covered Lives" shall mean each subscriber and enrolled dependent for coverage or payment for medical benefits by or through the State.

H. Confidentiality

1. Each party acknowledges that in the course of performing under these License Terms, each party may learn confidential, trade secret, or proprietary information concerning the other party or third parties to whom the other party has an obligation of confidentiality ("Confidential Information"). Without limiting the foregoing, Contractor's Confidential Information shall include, without limitation, the terms of these License Terms, financial information and employee information; information regarding Contractor products, marketing plans, business plans, customer names and lists, Software, data products, Services and Documentation; reports generated by or for Contractor; Contractor's methods of database creation; Contractor's

translation, standardization, enhancement, and health data analysis techniques, health data reporting and profiling methods and formats; software tools for report creation, distribution and retrieval; and associated algorithms, developments, improvements, know-how, code (object and source), programs, software architecture, technology and trade secrets. Without limiting the foregoing, the State's Confidential Information shall include information regarding the State's business and information regarding the State's patients, premiums and claims data. Confidential Information shall not include PHI.

2. Each party agrees that (a) it will use the other party's Confidential Information only as may be necessary in the course of performing duties, receiving services or exercising rights under these License Terms; (b) it will treat such information as confidential and proprietary; (c) it will not disclose such information orally or in writing to any third party without the prior written consent of the other party; (d) it will take all reasonable precautions to protect the other party's Confidential Information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Without limiting the foregoing, each party agrees to take at least such precautions to protect the other party's Confidential Information as it takes to protect its own Confidential Information. Each party is solely responsible for all use of the other party's Confidential Information by anyone who gains access to the Confidential Information under such party's authorization. Upon termination or expiration (without renewal) of these License Terms, each party will return to the other party or certify as destroyed all tangible items containing any of the other party's Confidential Information copies. Each party agrees to notify the other party if it becomes aware of any unauthorized use or disclosure of the other party's Confidential Information.
3. If either party believes it is required by law or by a subpoena or court order to disclose any of the other party's Confidential Information, it shall promptly notify the other party and shall make all reasonable efforts to allow the other party an opportunity to seek a protective order or other judicial relief prior to any disclosure.
4. Nothing in these License Terms shall be construed to restrict disclosure or use of information that (a) was in the possession of or rightfully known by the recipient, without an obligation to maintain its confidentiality, prior to receipt from the other party; (b) is or becomes generally known to the public without violation of these License Terms; (c) is obtained by the recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; or (d) is independently developed by the receiving party without reference to the other party's Confidential Information.

#### I. Termination

Within thirty (30) days after termination of this Contract, the State acknowledges that Contractor may use certain functionality in the Software to de-activate and disable the Software upon termination of these License Terms and the State shall remove any State data, including passwords, from the Software within thirty (30) days after termination of this Contract.

## Schedule 1

### AMA AND CONSORTIUM MEASURES

#### End User Agreement

##### 1. Grant of Rights and License Restrictions

- a. The right to use the Measures in the Contractor product is non-transferable, non-exclusive, and for the sole purpose of internal use by the State of physician performance measures within the United States and its territories.
- b. For purposes of this end user agreement, physician performance measures shall mean and include only the Consortium measures and related documentation posted on the Web site ([www.phvsicianconsortium.org](http://www.phvsicianconsortium.org)) ("AMA Web site") that includes the AMA's copyright notice, including measure definitions, numerator and denominator statements, inclusions/exclusions, clinical and technical specifications and algorithms necessary to construct each measure from health care data and to report measure results ("Measures"). Measures as defined and licensed hereunder do not include any computer object, application or any type of programming or relational data tables.
- c. The State shall not modify the Measures except to customize the Measures for use within the State's practice (but in no event will the content of the Measures be altered), removing any copyright, trademark, and attribution notices and disclaimers, creating derivative works (other than to customize the Measures for use within the State's practice), removing copyright, trademark and selling or licensing Measures or otherwise making the Measures or any portion thereof available to any unauthorized party.
- d. Updated versions of the Measures are available at [www.phvsicianconsortium.org](http://www.phvsicianconsortium.org), or that Contractor will provide updated versions of the Measures in the next release of its Product(s) if commercially feasible.
- e. The State should ensure that anyone who has authorized access to the Product(s) including the Measures complies with the provisions of this agreement and with all applicable laws in the use of the Product(s) and the Measures, including but not limited to the Health Insurance Portability and Accountability Act.

