

## NONDISCLOSURE AGREEMENT

THIS AGREEMENT is made effective as of the date set forth below, by and between \_\_\_\_\_ (“Vendor”) and California Insurance Guarantee Association (“CIGA” also known as the disclosing party) (sometimes collectively, the “Parties”.)

WHEREAS, during their interactions the Parties have disclosed and will in the future disclose certain proprietary and confidential information, which may include sensitive and protected financial data, personnel information, claim or claimant data, medical reports or information, trade secrets, technical data, software, policies, procedures, benchmarking, know-how, and confidential business and claims information not generally known in the marketplace (collectively, the “Confidential Information”); and

WHEREAS, herein, the party disclosing Confidential Information will be referred to as the “Disclosing Party” and the party receiving Confidential Information will be referred as the “Recipient”.

NOW, THEREFORE, it is agreed as follows:

1. Nondisclosure of Confidential Information. Recipient agrees that neither it, nor any of its employees, agents, representatives or affiliates will: (a) in any fashion or for any purpose use the Confidential Information except as necessary to provide the services described above; or (b) disclose, divulge, publish or disseminate the Confidential Information except as expressly authorized by this Agreement. Recipient further agrees that it, and its employees, agents, representatives and affiliates will: (i) take all reasonable measures to protect the confidentiality of, and avoid disclosure or use of,

the Confidential Information so as to prevent it from entering the public domain or falling into the possession of persons other than those authorized by this Agreement to have access to it; and (ii) only permit those employees, agents and representatives of Recipient who are necessary to the implementation of the services described above, and who have agreed to the terms hereof to have access to Confidential Information.

2. Permitted Use. In the event Recipient is required by order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule, regulation, subpoena, or any other administrative or legal process, or by applicable regulatory or professional standards to disclose Confidential Information, Recipient may disclose the requested information without liability hereunder, provided that, to the extent permitted by applicable law or regulation, Recipient gives the Disclosing Party prompt notice of any such requirement. Notwithstanding anything to contrary in this paragraph 2 above, Vendor specifically acknowledges that CIGA may disclose the Confidential Information to the California Department of Insurance as part of any examination of CIGA by the Department and also to any statutory receiver or liquidator of any insolvent member insurer who requests such Confidential Information.

3. Designation and Scope of Confidential Information. All information which Disclosing Party discloses to Recipient shall be deemed confidential and proprietary and included within the scope of the term Confidential Information whether such information be in tangible media or in the intangible memory of Recipient, its employees, agents, representatives, or affiliates, except that the Confidential Information shall in no event include any information to the extent that: (a) it was in the public domain at the time of its disclosure to Recipient; (b) it comes to Recipient from a third party who has no obligations to maintain its confidentiality; (c) it becomes part of the public domain without fault of the Recipient; or (d) Recipient can demonstrate that such information was independently

developed by Recipient without use of the Confidential Information.

4. Ownership of Confidential Information. Nothing in this Agreement is intended to, or shall, create any ownership or other rights of any kind in Recipient to the Confidential Information, except the limited right to review Confidential Information solely for the purposes of the possible transaction described above, nor shall any rights be granted by reason of this Agreement to Recipient under any copyrights or other intellectual property rights of the Disclosing Party.

5. Return of Materials. Upon termination of the discussions between the Parties, Recipient shall promptly return to the Disclosing Party all copies of any materials or documents containing Confidential Information. Alternatively, Recipient may represent in writing that all copies of such Confidential Information have been destroyed.

6. Term. This Agreement may be terminated upon ten (10) days prior written notice, but any existing confidentiality or nondisclosure obligations shall survive such termination.’

7. Indemnity. Contained in the Confidential Information will be sensitive, medical data, access to which is limited by federal or state law (“Medical Data.”) Also contained in the Confidential Information will be sensitive personal data, disclosure of which is governed by state and federal law (the “Personal Data.”) Also contained in the Confidential Information are data, correspondence, and other communications which may be protected against disclosure or which is considered privileged under federal or state law (“Privileged Data”.) The disclosure by CIGA of any Privileged Data to Vendor is not to be construed nor does it in any way constitute a waiver of any of the privileges and protections associated with such Privileged Information. Vendor agrees to indemnify and hold harmless, CIGA, its successors and assignees and its member insurers, from and against any and all

expenses, claims, demands, causes of action, damages, attorneys fees and judgments that arise out of or that may be imposed upon, incurred by or brought against CIGA as a result of CIGA providing Vendor access to the Medical Data and Personal Data (as described above). The indemnification provided in this paragraph will commence from the effective date of this Agreement and will cover claims made against CIGA by the recipient of the medical services as reported in the Medical Data or by person to whom the Personal Data relates.

8. Equitable Relief and Attorneys' Fees. (a) Recipient acknowledges that monetary relief alone may not be a sufficient remedy for unauthorized disclosure and use of Confidential Information and that 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.

(b) If either party employs attorneys to enforce any rights arising out of or relating to this agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees.

9. Miscellaneous. No amendments or additions to this Agreement shall be binding unless in writing and signed by the Parties. This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of California. This Agreement shall be binding upon the Parties and their respective successors, assigns, heirs and personal representatives; provided, however, that neither party may assign its rights under this Agreement without the prior written consent of the other party. The failure to enforce any provision of this Agreement shall not constitute a waiver of any provision hereof. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any person. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior

oral or written agreements related to such subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_,  
2019.

\_\_\_\_\_

California Insurance Guarantee Association

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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