

STATE OF MINNESOTA
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT
 For
ENCOUNTER DATA COLLECTION AND PROCESSING

This Professional and Technical Services Contract (this "Contract") is between the State of Minnesota, acting through its commissioner of the Minnesota Department of Health ("State") and the Maine Health Information Center, 16 Association Drive, P.O. Box 360, Manchester, ME 04351-0360 ("Contractor").

Recitals

1. Under Minn. Stat. § 15.061 and Minnesota Session Laws 2008, Chapter 358, Article 4, Sect. 7, Subd. 4, the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of the design and implementation of a system to collect health care claims data, otherwise known as encounter data. Specifically, the Minnesota Department of Health seeks written recommendations on the data elements to be collected and the format in which the data must be submitted. These written recommendations must also be informed by the input of stakeholders, particularly by health plans and third party administrators who will begin submitting health care claims data on July 1, 2009. The Minnesota Department of Health also needs this data collection system to be implemented, including the following responsibilities: development of a data warehouse; data collection, processing, editing, and management; summary reporting on data quality, completeness and timeliness; facilitation of secure data collection, storage and management; facilitation of efficient data collection; and proactive collaboration with other Minnesota Department of Health contractors working on health care reform.
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of the State.

Contract

1 Term of Contract

- 1.1 **Effective date:** December 26, 2008, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration date:** March 1, 2011, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The Contract may be extended at the State's option at the price Contractor quoted through March 1, 2013.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this Contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 14. Data Disclosure.
- 1.4 Consistent with Minnesota Session Laws 2008, Chapter 358, Article 4, Sect. 7, Subd. 4, the work outlined under "Contractor's duties" below must be performed according to the following specifications:
 - The data must be de-identified data as described under the Code of Federal Regulations, title 45, section 164.514;
 - The data for each encounter must include an identifier for the patient's health care home if the patient has selected a health care home;
 - Except for the identifier for health care homes described above, the data may only include information that is included in a health care claim or equivalent encounter information transaction that is required under Minnesota Statutes section 62J.536.
 - The commissioner or the commissioner's designee shall only use the data submitted for the purpose of calculating providers' relative cost of care, a measure of health care spending including resource use and unit prices, and relative quality of care. The results of these calculations will allow the Department of Health to create and publicly report provider peer groupings.

2 Contractor's Duties

The Contractor, who is not a state employee, will accomplish the following tasks:

- 2.1 The tasks outlined in Exhibit A, which exhibit is attached and incorporated into this Contract. Data collection and subsequent processing activities described in Exhibit A, Task Three must be performed every six months beginning July 1, 2009 through January 1, 2011.
- 2.2 The tasks outlined in Exhibit B, which exhibit is attached and incorporated into this Contract. Data collection and subsequent processing activities described in Exhibit A, Task Three must be performed every six months beginning July 1, 2009 through January 1, 2011.
- 2.3 The Contract shall be interpreted, to the extent possible, to give effect to all of its terms. In the case of an irreconcilable conflict between the main body of this Contract and the exhibits hereto, the main body of the Contract shall govern, unless the Exhibit explicitly states otherwise. In the case of a conflict between Exhibit A and Exhibit B, the terms of Exhibit B shall govern.
- 2.4 In addition to the tasks outlined in Exhibits A and B, the Contractor shall also accomplish the following tasks:
 - (A) Contractor shall ensure that all processed data from Minnesota reporters that has passed National Claims Data Management System quality edits and data completeness is kept completely separate from data submitted by other reporters, both when the data is initially submitted and when it is backed up. All data that is backed up shall be encrypted. The State has an interest in ensuring the Contractor has a state-specific database for data submitted by reporters. Contractor will provide documentation of how this is accomplished within the first three months of this Contract.
 - (B) Contractor shall ensure that any defective hardware with Minnesota reporters' data is disposed of in a fully secure manner and will provide documentation of this procedure within the first three months of this Contract.
 - (C) Contractor shall share results of any audit results of any kind with the State subject to any confidentiality restrictions imposed on Contractor by law.
 - (D) In the case of any irreconcilable conflict between the terms of Exhibit B and this section 2.4, the terms of this section 2.4 shall govern.