##### 2. Notices

- a. The Measures have been developed by the Consortium and copyrighted by the AMA as the convener and member of the Consortium.
- b. Limited proprietary coding is contained in the Measures data specifications for convenience. This license does not grant any rights to these proprietary code sets. The State agrees to obtain all legally necessary licenses for use of such proprietary coding from the owners of these code sets including a separate license from the AMA for use of Current Procedural Terminology (CPT®). CPT contained in the Measures data specifications is copyrighted by the AMA.

## 5. Miscellaneous

- a. THE STATE ACKNOWLEDGES THAT MEASURES DEVELOPED BY THE CONSORTIUM ARE INTENDED TO FACILITATE QUALITY IMPROVEMENT ACTIVITIES BY PHYSICIANS. THESE MEASURES ARE NOT CLINICAL GUIDELINES, DO NOT ESTABLISH A STANDARD OF MEDICAL CARE, AND HAVE NOT BEEN TESTED FOR ALL POTENTIAL APPLICATIONS.
- b. THE AMA, THE CONSORTIUM AND ITS MEMBERS SHALL NOT BE RESPONSIBLE FOR ANY USE OF ANY MEASURES. THE MEASURES ARE LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE AMA, THE CONSORTIUM AND THE CONSORTIUM'S MEMBERS DISCLAIM LIABILITY FOR ANY CONSEQUENCES ATTRIBUTABLE TO OR RELATED TO ANY USES, NON-USE OR INTERPRETATION OF INFORMATION CONTAINED IN OR NOT CONTAINED IN THE MEASURES, AND FOR USE OR ACCURACY OF ANY CPT OR OTHER CODING CONTAINED IN MEASURES SPECIFICATIONS. THE DEVELOPMENT AND DISTRIBUTION OF THE MEASURES DOES NOT CONSTITUTE THE PRACTICE OF MEDICINE BY THE AMA, THE CONSORTIUM OR BY ANY OF THE CONSORTIUM'S MEMBERS. IN NO EVENT WILL THE AMA, THE CONSORTIUM OR THE CONSORTIUM'S MEMBERS BE LIABLE TO THE STATE OR TO ANY OTHER PARTY FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH MEASURES EVEN IF THE AMA, THE CONSORTIUM OR THE CONSORTIUM'S MEMBERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. THE AMA, THE CONSORTIUM AND THE CONSORTIUM'S MEMBERS DO NOT WARRANT THAT THE MEASURES WILL MEET END USER'S REQUIREMENTS OR THAT THE OPERATION OF THE MEASURES WILL BE UNINTERRUPTED OR WITHOUT ERROR. END USER ACKNOWLEDGES THAT THE MEASURES HAVE NOT BEEN DEVELOPED ACCORDING TO END USER'S SPECIFICATIONS OR ARE OTHERWISE CUSTOM-MADE. THE AMA, THE CONSORTIUM AND EACH OF ITS MEMBER'S ENTIRE LIABILITY AND END USER'S EXCLUSIVE REMEDY SHALL BE FOR THE AMA TO PROVIDE END USER WITH COMPLETE COPIES OF MEASURES AS ADOPTED BY THE CONSORTIUM VIA THE AMA'S WEB SITE.
- d. The State acknowledges that Contractor may not provide the State with new or updated Measures in the event of the termination or expiration of the agreement between Contractor and the AMA (on behalf of the Consortium). The State may continue to use Measures incorporated into its system prior to such termination or expiration of that agreement and obtain updated Measures from the AMA Web site.
- e. In the event a provision is determined to violate any law or is unenforceable, the remainder the remainder of this agreement shall remain in full force and effect.
- f. The AMA is a third party beneficiary for purposes of enforcing its rights under this End User Agreement.

