

Connecture

Status - Open

Start Contract Date	Contract End Date
N/A	N/A

Contact: Sarah Rodehorst
101 Marietta Street
Suite 1600
Atlanta, Georgia 30303
(404) 879-4636
chip.kenyon@bcbsfl.com

Summary of Contract: Connecture will work with Florida Health Choices to create a dynamic questionnaire hub that will work with the Florida Health Choices portal and vendors to assist in the underwriting process.

Total Paid Prior Years: \$0.00

Total Paid in 2011: \$0.00

Total Paid Contract Term: \$0.00

Outstanding Obligations (if any): \$0.00

Notes:

December 2, 2011 – Board authorized execution of the contract subject to general counsel review and approval.

December 29, 2011 – Pending general counsel approval as of this date.

FLORIDA HEALTH CHOICES, INC.

STANDARD SERVICES CONTRACT

This Contract is entered into between Florida Health Choices, Inc. ("FHC"), a Florida not-for-profit corporation, pursuant to Chapter 617, Florida Statutes and Connecture, Inc., ("Entity" or "Connecture") a Delaware corporation, having its principal place of business at 101 Marietta Street, Suite 1600, Atlanta, GA 30303.

BACKGROUND

Entity is the owner of proprietary computer software known as StateAdvantage that enables consumers, employer groups, insurance agents and brokerages, navigators, state exchanges and other entities to compare health insurance plans, receive purchase recommendations and acquire health insurance via the internet, administer health insurance business and customer accounts, manage renewals, and manage the supporting business process workflow including underwriting and distribution.

FHC wishes to license certain modules of the StateAdvantage software and to retain Entity to configure, implement and provide additional services and support as identified herein.

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

Section 1 Definitions

- 1-1 "Applicant" means those employers, individuals, vendors, and health insurance agents as set forth in Section 408.910(4), F.S."
- 1-2 "Connecture Intellectual Property" or "Connecture IP" means the Software (including but not limited to the Source Code for the Software), Connecture trade secrets, any work product (including but not limited to all Source Code for any work product), Connecture proprietary information, and all Documentation; any modifications, copies, enhancements, adaptations, and derivative works thereof; and the techniques and ideas embodied and expressed in the foregoing, including but not limited to the structure, sequence, and organization of the foregoing.
- 1-3 "Data Center" means the co-location facility that contains the hardware provided by Connecture that runs the Software and the Hosted System.
- 1-4 "Documentation" means all written (including electronic) documents and procedures relating to the Software, or any derivative works thereto, including technical and operating manuals.

1-5 "Enrollee" means an individual who meets FHC standards of eligibility and has been enrolled in the Program.

1-6 "Florida Statutes" (F.S.) means the Florida Statutes as amended from time to time by the Florida Legislature during the term of this Contract.

1-7 "Hosting Services" means those services described in Attachment G (Hosting Services).

1-8 "Hosted System" means the Data Center, servers, file exchanges and integration between FHC and Connecture, and third party software (as identified herein) provided by Connecture, in each case, which is utilized to provide the Hosting Services. 1-9 "Liquidated Damages" mean the amounts stipulated in this Contract or any Attachments, and agreed to by the Parties as a reasonable estimation of the losses if the ENTITY breaches the terms of the Contract or fails to perform its obligations fully, correctly and on time, as determined in the sole discretion of FHC. The Parties agree that the actual damages in such situations are uncertain and difficult to ascertain. The Parties' mutual intent in establishing the liquidated damages as set forth in this Contract is to make a good-faith effort and estimation of damages, not to penalize ENTITY.

1-9 "Production Acceptance" means the acceptance and approval of the Software for the deployment into production, occurring at the completion of the user acceptance testing phase of the project, subject to the "sign off" process set forth in the applicable SOW.

1-10 "Professional Services" means those services delivered and performed by Entity for FHC as described in any applicable Statement of Work and/or Change Order.

1-11 "Program" means the program administered by FHC as created by and governed under section 408.910, F.S. and related state and federal laws.

1-12 "Software" or "Connecture Software" means Entity's core software product and modules that it offers commercially to its customers, and that may be configured to meet FHC's requirements. A description of the Software modules that will be licensed to FHC following the payment of applicable license fees is included in Attachment F.

1-13 "Source Code" means the human readable embodiment of the software code, in or on any electronic media, and all related documentation for such software.

1-14 "Users" means any individual(s) or organizations that may access or utilize the Hosted System

Section 2 Term of this Contract

The term of this Contract is for _____ (#) years. The Effective Dates are:

This Contract shall begin on _____, 20__.

This Contract shall end on _____, 20__.

This Contract may be extended at FHC's option for one additional year beyond the initial term indicated above. FHC agrees to notify ENTITY by _____, 20__ if FHC does not intend to exercise the one year extension. Thereafter, this contract may be extended only by mutual consent of both parties.

Section 3 Fees and Costs

- 3-1 In consideration for the Software License provided in Attachment F and services performed under this Contract, FHC agrees to pay ENTITY the fees and compensation set forth in each applicable Statement of Work for Professional Services and as set forth in Attachment H as applicable. . However, all billing must be itemized with specificity as to the services and fees being invoiced.3-2
- 3-2 For the purposes of fulfilling the obligations of this Contract within the scope of its terms, ENTITY may be entitled, in addition to the payment agreed to in subsection 2-1 above, to receive from the funds of FHC, reimbursement for per diem and travel expenses as provided by Section 112.061, F.S., in the same amounts and under the same procedures as Board Members of FHC are entitled to such reimbursements pursuant to Section 408.91, F.S. Per diem and travel expenses, as well as incidentals not specified in this Contract, for which reimbursement is sought must be approved by an authorized officer or employee of FHC before they are incurred for reimbursement to be considered. In addition, ENTITY may be entitled to receive reimbursement for necessary photocopy costs at the rate of twenty (20) cents per page and tele-copies at a rate of one dollar (\$1.00) per page. Reimbursement for postage, express mail and long distance phone calls will be for the expense actually incurred by ENTITY and must be itemized with specificity in billings to FHC so as to identify the individual costs.
- 3-3 ENTITY agrees to bill FHC monthly for all charges incurred in meeting the obligations of this Contract. Such bills will include the specificity required by this section of the Contract.
- 3-4 FHC will make payment to ENTITY within thirty (30) calendar days of receiving an invoice from ENTITY provided such billing is in accordance with the terms of this Contract. If FHC requests detail or clarification regarding an invoice, payment shall be made within thirty (30) calendar days of receipt of the detail or clarification.
- 3-5 In the event FHC disagrees with or questions any amount due under an invoice, FHC agrees to pay the amount not in disagreement in accordance with the terms of this Contract, and communicate such disagreement to ENTITY in writing within

thirty (30) calendar days of the invoice date. Any claim not made within that period shall be deemed waived.