3. Project Timing Requirements and Assumptions. The design and implementation of the Minnesota Health Care Claims Reporting System shall consist of those tasks outlined above in Section 2 as well as Exhibits A, B and C, including the tasks to be performed by the State and the reporters (collectively, the "Project").

- 3.1 Subject to the terms and conditions of this Section 3, the Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.
- 3.2 The State shall perform those tasks, and be responsible for those matters described in the Project that are identified as State tasks and such other ancillary tasks as are necessary to complete them, in accordance with this Contract and the time frames and specifications set forth herein and otherwise perform and observe the State's obligations under this Contract.
- 3.3 The following assumptions detail those elements that must be in place so that Project objectives are met, and without which the Project will likely not succeed. In addition, these assumptions are factored in during the costing process of the fixed fee proposal and may be affected if they are not met.
 - The State and the reporters each will timely perform their respective tasks as described and set forth in the Project.
 - The State's authorized representatives will be available during the project lifecycle to approve plans, sign off on deliverables, and confirm project closure.
 - The State will provide in a timely manner information, resources and other cooperation reasonably necessary for Contractor's performance and delivery timeframes.
- 3.4 The State acknowledges that Contractor will rely on the accuracy and completeness of any information and materials provided by State, and agrees that all information disclosed to Contractor is (or will be at the time of disclosure) true, accurate and not misleading in any material respect. Contractor shall have no obligation for

failure to provide services in accordance with this Contract to the extent such failure is caused by inaccurate or incomplete information provided by the State. The parties acknowledge that the duties and obligations set forth in this Section 3.4 do not apply to information provided by reporters and that Contractor's duties include assisting reporters to provide information that is true, accurate, not misleading and in a form that is useable for the Project.

- 3.5 Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.
- 3.6 The State may, at any time during the term of the Contract, request a modification to the specifications, or an addition or reduction, or other change in the scope of the Project or the implementation plan for the Project (collectively, a "Project Modification"). If the State desires such a modification, the State shall notify Contractor in writing, describing in detail the requested Project Modification. To the extent the requested Project Modification requires additional work or investigation to respond to the requested Project Modification, Contractor will advise the State and request authorization to proceed with such investigation, including whether time spent performing such investigation would be chargeable on a time and materials basis. If Contractor believes that any proposed Project Modification is impracticable or would impair the integrity of the System (defined below), Contractor shall immediately, and in no event more than fifteen (15) days after receipt of a Project Modification request, advise the State in writing that the request cannot be accepted ("Impossibility Notice"). Within thirty (30) days after Contractor's receipt of a Project Modification request, or such later date as may be agreed by the parties where investigation is required, Contractor will provide a final response. If Contractor accepts the Project Modification request, the parties shall negotiate the necessary adjustments to achieve such Project Modification and any necessary changes to the terms of this Contract.

4 Consideration and Payment

4.1 **Consideration.** The State will pay for all services performed by the Contractor under this Contract as follows:

- (A) **Compensation.** The State will pay Contractor the amounts set forth in Exhibit C in accordance with the payment schedule set forth therein.

Contractor's total compensation for the Project (exclusive of travel and subsistence expenses) will not exceed \$1,184,347.

- (B) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed \$35,000 provided that the Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations, which is incorporated in to this Contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

- (C) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Contractor for the Project under this Contract will not exceed \$1,219,347.

4.2. Payment

- (A) **Invoices.** The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and upon completion of the services according to the payment schedule set forth in Exhibit C.

- (B) **Retainage.** No more than ninety percent (90%) of the cost of the final product may be paid until the final product of this Contract has been reviewed by the State's agency head. The final product shall be the final

three months of services in the Contract period, as outlined in Exhibit C. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.

