PLAN ADMINISTRATION AND OPERATIONS

The South Dakota State Employee Health Plan is a "self-insured" Plan. The Bureau of Human Resources is the State agency responsible for designing and administering the Plan, including the administration and payment of claims. The Plan Administrator reserves the right to change the Plan design, modify coverage, and change contributions or funding mechanisms at any time it deems necessary, with or without notice. The Plan Administrator or other fiduciary designated by the Plan Sponsor shall have final authority to make a determination with respect to such issues or such provisions, unless such determination is found to be arbitrary and capricious by a court of appropriate jurisdiction. The information contained in this document and its interpretation by the Plan Administrator's designee supersedes all verbal representations of the Plan provisions. The benefits paid are funded entirely by the contributions paid by the State and participating Employees.

The State of South Dakota pays the contribution for coverage for an Active Employee under the $500 Deductible Plan, the $1,000 Deductible Plan, or the $1,800 Deductible Plan.

The Employee pays the contribution for Dependent coverage under the Plan.

The amount of such contribution will be established by the Bureau of Human Resources, at its sole discretion.

RIGHT TO RELEASE AND OBTAIN NECESSARY INFORMATION

The Plan Administrator may, without the consent of or notice to any person, release to or obtain from any other person or organization any information, which it deems needed to:

(a) Determine if a Plan provision applies; and

(b) Implement its terms or the terms of any provision of similar purpose of any other Plan.

Any claimant under this Plan shall furnish to the Plan Administrator the necessary information as may be needed to implement this provision.

FACILITY OF PAYMENT

If the payments, which should have been made by this Plan under the terms of this provision, are made under other Plans, the Plan Administrator may, at its discretion, pay to any person making such payment the amount it determines satisfies the intent of this provision. To the extent of the amount of those payments, the Plan Administrator shall be discharged from liability under this Plan.

RIGHT TO RECOVERY

If the Plan Administrator makes payments with respect to Allowable Expenses in a total amount, which is, at any time, in excess of the payment necessary at the time to satisfy the intent of this provision, it will have the right to recover such excess from:

(a) Any persons to or for or with respect to whom such payments were made; and

(b) Any organization, which should have made the payments.

ASSIGNMENT

The Plan Administrator retains the right to assign or to refuse assignment of benefits to providers and to pay members directly if non-preferred providers are used by the member.

PLAN MODIFICATION AND AMENDMENT

The State of South Dakota fully intends to continue the Plan or a similar Plan indefinitely. However, the Plan may be modified and amended at any time by the State of South Dakota or the Bureau of Human Resources upon its due approval of such modification or amendment. The modification or amendment shall be effective on the date of approval or on such date as the State of South Dakota may determine in connection therewith. Such modification or amendment shall be duly incorporated in writing into the master copy of the Plan.

SEVERABILITY

If any portion of this Plan is subsequently found to be invalid by a court of law, the remaining provisions of the Plan will remain in effect.

PLAN TERMINATION

The State of South Dakota or the Bureau of Human Resources may terminate the Plan at any time as of the date it authorizes. In the event of such termination, the State of South Dakota shall have no obligation under the Plan beyond paying the difference between:

(a) The claims Incurred (even though later filed) and expenses of the Plan due up to the date of termination plus extended benefits, if any, provided under the Plan; and

(b) The funds available to pay such claims, expenses, and extended benefits.

Such claims and expenses shall be paid from the funds in the Plan. No benefits will be paid for expenses Incurred after the date the Plan ends.

The Bureau of Human Resources has the final and binding authority to determine claims and direct the payment thereof. The Bureau of Human Resources shall incur no liability for failure to make payment of any claim or to make ratable distribution on any claim without regard to the reasons therefore. The Bureau of Human Resources shall have the right to employ third party administrators (TPA) under the Plan to aid it in the discharge of its duties hereunder.

HIPAA PRIVACY AND SECURITY

This section describes the manner in which the Plan will protect certain health information used or maintained by the Plan.

The Company sponsors and maintains certain group health plans that are subject to the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") regulations as are described more fully in this Document. Under the privacy and security rules of HIPAA, and the regulations issued thereunder at 45 CFR Parts 160 and 164 ("the HIPAA regulations"), a group health plan must: (i) restrict the use and disclosure of protected health information ("PHI"), (ii) ensure the confidentiality, integrity, and availability of all electronic protected health information ("e-PHI") the plan creates, receives, maintains, or transmits, (iii) protect against any reasonably anticipated threats or hazards to the security and integrity of such information, (iv) protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under the HIPAA privacy rules set forth in 45 CFR Part 164, Subpart E, and (v) ensure compliance with the HIPAA security rules set forth in 45 CFR Part 164, Subpart C by its workforce;

1. **Uses and Disclosures of PHI.** The Plan and the Company may disclose a Plan Member's PHI to the Company (or to the Company's agent) for the Plan administration functions described under 45 CFR 164.504(a), to the extent not inconsistent with the HIPAA regulations.