- 3-6 The parties agree that under no circumstances shall the total charges to FHC for the performance of this Contract and all associated costs exceed \$_____.

Section 4 Duties of ENTITY

4-1 Deliverables

- A. Entity shall perform and provide to FHC, as applicable, Hosting Services, Professional Services Software Maintenance, and Entity shall provide the FHC product configurations as specified in the Statement of Work attached hereto as Attachment E .
- B. Software License. The terms and conditions of the license agreement are described in Attachment F (Software License Usage and Software Maintenance Agreement).

4-2 Records Retention and Accessibility

- A. ENTITY agrees to maintain books, records and documents in accordance with generally acceptable accounting principles which sufficiently and properly reflect all expenditures of funds provided by FHC under this Contract.
- B. Upon reasonable advance notice, ENTITY shall have all make available records used or produced in the course of the performance of this Contract available at all reasonable times for inspection, review, or audit or copying to FHC, any vendor contracted with FHC or any state or federal regulatory agency as authorized by law or FHC. Access to such records will be during normal business hours and will be either through on-site review of records or, by agreement of the parties, through the mail. These records shall be retained for a period of at least five (5) years following the term of this Contract, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all tasks are completed.
- C. ENTITY agrees to cooperate in any evaluative efforts conducted by FHC or an authorized subcontractor of FHC both during and for a period of at least five (5) years following the term of this Contract. Entity may object to the use of an authorized subcontractor of FHC if the subcontractor can reasonably be considered to be a competitor of Entity. These efforts may include a post-Contract audit if required by state or federal law.

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Comment [R1]: WEB: split into i. public records and give 72 hours and ii. Audits. Give 15 business days notice for audits

- D. Additionally, ENTITY agrees to provide to FHC, by July 1st (first) each year, an audited financial statement for ENTITY'S preceding fiscal year. If such is not customarily available in the ordinary course of ENTITY'S business, then a written statement from an accountant verifying the financial stability of ENTITY shall be submitted and be subject to the approval of the Chief Executive Officer.
- E. ENTITY shall include all the requirements of this subsection in all approved subcontracts and assignments and ENTITY agrees to require subcontractors and assignees to meet these requirements.

4-3 Use of Subcontractors or Affiliates

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

- A. ENTITY identified the subcontractor or affiliate in its response to the RFP for covered by this Contract.
- B. ENTITY has provided FHC with a copy of the current contract or other written agreement and any amendments for services under this Contract between ENTITY and the subcontractor or affiliate. FHC shall have the right to withhold its approval of any such contracts, agreements and amendments.
- C. ENTITY'S Contract with the subcontractor or affiliate fully complies with all terms and conditions of this Contract between ENTITY and FHC.
- D. ENTITY agrees to notify FHC in advance of the termination of such agreements with any subcontractor or affiliate.
- E. ENTITY shall provide FHC with advance notice of ENTITY'S intent to contract with any new subcontractors or affiliates for services covered under this Contract. Prior to execution, ENTITY shall forward for FHC's review and approval any proposed agreement for services with subcontractors or affiliates.
- F. By April 1st (first) each year, ENTITY agrees to provide FHC with an annual report listing, for the previous calendar year, all subcontractors or affiliates that performed services under this Contract for ENTITY and attaching a copy of ENTITY'S executed contracts with such subcontractors and affiliates.

All agreements between ENTITY and its subcontractor or affiliates to provide services under this Contract shall be reduced to writing and shall be executed by both parties. All

such agreements shall also be available to FHC within seven (7) business days of request for production.

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

4-4 Indemnification

ENTITY shall indemnify, defend and hold FHC, its officers, directors, agents and employees harmless from all claims, losses, suits, judgments or damages, including court costs and attorneys fees, arising out of :

- A. negligence, intentional torts or breach of contract by ENTITY;
- B. any claims or losses attributable to the acts of any subcontractor, person or entity performing or furnishing services, materials, or supplies on behalf of ENTITY in connection with the performance of this Contract whether or not known to FHC; or
- C. any failure of ENTITY, its officers, employees or subcontractors to observe the requirements of applicable Florida or federal law, regardless of whether FHC knew or should have known of such failure.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the FHC's negligence. This clause will not be construed to bar any legal remedies that Entity may have for the State's failure to fulfill its obligation under this contract. Additionally, Entity will not be liable to FHC for any loss, damages or liabilities attributable to or arising from the failure of FHC or another FHC contractor to perform a service or activity in connection with this contract or Entity's prudent and diligent performance of the obligations under this contract in compliance with instructions given by FHC.

Comment [R2]: WEB Review

4-5 Insurance

ENTITY shall not commit any work in connection with the Contract until it has obtained all types and levels of insurance required and approved by FHC. Such coverage may include but not be limited to worker's compensation, liability, fire insurance, and property insurance depending upon the types of services being provided and shall be attached as Attachment___ to this contract. Within ten (10) days of contract execution, ENTITY shall provide FHC proof of coverage of insurance by a certificate of insurance. FHC shall be provided proof of coverage of insurance by a certificate of insurance within ten (10) business days of contract execution. Continuing evidence of insurance coverage must be provided to FHC by July 1st of each year.