(C) **Federal funds.** (Where applicable, if blank this section does not apply) Payments under this Contract will be made from federal funds obtained by the State through Title _____ CFDA number _____ of the _____ Act of _____. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

5 Conditions of Payment

All services provided by the Contractor under this Contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative (as set forth in Section 6 below) and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 Authorized Representatives

The State's Authorized Representative is Katherine Burns, Director, Quality Measurement, Transparency and Payment Reform Initiatives, Minnesota Department of Health, P.O. Box 64882, St. Paul, MN 55164, 651-201-3562 or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this Contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is James Harrison, President and CEO, 16 Association Drive, P.O. Box 360, Manchester, Maine 04351-0360, (207) 430-0682, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

7 Assignment, Amendments, Waiver, and Contract Complete

7.1 **Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

7.2 **Amendments.** Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.

7.3 **Waiver.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

7.4 **Contract Complete.** This Contract, including the exhibits referenced herein, contains all negotiations and agreements between the State and the Contractor. There are no further or other agreements or understandings, written or oral, in effect among the Parties relating to the subject matter hereof.

8 Disclaimers; Liability

8.1 EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS CONTRACT, CONTRACTOR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE SYSTEM WILL OPERATE ERROR-FREE OR UNINTERRUPTED AND ANY IMPLIED OR EXPRESS WARRANTIES ARISING FROM TRADE USAGE OR COURSE OF DEALING.

8.2 Indemnification.

- (A) Except for claims relating to intellectual property infringement, which are governed exclusively by the provisions of Section 10.2(G), the Contractor must indemnify, save, and hold the State, its agents, and employees harmless from and against any loss, cost, or expense, including attorneys fees, by reason of or resulting from or arising directly or indirectly out of or in connection with (i) any breach by Contractor or its agents or employees of any representation, warranty, covenant or obligation of Contractor under this Contract that forms the basis of any claim against the State by any third party, or (ii) any negligent or willful action or inaction of Contractor that forms the basis of any claim against the State by any third party.

Notwithstanding the foregoing, in no event shall Contractor be obligated to indemnify or hold harmless the State for any loss, cost or expense which shall result from the negligent or willful omissions or acts of the State or its agents or employees.

- (B) The State reserves the right to manage the defense of any claim against it. In the event of a suit or claim in which Contractor may be liable for indemnification obligations hereunder, the State agrees to: (i) promptly notify Contractor in writing of the suit or claim and (iii) reasonably cooperate with Contractor in defense of the suit or claim.

8.3 Limitations of Liability.

- (A) **Lost data or Information.** The State acknowledges that the System is dependent on the State and/or a Reporter's use of proper procedures and systems and input of correct data. CONTRACTOR AND ITS SUPPLIERS SHALL NOT BE LIABLE TO THE STATE FOR ANY LOSS OR DAMAGE RESULTING FROM LOST DATA OR INFORMATION RESULTING FROM BREACHES OF DATA SECURITY, EXCEPT TO THE EXTENT SUCH LOSS OR DAMAGE IS ATTRIBUTABLE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR, ITS EMPLOYEES, AGENTS OR CONTRACTORS OR ITS SUPPLIERS. NOTWITHSTANDING THE FOREGOING, IN THE EVENT DATA OR INFORMATION IS LOST DUE TO ANY ACT OR OMISSION BY CONTRACTOR OR ITS SUPPLIERS, OR DUE TO BREACH OF ANY WARRANTY, CONTRACTOR SHALL USE ITS BEST EFFORTS TO RECOVER THE LOST DATA OR INFORMATION RESULTING FROM BREACHES OF DATA SECURITY AT NO CHARGE TO THE STATE.
- (B) **Excluded Damages.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSS, BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE (EXCEPT FOR LOSS OF PROFITS OR REVENUE TO CONTRACTOR ARISING FROM THE STATE'S FAILURE TO PAY AMOUNTS DUE UNDER THIS CONTRACT), EQUIPMENT USE, DATA OR INFORMATION OF ANY KIND.
- (C) **Maximum Liability.** CONTRACTOR'S MAXIMUM CUMULATIVE LIABILITY FOR ALL DAMAGES, COSTS OR EXPENSES OF ANY TYPE OR NATURE RECOVERABLE UNDER LAW OR CONTRACT ARISING OUT OF OR RELATING TO THIS CONTRACT IS LIMITED TO THE TOTAL OBLIGATION OF THE STATE TO THE CONTRACTOR SET FORTH IN SECTION 4.1(C) OF THIS CONTRACT. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON LIABILITY SET FORTH IN SUBSECTIONS (B) AND (C) SHALL NOT APPLY TO (i) CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.2; (ii) DAMAGES CAUSED BY BREACH BY CONTRACTOR AND/OR ITS SUBCONTRACTORS OF THE CONFIDENTIALITY PROVISIONS OF THIS CONTRACT, BUT EXCLUDING LOST DATA OR INFORMATION, WHICH IS SUBJECT TO SECTION (A); (iii) DAMAGES CAUSED BY CONTRACTOR'S FAILURE TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS; AND (iv) PERSONAL INJURY (INCLUDING DEATH) CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF CONTRACTOR AND/OR ITS SUBCONTRACTORS.
- (D) This Section 8 will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligations under this Contract.

