



Commonwealth of Kentucky

MASTER AGREEMENT MODIFICATION

CONTRACT INFORMATION			
MASTER AGREEMENT NUMBER: MA 758 2000000682			
Effective Date:	1/1/21	Record Date:	7/1/21
Expiration Date:	12/31/24	Procurement Folder:	546624
Document Description:	Medicaid Managed Care Organization (MCO) (Anthem)	Procurement Type:	Standard Goods and Services
Cited Authority:	Competitive Negotiation-Goods and Services	Version Number:	3

CONTACT INFORMATION

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REASON FOR MODIFICATION

Updates to ATTACHMENT C - Draft Medicaid Managed Care Contract and Appendices as indicated in the redlined version of the document. No other changes have been made; documentation is on file with OPS.

VENDOR INFORMATION

Name /Address:	Contact:
KY0020841: ANTHEM KENTUCKY MANAGED CARE PLAN INC 13550 Triton Park Blvd Louisville KY 40223	Leon Lamoreaux 5026196810 Leon.Lamoreaux@Anthem.com

COMMODITY / SERVICE INFORMATION

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
1	0.00000	EA	\$0.000000	\$0.00			\$0.00

Medicaid Managed Care Organization (MCO) - All Regions

Extended Description:

Provided managed care services for Kentucky Medicaid recipients.

Capitated Rates contained in the contract are set by the Department within the actuarially sound range developed by the Department's Actuarial Contractor. These rates are subject to final approval by CMS.

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MASTER AGREEMENT
FOR
MEDICAID MANAGED CARE ORGANIZATION (MCO) - ALL REGIONS
BETWEEN
THE COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES (CHFS)
AND
ANTHEM KENTUCKY MANAGED CARE PLAN, INC.
13550 TRITON PARK BOULEVARD
LOUISVILLE, KENTUCKY 40223
502-619-6810
LEON D LAMOREAUX (Leon.Lamoreaux@Anthem.com)

This Master Agreement (“Contract”, “Award”, or “Agreement”) is entered into, by and between the Commonwealth of Kentucky (“Commonwealth”) and Anthem Kentucky Managed Care Plan, Inc. (“Contractor”, “Vendor”, or “Anthem”), to provide managed care services for Kentucky Medicaid recipients.

The Commonwealth and the Contractor agree to the following:

I. SCOPE OF CONTRACT

Anthem Kentucky Managed Care Plan, Inc. shall provide a Medicaid Managed Care Organization (MCO) for all regions of the Commonwealth to deliver the highest quality health care services to Kentucky Medicaid Members at the most favorable, competitive prices.

Services shall be delivered in accordance with the Medicaid Managed Care Contract and Appendices found herein.

The initial term of the contract shall be effective January 01, 2021 through December 31, 2024 as in accordance with Section IV (50.2) of this agreement.

II. NEGOTIATED TERMS

The Commonwealth is not willing to entertain negotiations; this Agreement excludes any exceptions and deviations to RFP 758 2000000202.

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III. SUMMARY OF FINANCIALS

Capitated Rates contained in the contract are set by the Department within the actuarially sound range developed by the Department's Actuarial Contractor. These rates are subject to final approval by CMS.

IV. TERMS AND CONDITIONS

To the extent unmodified by the above Sections I - III of this Contract, the following sections are incorporated pursuant to RFP 758 200000202. In the event of any conflict between the following Sections 40 and 50 and the previous Sections I - III, the terms in Sections I - III shall prevail.

SECTION 40 – PROCUREMENT REQUIREMENTS

40.1 Procurement Requirements

Procurement requirements are listed under “**Procurement Laws, Preference, Regulations and Policies**” and “**Response to Solicitation**” located on the eProcurement Web page at <http://eprocurement.ky.gov> and <http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx> respectively. The vendor must comply with all applicable statutes, regulations and policies related to this procurement.

40.2 Contract Components and Order of Precedence

The Commonwealth’s acceptance of the contractor’s offer in response to the solicitation, indicated by the issuance of a contract award by the Office of Procurement Services, shall create a valid contract between the Parties consisting of the following:

1. Procurement Statutes, Regulations, and Policies;
2. This written Agreement (Contract) between the Parties and any written amendments thereto;
3. Any Addenda to the Solicitation;
4. The Solicitation and all attachments;
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor’s proposal in response to the Solicitation;
7. The Contractor’s proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the contract, the order of precedence shall be as enumerated above.

40.3 Final Agreement

The contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this contract.

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40.4 Contract Provisions

If any provision of this contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the contractor shall be relieved of all obligations arising under such provision. If the remainder of this contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

40.5 Type of Contract

The contract proposed in response to this solicitation shall be on the basis of a **firm fixed unit price** for the elements listed in this solicitation. This solicitation is specifically not intended to solicit proposals for contracts on the basis of cost-plus, open-ended rate schedule, nor any non-fixed price arrangement.