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

4-6 Limitation of Liability

If Entity shall be found liable to FHC for any matter relating to or arising from this contract, the aggregate amount of damages recoverable against Entity shall not exceed \$400,000.

Section 5 General Terms and Conditions

5-1 Amendment

This Contract may be amended by mutual written consent of the parties at any time. This Contract shall automatically be amended to the extent necessary from time to time to comply with state or federal laws upon notice by FHC to ENTITY to that effect.

5-2 Assignment

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

5-3 Attachments

Attachments A through ____ are all incorporated into this Contract by reference. Any conflict between these Attachments and this Contract, the Attachment shall control.

5-4 ~~Attorney Fees~~

~~In the event of any legal action, dispute, litigation or other proceeding with relation to this Contract, FHC shall be entitled to recover from ENTITY its attorney fees and costs incurred, whether or not suit is filed, and if filed, at both trial and appellate levels. Legal actions are defined to include administrative proceedings.~~

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Comment [R3]: WEB: reinsert and add language about mutuality for prevailing party

5-5 Bankruptcy

FHC shall have the absolute right to elect to continue or terminate this Contract, at its sole discretion, in the event ENTITY or any of its approved subcontractors file a petition for bankruptcy or for approval of a plan of reorganization or arrangement under the Bankruptcy Act. ENTITY shall give FHC notice of the intent to petition for bankruptcy or reorganization or arrangement at the time of

the filing and immediately provide a copy of such filing to FHC. FHC shall have thirty (30) calendar days to elect continuation or termination of this Contract.

5-6 Change of Controlling Interest

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

5-7 Confidentiality and Ownership of Intellectual Property

5-7-1 Confidentiality

ENTITY shall treat all information, particularly personal or identifying information relating to Applicants or Enrollees that is obtained through its performance under this Contract, as confidential information to the extent confidential treatment is provided under state and federal laws. ENTITY shall not use any information obtained in any manner except as necessary for the proper discharge of its obligations and to secure its rights under this Contract. Such information shall not be divulged without written consent of FHC, the Applicant or the Enrollee. This provision does not prohibit the disclosure of information in summary, statistical or other form which does not identify particular individuals.

ENTITY and FHC mutually agree to maintain the integrity of all proprietary information to the extent provided under the law. Neither party will disclose or allow others to disclose proprietary information as determined by law by any means to any person without prior written approval of the other party. All proprietary information will be so designated. FHC shall treat all Connecture Intellectual Property as confidential and proprietary information and shall not disclose any such information to others without Connecture's consent. This requirement does not extend to routine reports and membership disclosure necessary for efficient management of the Program.

ENTITY understands that FHC is subject to the Florida Public Records Act, Section 119.07, F.S. and therefore all such information may be considered a public record and open to inspection. ~~Thus, unless otherwise confidential or exempted by law, ENTITY shall allow public access to all documents, papers, letters, electronic correspondence or other material subject to the provisions of Chapter 119, F.S. and made or received by ENTITY in conjunction with this Contract. However,~~ ENTITY agrees to advise FHC of any requests to release prior to the release of any such information.

Comment [R4]: WEB: add defend the claim language

5-7-2 Ownership of Intellectual Property

Connecture is and shall at all times be the sole and exclusive owner of all rights, title, and interests, including all Intellectual Property Rights, in the Software (including but not limited to the Source Code for the Software), in its Trade Secrets, the Work Product (including but not limited to all Source Code for the Work Product), Connecture proprietary information, and all Documentation; any modifications, copies, enhancements, adaptations, and derivative works thereof; and the techniques and ideas embodied and expressed in the foregoing, including but not limited to the structure, sequence, and organization of the foregoing.

Except as set forth in the Agreement, no express or implied license or right of any kind is granted to FHC regarding the Connecture Intellectual Property, including, but not limited to, any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, adapt, disassemble, decompile, or reverse engineer or create derivative works based on the Connecture Intellectual Property or any portions thereof, or obtain possession of any Source Code or other technical material relating to the Connecture Intellectual Property. FHC does not acquire any rights, express or implied, in the Work Product other than those expressly specified in this Agreement.

5-8 Conflicts of Interest

5-8-1 Conflicts of Interest

ENTITY confirms that to the best of its knowledge, the responsibilities and duties assumed pursuant to this Contract are not in conflict with any other interest to which ENTITY is obligated or from which ENTITY benefits. Further, ENTITY agrees to inform FHC immediately after becoming aware of any conflicts of interest which it may have with the interests of FHC, as set forth in this Contract and which may occur in the future.

Within ten (10) days of contract execution, ENTITY shall submit a disclosure form identifying any relationships, financial or otherwise with any FHC Board Member, or any employee of FHC.

5-8-2 Gift Prohibitions

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

5-8-3 Non-Solicitation

ENTITY recognizes and acknowledges that as a result of this Contract ENTITY will come into contact with employees of FHC and that these employees have received considerable training by FHC. ENTITY agrees

not to solicit, recruit or hire any individual who is employed by FHC during the term of this Contract. This prohibition shall be in effect for both the term of this Contract and twelve (12) months immediately following its termination.

5-9 Entire Understanding

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

5-10 Force Majeure

Neither party shall be responsible for delays or failure in performance of its obligations under this Contract resulting from acts beyond the control of the party. Such acts shall include, but are not limited to, blackouts, riots, acts of war, terrorism, epidemics, government regulations or statutory amendments adopted following the date of execution of this Contract, fire communication line failure, computer hardware failure, computer executive software failure, power failure or shortage, fuel shortages, hurricanes or other natural disasters.

5-11 Governing Law; Venue

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

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

- A. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color or national origin.
- B. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap.
- C. Title IX of the Education Amendments of 1972, as amended 29, U.S.C. 601 et seq., which prohibits discrimination on the basis of sex.
- D. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age.
- E. Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9848, which prohibits discrimination on the basis of

race, creed, color, national origin, sex, handicap, political affiliation or beliefs.