9 State Audits

Notwithstanding Section 2.4(C) herein, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract under Minn. Stat. § 16C.05, subd. 5.

10 Government Data Practices and Intellectual Property

10.1 **Government Data Practices.** The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

10.2. Intellectual Property Rights.

(A) Definitions. For the purpose of this Section 10.2, the following terms shall have the meaning specified below.

"Authorized Users" means the State's employees and State's Contractor including the State's Contractor for providing analysis of the Encounter Data as provided in Minnesota Chapter 358, Article 4, Sect. 7, subd. 4.

"Business Rules" means the State's unique specific data layouts and schema and the look and feel of its website, any or all of which is incorporated into the System.

"Documentation" means the user manual and training materials concerning the NCDMS, in printed or electronic format, which Contractor has provided to State, as updated from time to time.

"Encounter Data" means the de-identified eligibility files, medical and pharmaceutical claims data that is collected by Contractor, converted and/or entered into the System from submitted data files.

"Encounter Data Structure" means an extract of the Encounter Data in a readable and usable ODBC (Open Database Compliant) format consistent with the format of the quarterly data extracts provided to the State by Contractor under the Contract. It shall also include the documentation necessary for the party receiving the ODBC extract to load and validate the Encounter Data, including encryption methods, data table layout, analyses, and reports.

"Improvements" means all updates, upgrades, modifications, customizations, enhancements, error corrections, and other changes to and derivative works based on the NCDMS and Documentation conceived, made or developed by or for either party.

"Material Default" by the State means that an approved payment to Contractor is at least thirty (30) days past due, that Contractor has provided the State with written notice of the past due payment and that the State has failed to make the payment within thirty (30) days of the written notice.

"NCDMS" means the National Claims Data Management System described in Exhibit B hereto, including, without limitation, all internal processing systems and hardware, external interfaces, and tracking, communication and administration features thereof, as well as all software, code and/or algorithms incorporated therein, each as updated from time to time.

"System" means the Documentation, NCDMS and Improvements, including all patent, copyright, trademark, trade secret and other proprietary and intellectual property rights embodied therein.