**Appendix 5**  
**NCQA HEDIS Related Subscription License Terms**

Optum Government Solutions, Inc.'s ("Vendor") Symmetry EBM Connect Software ("Product") being provided to the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning ("Customer" or "you") contains Healthcare Effectiveness Data and Information Set (HEDIS®) measures and specifications and survey specifications for the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) (the "Data"). The Data is owned and copyrighted by the National Committee for Quality Assurance ("NCQA") and has been licensed to Vendor for inclusion in the Product. The HEDIS measures and specifications expressly exclude third-party intellectual property rights in the HEDIS Value Set Directory ("HEDIS VSD"), including without limitation code values owned, licensed or otherwise provided by third parties ("Third-Party Codes"). This Appendix 5 sets forth End-User License Agreement ("EULA") that shall be between FSSA ("you") and NCQA, regarding FSSA's use of Data within the Product.

BY DOWNLOADING OR USING THE DATA WITHIN THE PRODUCT, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA.

IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT DOWNLOAD OR USE THE DATA.

**1. License Grant.** Subject to the terms and conditions of this EULA, NCQA grants you a limited, perpetual, worldwide, non-exclusive, non-transferable, non-sublicensable license to use the Data or any portion thereof for the following non-commercial purposes: competitor analysis; benchmark analysis; trended data analysis; quality improvement initiatives; data analysis; cost analysis; analysis of performance from year to year; profiling performance goals and surveillance; population health initiatives; and/or market research.

**2. License Restrictions.** You shall:

- (i) use the Data only for population health purposes within an affiliated health plan network (e.g. Accountable Care Organization) and internal, quality improvement purposes (e.g., trend analysis) and not publicly display, disseminate or publish the Data, Adjustments (defined below) thereof or any portion of the same;
- (ii) prominently display NCQA's trademark and copyright notices, including the measure Adjustment and certification notices, as applicable, as provided in this EULA on any output that includes the Data or any portion thereof;
- (iii) only Adjust the Data, or any portion thereof, as explicitly permitted by the Rules for Allowable Adjustments of HEDIS (the "Rules"), except that you may apply or adapt the Data to your non-U.S. jurisdiction (including without limitation translations; mapping, combining or cross-referencing Data with local third-party code values);
- (iv) report or submit HEDIS measure results ("Rates") to external programs only if those Rates have been calculated by a HEDIS-certified vendor ("HEDIS Certified Vendor") and stem from Rates that have been audited and approved by an NCQA-certified HEDIS Compliance Auditor ("HEDIS Compliance Auditor"), or as expressly approved in writing by NCQA in advance;
- (v) not use the Data or any portion thereof for any purpose other than as specifically set forth in this EULA;
- (vi) not use the Third-Party Codes without an authorized license from the copyright owners;
- (vii) only publicly display Rates or conduct pay for performance incentive initiatives from/on Certified, Uncertifiable or Retired Measures;

- (viii) not use, or authorize or permit any third party, affiliate, subsidiary or related entity to use the Data or any portion thereof for any purpose other than as specifically set forth in this EULA, including but not limited to copying, selling, renting, leasing, licensing, sublicensing, or distributing the Data or any portion thereof;
- (ix) not reproduce, copy, reverse engineer, decompile or disassemble the Data or modify or prepare derivative works from the Data or any portion thereof except as expressly authorized by this EULA;
- (x) not alter or remove any copyright notices, patent notices, trademark and service mark notices, or other proprietary notices or disclaimers affixed to the Data;
- (xi) not use the Data in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; and
- (xii) not use the Data for purposes of: (a) benchmarking or competitive analysis of the Data or (b) developing a product or service that could reasonably be determined as a replacing the Data. NCQA agrees that the foregoing provision does not restrict or prevent you in any manner from offering or developing a product or service that includes (i) measures, risk models or other specification independently developed by you, or (ii) measures, risk models or other specifications from a third party that may be or are competitive to any NCQA product or offering.