- F. The American Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires accommodation for persons with disabilities.
- G. Section 274A (e) of the Immigration and Nationalization Act, FHC shall consider the employment by any contractor of unauthorized aliens a violation of this Act.
- H. OMB Circular A-102, A-87, 45 CFR-92 and Attachment A of this Contract. Covered transactions include procurement contracts for services equal to or in excess of one hundred thousand dollars (\$100,000.00) and all non-procurement transactions.
- I. All applicable state and federal laws and regulations governing FHC.
- J. All regulations, guidelines and standards as are now or may be lawfully adopted under the above statutes.

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

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

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

5-12 Independent Contractor

The relationship of ENTITY to FHC shall be solely that of an independent contractor. The parties acknowledge and agree that neither party has the authority to make any representation, warranty or binding commitment on behalf of the other party, except as expressly provided in this Contract or as otherwise agreed to in writing by the parties, and nothing contained in this Contract shall be

deemed or construed to (i) create a partnership or joint venture between the parties or any affiliate, employee or agent of a party; or (ii) constitute any party or any employee or agent of a party as an employee or agent of the other party.

5-13 Name and Address of Payee

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

For ENTITY:
Connecture, Inc.
One Riverwood Place
N17 W24222 Riverwood Drive, Suite 330
Waukesha, WI 53188
Attention: Chief Executive Officer
Telephone: (262) 408-3800
Facsimile: (262) 408-3840

5-14 Notice and Contact

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

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

For FHC:

Administrative Services Manager
Florida Health Choices, Inc.
225 South Adams Street, Suite 250
Tallahassee, FL 32301
850-222-0933 (Phone)
850-222-8222 (Fax)

For Entity:

Connecture, Inc.
One Riverwood Place
N17 W24222 Riverwood Drive, Suite 330
Waukesha, WI 53188
Attention: Chief Executive Officer
Telephone: (262) 408-3800
Facsimile: (262) 408-3840

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

5-15 Severability

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

5-16 Survival

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

5-17 Termination of Contract

A. Termination for Lack of Funding

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

B. Termination for Lack of Payment

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

C. Termination for Lack of Performance or Breach

The continuation of this Contract is contingent upon the satisfactory performance of the ENTITY and corresponding evaluations by FHC. If ENTITY fails to make timely progress on the objectives of this Contract or fails to meet the deliverables described under this Contract in the time and manner prescribed, FHC reserves the right to terminate this Contract, or any part herein, at its discretion and such termination shall be effective at such times as is determined by FHC. In its sole discretion, FHC may allow ENTITY to cure any performance deficiencies prior to termination.

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

Prior to termination under this section, FHC will give entity written notice of the reasons for an alleged lack of performance breach, and Entity shall have fifteen (10) business day to cure such breach to the satisfaction of FHC.

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

- D. FHC may terminate this Agreement in the event of a Material Breach of any material term or condition hereof, if such breach is not cured to the reasonable satisfaction of the non-breaching party within ten (10) calendar days after the non-breaching party has given written notice thereof to the breaching party. In the event the ENTITY cannot perform the cure within ten (10) business days, after the receipt of notice from FHC, and FHC is satisfied, in its sole discretion, that the ability to cure is not the fault of the ENTITY, FHC may establish a timetable for cure and such decision by FHC shall be final. A "Material Breach" shall mean the failure to perform any of the duties, requirements, terms or conditions set forth herein, and shall mean a violation of any duty, responsibility of the ENTITY required under this Contract, or any applicable state or federal laws or a rule or regulations.

It is expressly understood that evidence of ENTITY'S refusal to substantially comply with this Contract or such failure by ENTITY'S subcontractors, assignees or affiliates performing under this Contract shall constitute a Material Breach of this Contract.

E. Termination upon Revision of Applicable Law

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

F. Termination upon Mutual Agreement

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

5-18 Transition Plan and Process

Upon the expiration or termination of this Contract for any reason, should

FHC choose to use another vendor, ENTITY shall ensure a smooth transition. ENTITY shall provide a transition plan to FHC within ~~number of days~~ thirty (30) business days of notice of the expiration or termination of this Contract. Acceptance of the transition plan shall be determined in the sole discretion of FHC provided that if FHC does not accept the transition plan, FHC shall provide a list of deficiencies in the plan and provide ENTITY a reasonable opportunity to re-submit the plan. Failure for the ENTITY to provide a timely transition plan acceptable to FHC shall be cause to hold the ENTITY in default and for failure to perform; and in such event liquidated damages in the amount of five hundred DOLLARS (\$ 500.00)] per day may be charged against the ENTITY. FHC also may withhold payment to ENTITY for nonperformance or unsatisfactory performance of the terms of this Contract.

Comment [R5]: WEB: revise for reasonable business procedures?

ENTITY shall provide staff, services and other resources for consultation and the successful and complete transition after the expiration or termination of this Contract, as requested by FHC. The "Transition Period" required is estimated to be one hundred twenty days (120 days) after the expiration or termination of this Contract. In the event, the actual Transition Period extends longer than the estimated Transition Period; the ENTITY shall continue to perform the duties pursuant to this Contract and to provide the necessary level of staff, services and other resources until the actual Transition Period is completed successfully, as determined in the sole discretion of FHC.

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

[TWO (2) SIGNATURE PAGES FOLLOWS]

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

FOR

ENTITY:

NAME:

TITLE:

DATE SIGNED:

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged to me before this _____ day of _____, 2011, by _____, as _____ on behalf of _____. He/She is personally known to me or has produced _____ as identification.

Signature

Notary Public – State of Florida

Print, Type or Stamp Name of Notary Public

My Commission Expires

WITNESS #1 SIGNATURE _____

WITNESS #1 PRINT NAME _____

WITNESS #2 SIGNATURE _____

WITNESS #2 PRINT NAME _____

FOR

FLORIDA HEALTH CHOICES, INC.:

NAME: **Rose M. Naff**

TITLE: **Chief Executive Officer**

DATE SIGNED:

STATE OF FLORIDA)

COUNTY OF _____)

The foregoing instrument was acknowledged to me before this _____ day of _____, 20____, by Rose M. Naff, as Chief Executive Officer on behalf of the Florida Health Choices, Inc. He is personally known to me or has produced _____ as identification.