2. **Restriction on Plan Disclosure to the Company.** Neither the Plan nor any of its Business Associates, health insurance issuers, or HMOs, will disclose PHI to the Company except upon the Plan's receipt of the Company certification that the Plan has been amended to incorporate the agreements of the Company under paragraph 3, except as otherwise permitted or required by law.

3. **Privacy Agreements of the Company.** As a condition for obtaining PHI from the Plan, its Business Associates, Insurers, and HMOs, the Company agrees it will:

   a. Not use or further disclose such PHI other than as permitted by paragraph 1 of this section, as permitted by 45 CFR 164.508, 45 CFR 164.512, and other sections of the HIPAA regulations, or as required by law;

   b. Ensure that any of its agents, including a subcontractor, to whom it provides the PHI agree to the same restrictions and conditions that apply to the Company with respect to such information;

   c. Not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or Employee benefit plan of the Company;

   d. Report to the Plan any use or disclosure of the PHI that is inconsistent with the uses or disclosures provided for of which the Company becomes aware;

   e. Make the PHI of a particular Member available for purposes of the Member's requests for inspection, copying, and amendment, and carry out such requests in accordance with HIPAA regulation 45 CFR 164.524 and 164.526;

   f. Make the PHI of a particular Member available for purposes of required accounting of disclosures by the Company pursuant to the Member's request for such an accounting in accordance with HIPAA regulation 45 CFR §164.528;

g. Make the Company's internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance by the Plan with HIPAA;

h. If feasible, return or destroy all PHI received from the Plan that the Company still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, the Company agrees to limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

i. Ensure that there is adequate separation between the Plan and the Company by implementing the terms of subparagraphs (1) through (3), below:

(1) *Employees With Access to PHI*: The following Employees or other individuals under the control of the Company are the only individuals that may access PHI received from the Plan:

Commissioner
Director
Legal Counsel
Assistant Director
Personnel Specialists
Benefits Analyst
Program Assistants
Senior Secretary

(2) *Use Limited to Plan Administration*: The access to and use of PHI by the individuals described in (1), above, is limited to Plan Administration functions as defined in HIPAA regulation 45 CFR §164.504(a) that are performed by the Company for the Plan.

(3) *Mechanism for Resolving Noncompliance*. If the Company or any other person(s) responsible for monitoring compliance determines that any person described in (1), above, has violated any of the restrictions of this section, then such individual shall be disciplined in accordance with the policies of the Company established for purposes of privacy compliance, up to and including dismissal from employment. The Company shall arrange to maintain records of such violations along with the persons involved, as well as disciplinary and corrective measures taken with respect to each incident.

4. **Security Agreements of the Company.** As a condition for obtaining e-PHI from the Plan, its Business Associates, Insurers, and HMOs, the Company agrees it will:

a. 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 the Plan;

b. Ensure that the adequate separation between the Plan and the Company as set forth in 45 CFR 164.504(f)(2)(iii) is supported by reasonable and appropriate security measures;

c. Ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate security measures to protect the information;

d. Report to the Plan any Security Incident of which it becomes aware. For purposes of this section, "Security Incident" shall mean successful unauthorized access to, use, disclosure, modification or

destruction of, or interference with, the e-PHI; and

e. Upon request from the Plan, the Company agrees to provide information to the Plan on unsuccessful unauthorized access, use, disclosure, modification or destruction of the e-PHI to the extent such information is available to the Company.

5. **PHI not Subject to this Section**. Notwithstanding the foregoing, the terms of this section shall not apply to uses or disclosures of Enrollment, Disenrollment, and Summary Health Information made pursuant to 45 CFR 164.504 (f)(l)(ii) or (iii); of PHI released pursuant to an Authorization that complies with 45 CFR 164.508; or in other circumstances as permitted by the HIPAA regulations; provided however that paragraph 4 above shall apply if and only if e-PHI beyond enrollment, disenrollment, summary health information, and authorized disclosures is obtained by the Company, and the Company adopts the literal interpretation of 45 CFR 164.314(b)(1), which would apply paragraph 4 unless the only e-PHI obtained is enrollment, disenrollment, summary health information, or authorized disclosures.

6. **Definitions.** All capitalized terms within this section not otherwise defined by the provisions of this section shall have the meaning given them in the respective Plan or, if no other meaning is provided in the Plan, the term shall have the meaning provided under HIPAA.