**3. HEDIS VSD.** The HEDIS VSD contains Third Party Codes, including without limitation CPT® by American Medical Association, LOINC® by Regenstrief Institute, Inc., SNOMED CT® by the International Health Terminology Standards Development Organization, RxNorm by the U.S. National Library of Medicine, and Uniform Billing Codes by the American Hospital Association. All uses of the Third-Party Codes may require a license from the copyright owner.

**4. Ownership, Copyright and Disclosure.**

- a. Except for the Third-Party Codes, title to and full ownership of Data and all intellectual property rights therein (including, but not limited to, all copyrights, patent rights and trade secret rights) belong to NCQA, or NCQA has obtained the necessary rights in the Data to grant the rights and licenses set forth herein. This EULA provides only a limited license to use the Data and transfers no ownership or intellectual property interest or title in or to the Data. NCQA's name and logo, and all other names, logos, trademarks and icons identifying NCQA and its programs, products and services are proprietary trademarks of NCQA and any use not expressly provided for in this EULA is strictly prohibited. NCQA holds a copyright in these materials and can rescind or alter these materials at any time. These materials may not be modified by anyone other than NCQA or its designee. Use of the Rules to make permitted adjustment of the materials does not constitute a modification.
- b. As between NCQA and you, sole ownership rights to the Data and Adjustments reside with NCQA. "Adjust" or "Adjustments" as used in this EULA means all customizations, modifications, enhancements or other improvements developed by, on behalf of or implemented by you as permitted herein. You hereby irrevocably waive any and all claims you may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Data and Adjustments. NCQA's name and logo, and all other names, logos, icons, trademarks, and/or service marks identifying NCQA and its programs, products and services are proprietary trademarks of NCQA and any use not expressly provided for in this EULA is strictly prohibited.

**5. Breach.** Any material breach of this EULA by you may cause irreparable harm to NCQA and shall entitle NCQA to seek injunctive relief and all legal and equitable remedies available to NCQA.

**6. Disclaimers.**

- a. THE HEDIS MEASURES AND SPECIFICATIONS WERE DEVELOPED BY AND ARE OWNED BY NCQA. THE HEDIS MEASURES AND SPECIFICATIONS ARE NOT CLINICAL GUIDELINES AND DO NOT ESTABLISH A STANDARD OF MEDICAL CARE.
- b. NCQA MAKES NO REPRESENTATIONS, WARRANTIES OR ENDORSEMENT ABOUT THE QUALITY OF ANY ORGANIZATION OR PHYSICIAN THAT USES OR REPORTS PERFORMANCE MEASURES AND NCQA HAS NO LIABILITY TO ANYONE WHO RELIES ON SUCH MEASURES OR SPECIFICATIONS.
- c. NCQA MAKES NO WARRANTY TO YOU, EXPRESS OR IMPLIED, WITH RESPECT TO INFORMATION OR MATERIALS DELIVERED PURSUANT TO THIS EULA, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY THAT THE DATA WILL BE FREE FROM INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS OR OTHER RIGHTS OF THIRD PARTIES AND ANY WARRANTY AS TO THE ACCURACY QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF THE DATA.
- d. NCQA DOES NOT CERTIFY EVERY PERMUTATION OF THE RULES FOR ALLOWABLE ADJUSTMENT OF HEDIS FOR A MEASURE. AS SUCH, NCQA SHALL NOT BE RESPONSIBLE OR LIABLE IN ANY WAY FOR ANY MEASURE ADJUSTMENT PERFORMED BY THE VENDOR OR YOU. SUCH MEASURE ADJUSTMENTS ARE AT YOUR OWN RISK.
- e. NCQA DISCLAIMS ALL LIABILITY FOR USE OR ACCURACY OF ANY THIRD-PARTY CODES.
- f. SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

**7. Indemnity.** Intentionally Omitted.

**8. Limitation of Liability.** NCQA SHALL HAVE NO LIABILITY TO YOU FOR: (1) ANY DAMAGES RESULTING FROM USE OR INTERPRETATION OF THE DATA, INCLUDING BUT NOT LIMITED TO THE IMPACT, PROVISION OR STANDARD OF MEDICAL CARE; OR (2) ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE OR OTHER INDIRECT DAMAGES ARISING UNDER OR RELATED TO THIS EULA, IN EACH CASE WHETHER OR NOT NCQA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LIABILITY OF NCQA SHALL OTHERWISE BE LIMITED TO ACTUAL AND DIRECT DAMAGES, NOT TO EXCEED \$10,000.