Signature

Notary Public – State of Florida

Print, Type or Stamp Name of Notary Public

My Commission Expires

WITNESS #1 SIGNATURE

WITNESS #1 PRINT NAME

WITNESS #2 SIGNATURE

WITNESS #2 PRINT NAME

Reviewed by:

Date: ____/____/20____

Wilbur E. Brewton

Fla Bar Number: xxxxxxxxx

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION

CONTRACTS AND SUBCONTRACTS

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

INSTRUCTIONS

- A. *Each entity whose contract\subcontract equals or exceeds twenty five thousand dollars (\$25,000) in federal monies must sign this certification prior to execution of each contract\subcontract. Additionally, entities who audit federal programs must also sign, regardless of the contract amount. The Florida Health Choices, Inc. chooses not to contract with these types of Entities if they are debarred or suspended by the federal government.*
- B. *This certification is a material representation of fact upon which reliance is placed when this contract\subcontract is entered into. If it is later determined that the signer knowingly rendered an erroneous certification, the Federal Government may pursue available remedies, including suspension and/or debarment.*
- C. *ENTITY shall provide immediate written notice to the contract manager at any time ENTITY learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.*
- D. *The terms "debarred," "suspended," "ineligible," "person," "principal," and "voluntarily excluded," as used in this certification, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the contract manager for assistance in obtaining a copy of those regulations.*
- E. *ENTITY agrees by submitting this certification that, it shall not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract\subcontract unless authorized by the Federal Government.*
- F. *ENTITY further agrees by submitting this certification that it will require each subcontractor of this contract\subcontract whose payment will equal or exceed twenty five thousand dollars (\$25,000) in federal monies, to submit a signed copy of this certification.*
- G. *The Florida Health Choices, Inc. may rely upon a certification of Entity that it is not debarred, suspended, ineligible, or voluntarily excluded from contracting\subcontracting unless it knows that the certification is erroneous.*
- H. *This signed certification must be kept in the contract manager's file. Subcontractor's certifications must be kept at the contractor's business location.*

CERTIFICATION

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

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

Signature (Above)

Date of Signature

Name and Title of Authorized Signatory:

Name of Entity and Business Address:

ATTACHMENT B

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE CONTRACTS

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

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

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

Signature (Above)

Date of Signature

Name and Title of Authorized Signatory:

Name of Entity and Business Address:

**ATTACHMENT C
REGARDING HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY
ACT OF 1996 COMPLIANCE:
BUSINESS ASSOCIATE (BA) AGREEMENT**

THIS BA AGREEMENT (Attachment C), is entered into and made between Florida Health Choices, Inc., a Florida non-profit corporation, (FHC) (the "Covered Entity") and _____ (the "BA") and is incorporated in the Services Contract (Contract) between FHC and _____.

1. HIPAA Compliance. FHC and BA agree to comply with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended from time to time ("HIPAA"). Pursuant to HIPAA, FHC meets the definition of a covered entity and BA meets the definition as a business associate. As a covered entity, FHC must obtain and document satisfactory assurances from business associates, such as BA, that BA shall appropriately safeguard the individually identifiable health information which is personal health information ("PHI") and/or electronic protected health information ("EPHI") through a written contract or other written agreement such as this Attachment.
2. Definitions For Use in This Attachment. Terms used, but not otherwise defined, in this Attachment and the Agreement shall have the same meaning as those terms in 45 C.F.R. Parts 160, 162 and 164.
3. Privacy Obligations and Activities of BA. BA shall ensure compliance with the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164 (the "Privacy Rule"). Without limiting the generality of the foregoing, BA agrees that it will, in accordance with HIPAA, comply with the following:
 - BA agrees to not use or disclose personal health information PHI other than as permitted or required by this Attachment, the Agreement or as Required By Law.
 - BA agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Attachment and the Agreement.
 - BA shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of the Covered Entity.
 - BA agrees to mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Attachment, the Agreement and HIPAA.
 - BA agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Attachment and the Agreement of which it becomes aware, within twenty (20) business days.
 - BA shall promptly report to Covered Entity any "security incident" of which it becomes aware; as such term is defined in the HIPAA Security Rule. At the request of Covered Entity, BA shall identify: the date of the security incident, the scope of the security incident, the BA's response to the security incident and the identification of the party responsible for causing the security incident, if known.
 - BA agrees to ensure that any agent, including a subcontractor, to whom it provides PHI and/or EPHI received from, or created or received by BA on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Attachment and the Agreement to BA with respect to such information.
 - BA agrees to provide access, at the written request of Covered Entity, within ten (10) business days of the written request (five (5) additional business days are permitted if written request provided by the U.S. Postal Service ("USPS")), to PHI in a Designated Record Set ("DRS"), to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR

§164.524. In the event any Individual requests access to PHI directly from BA, BA shall forward written notice of such request, to Covered Entity within ten business (10) days (five (5) additional business days are permitted if written notice provided by U.S.P.S.). Any denials of access to the PHI requested shall be the responsibility of Covered Entity.

BA agrees to make any amendment(s) to PHI in a DRS that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the written request of Covered Entity or an Individual, within twenty (20) business days of the written request (five (5) additional business days are permitted if written request provided by U.S.P.S.).

BA agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by BA on behalf of, Covered Entity available to the Covered Entity and to the Secretary, within fifteen (15) business days notice of the Secretary's request (five (5) additional business days permitted if notice provided by U.S.P.S.) or in the time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's HIPAA compliance.

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

BA agrees to provide to Covered Entity, or an Individual at the request of the Covered Entity, within fifteen (15) business days (five (5) additional business days are permitted if written notice provided by U.S.P.S.) of written notice by Covered Entity to BA that Covered Entity has received a request for an accounting of PHI disclosures regarding an Individual during the six (6) years prior to the date on which the accounting was requested, information collected in accordance with Section 2.i. of this Attachment, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures, pursuant to 45 CFR §164.528.