40.6 Contract Usage

As a result of this RFP, the contractual agreement with the selected vendor will in no way obligate the Commonwealth of Kentucky to purchase any services or equipment under this contract. The Commonwealth agrees, in entering into any contract, to purchase only such services in such quantities as necessary to meet the actual requirements as determined by the Commonwealth.

40.7 Addition or Deletion of Items or Services

The Office of Procurement Services reserves the right to add new and similar items, by issuing a contract modification, to this contract with the consent of the vendor. Until such time as the vendor receives a modification, the vendor shall not accept delivery orders from any agency referencing such items or services.

40.8 Changes and Modifications to the Contract

Pursuant to KRS 45A.210 (1) and 200 KAR 5:311, no modification or change of any provision in the contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the contractor and the Commonwealth, and incorporated as a written amendment to the contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the contract.

If the contractor finds at any time that existing conditions made modification of the contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

40.9 Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the contract. No changes in scope are to be conducted except at the approval of the Commonwealth.

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40.10 Contract Conformance

If the Commonwealth Buyer determines that deliverables due under the contract are not in conformance with the terms and conditions of the contract and the mutually agreed-upon project plan, the Buyer may request the contractor to deliver assurances in the form of additional contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the contractor.

40.11 Assignment

The contract shall not be assigned in whole or in part without the prior written consent of the Commonwealth Buyer.

40.12 Payment

The Commonwealth will make payment within thirty (30) working days of receipt of contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the agency contact person or his representative.

40.13 Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the contractor shall fully cooperate with such other contractors and Commonwealth employees. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

40.14 Contractor Affiliation

"Affiliate" shall mean a branch, division or subsidiary that is effectively controlled by another party. If any affiliate of the contractor shall take any action that, if done by the contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

40.15 Commonwealth Property

The contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for contractor's use in connections with the performance of this contract. The contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

40.16 Confidentiality of Contract Terms

The contractor and the Commonwealth agree that all information communicated between them before the effective date of the contract shall be received in strict confidence and shall not be necessarily disclosed by the

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receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of the contract by all parties, terms of the contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The contractor shall have an appropriate agreement with its subcontractors extending these confidentiality requirements to all subcontractors' employees.

40.17 Confidential Information

The contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the contractor. The contractor shall have an appropriate agreement with its employees, and any subcontractor employees, to that effect, provided however, that the foregoing will not apply to:

- A. Information which the Commonwealth has released in writing from being maintained in confidence;
- B. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- C. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the contractor.

40.18 Advertising Award

The contractor shall not refer to the award of contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky without the expressed written consent of the agency technical contact person. (see Section 50.4)

40.19 Patent or Copyright Infringement

The contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this contract of which the contractor has knowledge.

The Commonwealth agrees to notify the contractor promptly, in writing, of any such claim, suit or proceeding, and at the contractor's expense give the contractor proper and full information needed to settle and/or defend any such claim, suit or proceeding.

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If, in the contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the contractor's obligation to satisfy any final award, the contractor may, with the Commonwealth's written consent, substitute other equally suitable equipment, materials, and information, or at the contractor's options and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

The Commonwealth agrees that the contractor has the right to defend, or at its option, to settle and the contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the contractor to the Commonwealth under this agreement. The contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the contractor.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the contractor without the contractor's written consent.

The contractor shall have no liability for any infringement based upon:

- A. the combination of such product or part with any other product or part not furnished to the Commonwealth by the contractor
- B. the modification of such product or part unless such modification was made by the contractor
- C. the use of such product or part in a manner for which it was not designed

40.20 Permits, Licenses, Taxes and Commonwealth Registration

The contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this contract is performed.

The contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the contractor need not be registered as a prerequisite for responding to the RFP. Additional local registration or license may be required.

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The contractor shall pay any sales, use, and personal property taxes arising out of this contract and the transaction contemplated hereby. Any other taxes levied upon this contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the contractor.

40.21 EEO Requirements

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>.

40.22 Provisions for Termination of the Contract

Any contract resulting from this solicitation shall be subject to the termination provisions set forth in 200 KAR 5:312.

40.23 Bankruptcy

In the event the contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this contract may be subject to the rights of a trustee in bankruptcy to assume or assign this contract. The trustee shall not have the right to assume or assign this contract unless the trustee (a) promptly cures all defaults under this contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

40.24 Conformance with Commonwealth & Federal Laws/Regulations

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

40.25 Accessibility

Vendor hereby warrants that the products or services to be provided under this contract comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor further warrants that the products or services to be provided under this contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any

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complaint regarding accessibility of its products or services which is brought to its attention.