THE LIABILITY OF THE CUSTOMER TO NCQA ARISING UNDER THIS EULA WHETHER IN CONTRACT, TORT, OR OTHERWISE SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES. THE CUSTOMER SHALL HAVE NO LIABILITY FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES ARISING UNDER OR RELATED TO THIS EULA, WHETHER OR NOT THE CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

EACH PROVISION OF THIS EULA THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THIS EULA. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS EULA. THE LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**9. NCQA’s Notice of Copyright.**

- a. NCQA holds a copyright in the Data and can rescind or alter the Data at any time. The Data may not be modified by anyone other than NCQA.
- b. Any commercial use and/or internal or external reproduction, distribution and publication must be approved by NCQA and are subject to a license at the discretion of NCQA. Any use of the materials to identify records or calculate measure results, for example, requires a custom license and may necessitate certification pursuant to NCQA’s Measure Certification Program. Reprinted with permission by NCQA. © [current year] NCQA, all rights reserved.
- c. The American Medical Association holds a copyright to the CPT® codes contained in the measure specifications.
- d. The American Hospital Association holds a copyright to the Uniform Billing Codes (“UB”) contained in the measure specifications. The UB Codes in the HEDIS specifications are included with the permission of the AHA. The UB Codes contained in the HEDIS specifications may be used by health plans and other health care delivery organizations for the purpose of calculating and reporting HEDIS measure results or using HEDIS measure results for their internal quality improvement purposes. All other uses of the UB Codes require a license from the AHA. Anyone desiring to use the UB Codes in a commercial product to generate HEDIS results, or for any other commercial use, must obtain a commercial use license directly from the AHA. To inquire about licensing, contact [ub04@aha.org](mailto:ub04@aha.org).

**10. Display of Measure Rates.** Except for output used solely for internal, quality improvement purposes (e.g., trend or gap analysis), you agree to clearly and conspicuously display, along with the HEDIS measure name or acronym, the applicable HEDIS measurement year and complete calculated HEDIS measure result (“Rate”) name (e.g., HEDIS MY 2020 Use of Imaging Studies for Low Back Pain - Unaudited Health Plan HEDIS Rate (or) HEDIS MY 2020 LBP - Unaudited Health Plan HEDIS Rate) next to any Rate on all output containing a Rate, including such Rates that may be used for population health purposes within an affiliated health plan network, in accordance with the following:

- a. **Unadjusted Certified Measures.** A Rate that has been certified via a NCQA Measure Certification Program™, and is based on unadjusted HEDIS specifications, may not be called a “Health Plan HEDIS Rate” until it is audited and designated reportable by a HEDIS Compliance Auditor. Until such time, applicable Rates shall be designated or referred to as “Unaudited Health Plan HEDIS Rates.”
- b. **Adjusted Certified Measures.** A Rate that has been certified via a NCQA Measure Certification Program, and is based on adjusted HEDIS specifications, may not be called an “Adjusted HEDIS Rate” until it is audited and designated reportable by a HEDIS Compliance Auditor. Until such time, applicable Rates shall be designated or referred to as “Adjusted, Unaudited HEDIS Rates.”
- c. **Unadjusted Uncertified Measures.** *At times, the logic used to produce Rates from the Product will not have been certified by NCQA.* A Rate that has not been certified via a NCQA Measure Certification Program, and is based on unadjusted HEDIS specifications, may not be called a “Health Plan HEDIS Rate” until it is audited and designated reportable by a HEDIS Compliance Auditor. Such Rates are for reference only and are not an indication of measure accuracy. Until such time, such Rates shall be designated or referred to as “Uncertified, Unaudited Health Plan HEDIS Rates” and may only be used

for population health purposes within an affiliated health plan network and internal, quality improvement purposes (e.g., trend analysis).