4. Security. BA shall ensure compliance with the HIPAA Security Standards for the Protection of Electronic Protected Health Information ("EPHI"), 45 C.F.R. Part 160 and Part 164, Subparts A and C (the "Security Rule"), with respect to Electronic Protected Health Information covered by this Agreement effective on the compliance date for initial implementation of the security standards set for in 45 C.F.R. §164.318. Without limiting the generality of the foregoing, BA agrees that it will, in accordance with HIPAA:

Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C.

Ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it;

Report to the Covered Entity any security incident of which it becomes aware;

Ensure the confidentiality, integrity, and availability of all Electronic Protected Health it creates, receives, maintains, or transmits;

Protect against any reasonably anticipate threats or hazards to the security or integrity of such information;

Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under HIPAA; and

Ensure compliance with 45 C.F.R. Part 164, Subpart C (Security Standards for the Protection of Electronic Protected health Information) by its workforce.

5. Electronic Transaction And Code Sets. BA shall comply with the HIPAA Standards for Electronic Transactions and Code Sets, 45 C.F.R. Parts 160 and 162, with respect to Electronic Protected Health Information covered by this Agreement. Without limiting the generality of the foregoing, BA agrees that it will, in accordance with 45 C.F.R. § 162.923(c):

Comply with all applicable requirements of 45 C.F.R. Part 162; and
Require any agent or subcontractor to comply with all applicable requirements of 45 C.F.R. Part 162.

6. Permitted Uses and Disclosures by BA - General Use and Disclosure Provisions. Except as otherwise limited in this Attachment, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate HIPAA if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.
7. Permitted Uses and Disclosures by BA - Specific Use and Disclosure Provisions.
Except as otherwise limited in this Attachment and the Agreement, BA may use PHI for the proper management and administration of BA or to carry out BA's legal responsibilities.
Except as otherwise limited in this Attachment and the Agreement, BA may disclose PHI for the BA's proper management and administration, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies BA of any instances of which it is aware in which the confidentiality of the information has been breached.
Except as otherwise limited in this Attachment and the Agreement, BA may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. §164.504(e)(2)(i)(B).
BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).
8. Provisions for Covered Entity to Inform BA of Privacy Practices and Restrictions.
Covered Entity shall notify BA of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect BA's use or disclosure of PHI.
Covered Entity shall notify BA of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure PHI.
Covered Entity shall notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect BA's use or disclosure of PHI.
9. Term and Termination.
Term. The Term of this Attachment shall be effective concurrent with the Agreement, and shall terminate when all of the PHI provided by Covered Entity to BA, or created or received by BA on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
Termination for Cause. Upon Covered Entity's knowledge of a breach by BA, Covered Entity shall either:
Provide an opportunity for BA to cure the breach or end the violation and terminate this Attachment and/or the Agreement if BA does not cure the breach or end the violation within thirty (30) calendar days (five (5) additional calendar days are permitted if written notice provided by U.S.P.S.) of Covered Entity's notice to BA of the Covered Entity knowledge of the BA's breach; or
Immediately terminate this Attachment and the Agreement if BA has breached a term of this Attachment and/or the Agreement and cure is not possible;

as determined at the sole discretion of Covered Entity; or
If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

Effect of Termination.

Except as provided in paragraph (ii) of this Section, upon termination of this Attachment and the Agreement, for any reason, BA shall return or destroy all PHI received from Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of any subcontractors or agents of BA, and BA has the duty to insure that any of its subcontractors or agents comply with these termination provisions. Neither BA, nor any of its subcontractors or agents, shall retain any copies of PHI upon termination of this Attachment and the Agreement.

In the event that BA determines that returning or destroying the PHI is infeasible, BA shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible thirty (30) calendar days (five (5) additional calendar days are permitted if written notice provided by U.S.P.S.) prior to the termination of the Agreement or within thirty (30) calendar days (five (5) additional calendar days are permitted if written notice provided by U.S.P.S.) of BA's notice of Covered Entity's knowledge of a breach of this Attachment and/or the Agreement. Upon mutual agreement of the parties that return or destruction of PHI is infeasible; BA shall extend the protections of this Attachment and the Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BA maintains such PHI.

10. Miscellaneous.

Regulatory References. A reference in this Attachment and the Contract to a section in HIPAA means the section as in effect or as amended.

Amendment. The Parties agree to take such action as is necessary to amend this Attachment and the Agreement, from time to time, as is necessary for Covered Entity to comply with the requirements of HIPAA.

Survival. The respective rights and obligations of BA under Section 9.c., "Effect of Termination," of this Attachment shall survive the termination of this Attachment and the Contract.

Interpretation. Any ambiguity in this Attachment and the Contract shall be resolved to permit Covered Entity to comply with HIPAA.

(ONE (1) HIPAA SIGNATURE PAGE FOLLOWS)

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

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

DONE this _____ day of _____, 2011.

FOR

ENTITY:

NAME:

TITLE:

DATE SIGNED:

FOR

FLORIDA HEALTH CHOICES, INC.:

NAME: Rose M. Naff

TITLE: Chief Executive Officer

DATE SIGNED:

ATTACHMENT D – DISCLOSURE FORM

ENTITY NAME: _____

The following are relationships, business and personal, that may create a conflict of interest that ENTITY is hereby disclosing:

Type of Relationship (Business, Personal)	Name of Organization or Individual	Status of Organization or Individual (Current Contractor, Applicant, Enrollee, etc.)	Term of Relationship

By my signature, I certify that the information contained in this report and any attachments to this document are true representations. INSURER understands that if any information is found to be false that the Contract between FHC and INSURER may be terminated at FHC's sole discretion.

Submitted By:

Date of Submission:

(Signature Above)

Name:

Title

Attachment E

Software License Usage ("License") and Maintenance Agreement

This License governs the use by FHC of the Software. This License is subject to the terms and conditions of the MSA, except as specifically modified in this License, all of which terms and conditions are incorporated herein by this reference.