40.26 Access to Records

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1) (c).

40.27 Prohibitions of Certain Conflicts of Interest

In accordance with KRS 45A.340, the contractor represents and warrants, and the Commonwealth relies upon such representation and warranty, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The contractor further represents and warrants that in the performance of the contract, no person, including any subcontractor, having any such interest shall be employed.

In accordance with KRS 45A.340 and KRS 11A.040 (4), the contractor agrees that it shall not knowingly allow any official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this contract to voluntarily acquire any ownership interest, direct or indirect, in the contract prior to the completion of the contract.

40.28 No Contingent Fees

No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this contract, excepting bona fide employees of the offeror or bona fide established commercial or selling agencies maintained by the offeror for the purpose of securing business. For breach or violation of this provision, the Commonwealth shall have the right to reject the proposal or cancel the contract without liability.

40.29 Vendor Response and Proprietary Information

The RFP specifies the format, required information, and general content of proposals submitted in response to the RFP. ***The Finance and Administration Cabinet will not disclose any portions of the proposals***

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prior to Contract Award to anyone outside the Finance and Administration Cabinet, representatives of the agency for whose benefit the contract is proposed, representatives of the Federal Government, if required, and the members of the evaluation committees. After a contract is awarded in whole or in part, the Commonwealth shall have the right to duplicate, use, or disclose all proposal data submitted by vendors in response to this RFP as a matter of public record. Although the Commonwealth recognizes the vendor's possible interest in preserving selected data which may be part of a proposal, the Commonwealth must treat such information as provided by the Kentucky Open Records Act, KRS 61.870 et sequitur.

Informational areas which normally might be considered proprietary shall be limited to **individual personnel data, customer references, selected financial data, formulae, and financial audits** which, if disclosed, would permit an unfair advantage to competitors. If a proposal contains information in these areas that a vendor declares proprietary in nature and not available for public disclosure, the **vendor shall declare in the Transmittal Letter [see Section 60.6 (A)] the inclusion of proprietary information and shall noticeably label as proprietary each sheet containing such information. Proprietary information shall be submitted under separate sealed cover marked "Proprietary Data"**. Proposals containing information declared by the vendor to be proprietary, either in whole or in part, outside the areas listed above may be deemed non-responsive to the RFP and may be rejected.

40.30 Contract Claims

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

40.31 Limitation of Liability

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245

40.32 Discrimination (Effective April 8, 2015)

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race,

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religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a

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subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 50 – SCOPE OF WORK

50.1 Agencies to Be Served

This contract shall be for use by **CHFS-DMS**. No shipments shall be made except upon receipt by vendor of an official delivery order from the using agency.

50.2 Term of Contract and Renewal Options

The initial term of the contract shall be effective **January 01, 2021** and expire **December 31, 2024**.

This contract may be renewed at the completion of the initial contract period for **six (6) additional two (2) year** periods upon the mutual agreement of the Parties. Such mutual agreement shall take the form of a contract modification as described in Section 40.8 of this RFP.

Vendors shall not be eligible to accept Medicaid members or receive monthly capitated rate payments prior to meeting all Readiness Review and Network Adequacy requirements. Awarded Vendor(s) are to meet these requirements no later than December 15, 2020. Failure to meet the requirements by this date may result in cancellation of the awarded contract.

At the end of the contract, the vendor shall provide all agency data in a form that can be converted to any subsequent system of the agency's choice. The vendor shall cooperate to this end with the vendor of the agency's choice.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

The Commonwealth reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the contract in an extended period.

50.3 Basis of Price Revisions

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PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by the contract resulting from this solicitation shall remain firm for the contract period subject to the following:

CMS Approval: The capitation payment rates established by the Contract are subject to the approval of the Center for Medicare and Medicaid Services (CMS). If CMS rejects any component of the rates, DMS will work with its actuaries to develop and certify new rates to CMS for approval. Those new rates, shall be reconciled retroactively to the beginning of the rate period certified to CMS.

50.4 Notices

After the award of contract, all programmatic communications with regard to day-to-day performance under the contract are to be made to the agency technical contact(s) identified during the negotiation phase of this procurement. After the award of contract, all communications of a contractual or legal nature are to be made to the Commonwealth Buyer.

50.5 Subcontractors

The contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The contractor shall be solely responsible for performance of the entire contract whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor. All references to the contractor shall be construed to encompass both the contractor and any subcontractors of the contractor.

50.6 Transition of MCOs

Transition of membership upon award is outlined in Section 26.2 of the Draft Contract.

50.7 Scope of Work/Technical Requirements

See RFP Attachment C - “Draft Medicaid Managed Care Contract and Appendices.”