- d. **Adjusted Uncertified Measures.** *At times, the logic used to produce Rates from the Product will not have been certified by NCQA.* A Rate from a HEDIS measure that has not been certified via a NCQA Measure Certification Program, and is based on adjusted HEDIS specifications, may not be called an “Adjusted HEDIS Rate” until it is audited and designated reportable by a HEDIS Compliance Auditor. Such Rates are for reference only and are not an indication of measure accuracy. Until such time, such Rates shall be designated or referred to as “Adjusted, Uncertified, Unaudited HEDIS Rates” and may only be used for population health management purposes within an affiliated health plan network and internal, quality improvement purposes (e.g., trend analysis).
- e. **Uncertifiable Measures.** Not all HEDIS measure specifications are eligible for NCQA certification. As such, the logic used to produce Rates from those measures have not been certified by NCQA. As such, they shall be designated or referred to as “Uncertifiable, Unaudited Health Plan HEDIS Rates” or “Adjusted, Uncertifiable, Unaudited HEDIS Rates,” as applicable. A list of current HEDIS measure specifications ineligible for certification can be found on NCQA’s website via ncqa.org. Once audited and designated reportable by an NCQA-Certified HEDIS Compliance Auditor, the “Unaudited” designation may be removed.
- f. For the sake of clarity, for each of Section 10 a.-e. above, once the measure rate is audited and designated reportable by an NCQA-Certified HEDIS Compliance Auditor, the “Unaudited” designation may be removed.

**11. Termination.** If you violate any provision of this EULA, your permission to use the Data may be terminated, upon notice. NCQA reserves the right to modify or discontinue the Data at any time (including by limiting or discontinuing certain features of the Data), temporarily or permanently, without notice to you. Termination of this EULA shall not impair your right to continue to use the Data contained in the Product or Rates contained in reports generated from the Product prior to the termination of this EULA; provided such use is consistent with the limitations and restrictions set forth in this EULA.

## **12. Disputes.**

- a. **Governing Law.** To the maximum extent permitted under applicable law, this EULA will not be subject to the Uniform Computer Information Transactions Act (prepared by the National Conference of Commissioners on Uniform State Laws) as currently enacted or as may be codified or amended from time to time by any jurisdiction. PURSUANT TO ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (“U.N. CONVENTION”), THE PARTIES AGREE THAT THE U.N. CONVENTION SHALL NOT APPLY TO THIS EULA. *For the sake of clarity, you agree to comply with all applicable U.S. and non-U.S. laws, including but not limited to export control laws and regulations and agree to the enforceability of these laws in the U.S. U.S. intellectual property and contract laws, including U.S. copyright laws, shall be the governing law with respect to all intellectual property and other proprietary rights in the Data and Adjustments and otherwise arising out of or relating to this EULA.*
- b. **Dispute Resolution – Entities Incorporated in the United States.** Any dispute arising out of or in connection with this EULA, the rights and obligations under this EULA or the breach, termination,

formation or validity of this EULA (a “Dispute”) that cannot be resolved within thirty (30) days may be resolved by one party bringing action in court.

- c. Vendor Disputes. ANY DISPUTE YOU HAVE WITH VENDOR OR A THIRD PARTY IS DIRECTLY BETWEEN YOU AND VENDOR, AND YOU IRREVOCABLY RELEASE NCQA (AND ITS OFFICERS, DIRECTORS, AGENTS, SUBSIDIARIES, JOINT VENTURES AND EMPLOYEES) FROM CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.
- d. No Class Action. EACH PARTY WAIVES THE RIGHT TO LITIGATE IN COURT OR ARBITRATE ANY CLAIM OR DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.