- A. **Software License Grant.** During the Term of this Agreement, provided that FHC continues to pay Connecture the applicable Software Usage Fees, Connecture hereby grants to FHC a nontransferable, nonassignable, nonexclusive (except as may otherwise be provided herein) license to use the Software, in object code form only, for FHC's business purpose of establishing a web-based hub to facilitate the enrollment of small groups and only for the Products and Regions defined herein.
- B. **Modules:** The Software modules licensed to FHC are summarized below and shall be configured to operate as further defined in each applicable Statement of Work.
- StateAdvantage Small Business Sales Automation
 - StateAdvantage Small Business Underwriting/Questionnaire
 - StateAdvantage Small Business Enrollment Workflow
- C. **Product, Business and Market Segments:** The Software supports and may be used by FHC for the following business and market segments:
- Small Group (employer groups with 4-50 employees). Small Group does not include consumers or individuals seeking coverage apart from an employer entity.
 - New Business
 - Medical
- D. **Regions:** The Software may be used by FHC for the following Regions, each of which is a Participating Affiliate:
- State of Florida
- E. **Reserved Rights.** All rights not specifically granted to FHC hereunder are reserved by Connecture.
- F. **Limitations.** Except as expressly set forth in this Agreement, no express or implied license, moral rights, or other right of any kind is granted to FHC regarding the Software. Without limiting the foregoing and except as expressly set forth in this Agreement, FHC agrees not to, and shall not allow others to, reproduce, copy, market, sell, distribute, transfer, translate, disassemble, decompile, or reverse engineer the Software or create derivative works from the Software. FHC further agrees not to utilize the Software or the Hosted System to operate a service bureau, to provide services to other entities that are not included in this Agreement, to provide services beyond the business purpose of establishing a web-based hub to facilitate the enrollment of small groups and the associated required underwriting process, or allow non-approved third-parties to directly interface to or integrate with the Software or Hosted System.
- G. **Documentation.** Connecture shall document the FHC Software and shall provide FHC with one electronic copy of the Documentation. Connecture grants FHC permission to

duplicate, for its internal use, all Documentation, subject to the terms and conditions of this License. FHC shall use the Documentation solely in connection with the rights granted to FHC under this License.

- H. Passwords. FHC shall be fully responsible for all passwords issued to access the application. FHC accepts full responsibility for, and is liable for, all access, authorized or unauthorized, to the system in connection with the password(s) issued to by or on behalf of FHC. FHC agrees to be solely responsible for the confidentiality of all password(s) issued by or on behalf of FHC, and FHC agrees to immediately notify Connecture of any unauthorized use of the passwords or any other breach of security.

Warranty Period. For a period of ninety (90) days after acceptance of the Software ("Warranty Period"), Connecture shall, at no additional cost to FHC, correct any material errors or defects in the Software not caused by FHC, regardless of whether any such error or defect is brought to the attention of Connecture by FHC, another user of comparable software, Connecture, or any other person. Connecture shall notify FHC of the existence of any such error or defect within the first business day for both Connecture and FHC that occurs after Connecture becomes aware of such error or defect. If FHC requires additional technical support in the use of the correct Software and documentation beyond what is included in Software Maintenance, Connecture shall furnish such support at FHC's expense on a time and material basis and at the hourly rates mutually agreed upon in the Agreement.

3. SOFTWARE MAINTENANCE.

- A. In consideration of the payment of Software Usage Fees identified in Exhibit C (Connecture Fees) and commencing with the termination of the Warranty Period, Connecture will provide FHC with such assistance and support as necessary to cause the Connecture Software to perform materially in accordance with the applicable specifications set forth in any applicable Statement of Work and the Documentation, and shall maintain the Connecture Software in operable condition, providing bug fixes, corrections and/or revising the Connecture Software for Nonconformities ("Software Maintenance")
- B. Connecture will provide telephone support from 9:00 a.m. to 5:00 p.m. Eastern Standard Time, Monday through Friday, with the holidays of New Years Day, Memorial Day, July 4th, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Eve and Christmas excepted ("Daily Support Hours"). FHC's Project Manager and its designee will be FHC's primary representatives for contact with Connecture regarding Software Maintenance. A backup contact will be identified to provide notification to Connecture in the absence of the primary representatives. Upon notification of a Nonconformity from FHC, or is otherwise known by Connecture, Connecture will take prompt action to correct the Nonconformity.
- C. Except for Urgent Issues or High Priority Issues as described below, if FHC requires support (e.g., after-hours staffing to remedy a non-critical issue), outside of Connecture's standard hours, set out above in Section 3.B, FHC agrees to pay Connecture for all such non-standard support services that will be billed to FHC at the hourly rates identified in Exhibit C (Connecture Fees).