**13. Export Control Laws.** You shall abide by the Export Administration Regulations (15 C.F.R. Part 730 et seq.); and (b) the sanctions, embargoes and restrictions administered by the United States Department of the Treasury Office of Foreign Assets Control as set forth in 31 C.F.R. 500-598 and certain executive orders, the European Union, European Union member states, United Nations, World Bank and other relevant government body (“Export Control Laws”) in use of the Data. The Data may be subject to Export Control Laws. You shall not directly or indirectly, export, re-export, or release the Data to, or make the Data accessible from, any country, jurisdiction or person to which export, re-export, or release is prohibited by applicable law. You shall comply with all applicable laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Data available outside the U.S.

You represent and warrant you are not a Restricted Party. “Restricted Party” means, collectively, any party that (i) appears on a restricted party list maintained by any relevant government body, including without limitation the Specially Designated Nationals and Blocked Persons List, Sectoral Sanctions Identification List, Foreign Sanctions Evader List, Denied Persons List, Unverified List, Entity List, and United Nations Security Council Sanctions Lists; (ii) is headquartered in, located in, or organized under the laws of a country or territory subject to comprehensive territorial sanctions, currently, Cuba, Iran, North Korea, Syria, and the Crimea region; or (iii) is owned or controlled by or acting on behalf of any party identified in (i) or (ii) above. You represent and warrant that you or any person acting on your behalf has not taken any action that is reasonably likely to result in it being designated as a Restricted Party.

**14. Additional Terms; Modifications.**

- a. Additional Terms. Your use of the Data and Rates may be subject to additional terms, policies, rules or guidelines applicable to the Data or Rates that NCQA may post on its website (the “Additional Terms”), subject to the section of this EULA titled “Modification of this EULA.” All Additional Terms are incorporated by this reference into, and made a part of, this EULA. The rights granted under this EULA are limited to the Data and Rates, and nothing herein grants you any rights to the Product.
- b. Modification of this EULA. You acknowledge that the EULA may be modified or replaced on a going-forward basis at any time. Please check NCQA’s website periodically for changes to this EULA. If a change to this EULA materially modifies your rights or obligations, you will be required to accept the modified EULA in order to continue to use the Data and yet to be calculated Rates. This EULA will be identified by the most recent date of revision and will be effective immediately upon being made available through NCQA’s website or otherwise through the Product, except: (i) if any such modification materially alters your rights under this EULA, an attempt to notify you will be made directly through a message sent by NCQA to the email address you have provided to Vendor, if any,

or through a pop-up window or other notification when you access or use the Product; (ii) such materially modified EULA will be effective upon the earlier of your use of the Data or calculated Rates therefrom with actual knowledge of the changes or thirty (30) days after the changes are made available to you; and (iii) no modifications to this EULA will apply to any dispute between you and NCQA that arose prior to the date of such modification. What constitutes a material change will be determined at NCQA's sole reasonable discretion. Your use of the Data or yet to be calculated Rates after modifications to this EULA become effective constitutes your binding acceptance of such changes. If you are dissatisfied with the terms of this EULA or any modifications to this EULA, then you agree that your sole and exclusive remedy is to discontinue any use of the Data, including continued calculation of Rates therefrom.

- c. Changes to the Data. NCQA reserves the right to modify, suspend or discontinue, temporarily or permanently, the Data with or without notice and without liability to you.

**15. Feedback.** If you provide NCQA with any comments, bug reports, feedback, or modifications proposed or suggested by you for the Data ("Feedback"), such Feedback is provided on a non-confidential basis (notwithstanding any notice to the contrary you may include in any accompanying communication), and NCQA will have the right to use such Feedback at its discretion, including, but not limited to the incorporation of such suggested changes into the Data. You hereby grant NCQA a perpetual, irrevocable, nonexclusive license under all rights necessary to so incorporate and use for any purpose your Feedback related to the Data. You acknowledge that you will address all support and Product-related requests and issues to the Vendor, and NCQA is not responsible for such requests or issue solving.

**16. Miscellaneous.**

- a. Entire Agreement. This EULA sets forth the entire understanding of the parties relating to your use of the Data and supersedes all prior agreements and understandings between the parties relating to your use of the Data. This EULA shall control in the event of any conflict between this EULA and any Additional Terms.
- b. Further Assurances. Each party shall, upon the reasonable request of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this EULA.
- c. Severability; Waiver. If any part of any provision of this EULA is found to be invalid or unenforceable, the remainder of this EULA shall remain in full force and effect. No failure to enforce any terms of this EULA shall: (i) be effective unless expressly set forth in writing; (ii) constitute a waiver of such term in the future; or (iii) in any way affect the other terms hereof.
- d. Notice. Any notice required or permitted to be delivered pursuant to this EULA shall be in writing and shall be deemed given upon delivery. All such notices shall be addressed to NCQA at the address set forth below, by email, or to such other address as NCQA shall notify you in accordance with this Section:

AVP, Measure Validation  
NCQA  
1100 13<sup>th</sup> Street NW, Third Floor  
Washington, DC 20005  
Phone: 202-955-3500

- e. Independent Contractor. The relationship among the parties is and will be that of independent contractors. This EULA does not establish or create a partnership, joint venture, or similar relationship among the parties and neither party has authority to contract for or bind the other party in any manner whatsoever.
- f. Assignment. You shall not assign or delegate this EULA or any of your rights or obligations hereunder without the prior written consent of NCQA. Any attempted assignment by you without such consent shall be null and void. NCQA may assign this EULA, or any of its rights under this EULA, to any third party with or without your consent.
- g. Language. The EULA all other communications under or in connection with the EULA shall be in, the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.

## Limited Exceptions and Revisions to Attachment B.2, State of Indiana Additional Terms and Conditions Platform as a Service Engagements

The following sets forth a limited set of exceptions and proposed revisions to Attachment B.2, State of Indiana Additional Terms and Conditions Platform as a Service Engagement for those components of Optum's EDW Solution that are offered under a Platform as a Service construct (i.e., the Teradata Platform Services hosted in the Azure GovCloud).

### 1. Definitions

In an effort to avoid an inadvertent inconsistency between the terms "Data Breach" and "Security Incident" that are defined in both Attachment B.2 and in Section 12(A)(2) and (3) of the base Professional Services Contract for which Attachment B.2 is an Attachment, Optum proposes the following modifications to the definitions in Attachment B.2, where the modifications are highlighted in bold below:

- A. **Data Breach** means any actual or reasonably suspected unauthorized access to or acquisition of Encrypted Data **to the extent this definition is consistent with the definition of "Data Breach" under Section 12(A)(2) of the base Professional Services Contract for which this is an Exhibit.**
- B. **Security Incident** means any actual or reasonably suspected unauthorized access to the contractor's system, regardless of whether contractor is aware of a Data Breach **to the extent this definition is consistent with the definition of a "Security Incident" under Section 12(A)(3) of the base Professional Services Contract for which this is an Exhibit.** A Security Incident may or may not become a Data Breach.

### 2. Section 11, Data Center Audit

The second paragraph of Section 11 reads as follows:

"The State may perform an annual audit of contractor's data center(s) where Data, State applications, or other State information is maintained. The audit may take place onsite or remotely, at the State's discretion. The State shall provide to contractor thirty (30) days' advance notice prior to the audit. The contractor will make reasonable efforts to facilitate the audit and will make available to the State members of its staff during the audit. The State may contract with a third party to conduct the audit at its discretion and at the State's expense. If the contractor maintains Data, State applications, or other State information at multiple data centers, the State may perform an annual audit of each data center."

The above language is typical and customer for so called "private cloud" data centers used to provide Platform as a Service. For public cloud based data centers, such as the Azure GovCloud data centers that are part of Optum's solution and offered through Teradata and its agreement with Microsoft, this right is not provided by the cloud provider. Based on that, Optum proposes to delete this paragraph while retaining the obligation for Optum to provide attestations regarding the audit results of the EDSS Solution provided by Optum within the Azure GovCloud tenant space provisioned for use by FSSA. Azure audit results from independent third parties are also available to Azure tenants directly from Microsoft.