- D. All defects mutually identified prior to production launch, that the parties agree will be fixed after the Software is in production, will be resolved according to a mutually agreed upon timeframe.
- E. Software Maintenance supports the current generally available major point software release and any major point release immediately prior to the current release of the Connecture Software. Software Maintenance includes new releases and updates that are made commercially available to the Connecture Software, as well as bug fixes and correction of errors to the Connecture Software. All costs associated with migrating FHC from one major or minor point release to another will be on a time and materials basis, at the hourly rate identified in the SOW. As used herein a major point means a number to the left of the decimal, i.e., 1.0, 1.5, 2.0. and the numbers to the right of the decimal shall designate a minor point release.
- F. During the period that Connecture is providing Hosting Services, Connecture shall install all new releases, updates, bug fixes, and corrections. With the exception of the installation of security patches which are included within Hosting Services, the above installation support shall be on a time and materials basis, at the hourly rate identified in the SOW.
- G. Should FHC or any other party without the prior written authorization and approval of Connecture perform any modification, alteration, change or removal to the Software, Connecture shall not be required to perform Software Maintenance.
- H. Connecture does not warrant that modifications to any FHC systems that materially impacts the functionality of the Software and are identified as interfacing or linking to the Software as identified in any SOWs are compatible with the Software unless such modifications were performed with assistance by Connecture.
- I. Connecture shall provide response and support services to FHC for the categories of issues identified in the following table for the Connecture Software. Resolution shall be defined as the migration of the fix to the FHC's user acceptance testing environment for review and sign-off.
- a) *Urgent Issues*: Immediate service required; the software is inoperable (i.e., system down, system inoperable). Applies to the total unavailability of the core system functions and impacts all system users. Partial functional outages will be classified as High Priority or Medium Priority as appropriate. Engineer(s) will be deployed pursuant to the following table to remedy the error and as appropriate determine the root cause per the agreed-upon response times set out in the table below and will apply resources as appropriate to resolve the issue until it is successfully resolved.
- b) *High Priority Issues*: Errors that make continued use of the system seriously inconvenient or inaccurate for all users within a category (e.g., internal users, brokers, consumers), or materially inhibit online sales processing. Specifically includes specific pages and functions required to access new sales, proposals or renewals that are not available or do not function specifically to allow completion by a User. Engineer(s) will be deployed pursuant to the following table and as appropriate determine the root cause per the agreed-upon response times set out in the table below and will apply resources as appropriate to resolve the issue until it is successfully resolved.

- c) *Medium Priority Issues*: Errors that materially impact the application flow or User's experience. Specifically includes site navigation and page alignment.
 - d) *Low Priority Issues*: Generally related to inaccurate content that already exists on the site.
- i. FHC shall log all defects and service issues into the Test Director website provided by Connecture for such logging and tracking purposes. Prior to logging such issues or defects, and/or contacting Connecture, FHC shall replicate and verify that the issue or defect is within the Connecture Software. If Connecture is performing Hosting Services, Connecture shall promptly notify FHC of all known service issues so that FHC may promptly notify its customer service group of any Urgent or High Priority issues so as to provide good customer service to its Users.
 - ii. In all cases the FHC Project Manager or designee(s) reporting the error will be notified as appropriate of the progress made toward the solution along with an estimated time of completion.
 - iii. Upon receipt of an issue or event, an engineer will be deployed within the timeframes listed above based on the severity of the issue. Root causes will be communicated to the FHC Project Manager or designee(s) as soon as they are available and will include expected steps and timeframes required to resolve the issues. In the event the issue is not resolved within the timeframes listed above, the FHC Project Manager will be notified with the expected completion time, the reasons why the issues cannot be resolved within the allotted time frame.
 - iv. The determination of the severity-level for each specific reported service issue shall be upon mutual agreement of the parties, and if such agreement does not occur, than the following escalation path shall occur:
 - Connecture path of escalation will be as follows: Customer Support Consultant > Customer Support Team Lead > Project Director > FHC Account Manager > VP, FHC Services > CEO.
 - The FHC path of escalation will be as follows: Project Manager > Project Sponsor > Project Executive Sponsor

Attachment F Hosting Services

Connecture shall, subject to the terms and conditions of this Agreement, including payment by FHC of the Software Usage Fees identified in Exhibit H, provide and operate the Hosted System for the benefit of FHC for each Module, Product and Region, as identified in Exhibit A and or as amended by any Statement of Work. The Hosted System shall be available to Users twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year.

Bulletin boards, chat rooms, and other similar electronic discussion forums shall not be implemented on the site hosted hereunder without the prior written approval by Connecture.

Connecture shall provide FHC with support 24 hours a day, 7 days a week, 365 days a year. Daily telephonic hosting support hours are Monday – Friday, 9:00 am through 5:00 pm, Eastern Standard Time. Support shall also include the application of software builds for operating system and security patches.

If the Hosted System becomes unavailable to Users via the Internet, Connecture shall have qualified personnel respond within 60 minutes for daily telephonic support hours (as set out above) and within 4 hours for non-daily telephonic support hours of notification or discovery of such unavailability and shall render continuous efforts until the problem has been resolved.

C. Reports.

Connecture shall provide a monthly report to FHC on the Hosted System which covers items that the parties shall agree to.

D. Hosting Capacity

In the event that Connecture can reasonably justify or demonstrate the need to add additional third party software or any hardware in order to maintain or improve the performance of the Hosted System due to increases in volume, the parties agree to negotiate in good faith as to the terms and conditions for increasing the hosting capacity, the cost of which will be borne by FHC.

G. Acceptable Use.

Without limitation of the foregoing, FHC agrees to use the Hosting System network only for its own lawful purposes. Making available any data or material in violation of any applicable law or regulation is prohibited, including without limitation the transmission of data or information that may be subject to copyright or trade secret protection, or material that is determined to be defamatory, threatening or obscene. FHC agrees to indemnify and hold harmless Connecture from any losses, damages, costs or expenses (including reasonable attorney's fees) resulting from any third party claim or allegation ("Claim") arising out of or relating to use of the hosting service, including any Claim that, if true, would constitute a violation of the paragraph. This indemnity will survive expiration or termination of the Agreement.

**Attachment H
FEES**

1) Professional Services Fees Identified in a Statement of Work (SOW)

A) Fees for Professional Services described in a SOW shall be identified within each applicable SOW and shall be at either on a fixed fee basis or time and materials basis and shall not be more than the rates identified in Section B below, if applicable.

B) Additional Professional Services: Fees for Services for additional projects or Change Orders shall be billed at the following hourly rate: \$150

2) Annual Software Usage Fees.

StateAdvantage Small Business Sales Automation: \$19,000
StateAdvantage Small Business Enrollment Workflow: \$36,000
StateAdvantage Small Business Underwriting/Questionnaire: \$34,000

Includes Software and Software Maintenance Services as identified in the Agreement.

The Software Usage Fees shall be invoiced on annual basis commencing upon Production Acceptance.

3) Hosting Fees

\$60,000 per year. Hosting Fees shall be invoiced on an annual basis commencing upon Production Acceptance.