- (B) **Ownership of System.** The System is and shall remain the sole and exclusive property of Contractor. Improvements shall not constitute a "work made for hire" within the meaning of U.S. copyright law. For the avoidance of doubt, no right, title or interest to the System, including, without limitation, Improvements, is granted or otherwise transferred by Contractor to State pursuant to this Contract, provided that, subject to the terms and conditions of this Contract, State shall have those rights to use the System as set forth in Section 10.2(D) below. State shall cooperate with Contractor in protecting the copyrights, patents, trademarks, trade secrets and other proprietary rights of Contractor regarding the System by signing documents necessary to effectuate the intent of this paragraph to the extent the State is permitted to modify any such documents.
- (C) **Representations.** The Contractor represents and warrants that the System when used by the State in the manner contemplated hereunder does not and will not infringe upon any intellectual property rights of other persons or entities. The State represents and warrants that it has obtained all consents and/or authorizations required, if any, for Contractor to perform its obligations hereunder and for the use and disclosure of information as permitted under this Contract.
- (D) **Access to and Use of the System.** Subject to the terms, conditions and limitations of this Contract, and provided State is not in Material Default of the Contract terms, Contractor hereby grants to State the non-exclusive, non-transferable right and license during the term of the Contract to: (a) allow authorized users to access and use the System for the purposes contemplated herein; and (b) use, reproduce and distribute copies of the Documentation solely in support of the State's use of the System. If the State receives a request to disclose Documentation pursuant to the Minnesota Data Practices Act, Minnesota Statutes Chapter 13, the State will give notice to Contractor. The State acknowledges and agrees that Contractor may assert that the Documentation meets the definition of Trade Secret as defined by Minn. Stat. § 13.37, subd. 1(b).
- (E) **Restrictions on State's Access to and Use of the System.** State shall not (i) use the System in any manner which is not expressly authorized by this Contract or which violates any applicable law; (ii) copy or reproduce the System, in whole or in part; (iii) modify, translate or create derivative works of the System; (iv) reverse engineer, decompile, disassemble or otherwise reduce the System to source code form; (v) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes or otherwise transfer the System or State's right to access and use the System; or (vi) remove or modify any copyright, trademark or other proprietary notice of the System or its licensors. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO CONTRACTOR AND ITS LICENSORS.
- (F) **Ownership of Encounter Data, Encounter Database and Business Rules; License.** Notwithstanding any other term of this Contract, the State shall retain all rights in the Encounter Data, Encounter Database and Business Rules. This excludes any rights in the System itself or data, code or functions that enable the System to operate. Except for the license expressly set forth herein, in no event shall the State's use of the System vest in Contractor any ownership or similar rights or interests in or to the Encounter Data, Encounter Database or Business Rules. Notwithstanding anything to the contrary in this Contract, Contractor may use the Encounter Data, Encounter Database and Business Rules (i) to the extent necessary to fulfill its obligations under the Contract and (ii) for the proper management and administration of its business and to carry out the legal responsibilities of Contractor; provided that the Encounter Data is used only in a de-identified or aggregate form. All Encounter Data that contains Data on Individuals as defined by Minn. Stat. § 13.02, subd. 5 may only be used by Contractor to the extent such data meets the definition of Summary Data as defined by Minn. Stat. § 13.02, subd. 19 (i.e., in a form that makes it impossible to identify the subject or the source of the Encounter Data).
- (G) **Indemnification.**

(i) In the event a party becomes aware of any claim that the System infringes a third party's intellectual property rights, such party shall promptly notify the other of such infringement claim. The selection of counsel, the conduct of the defense of any lawsuit and any settlement shall be within the control of Contractor, to the extent permitted by the Attorney General and at Contractor's sole expense. Contractor also agrees to indemnify and hold the State harmless from any damages or expenses (including attorneys fees) actually and finally awarded against the State in any lawsuit arising out of or related to such third party infringement claim. In the event of any claim pursuant to this clause, Contractor shall, at its sole option and expense: (a) procure for the State the right to continue using the System; or (b) modify the System so it becomes non-infringing, or, in the event that neither of the foregoing options is feasible, (c) terminate the Contract. THIS CLAUSE 10.2(G) STATES THE SOLE AND EXCLUSIVE REMEDY OF THE STATE FOR ANY ALLEGED INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD THERETO.

(ii) Exclusions. The provisions of this Section 10.2(G) notwithstanding, Contractor shall not have any liability to the State to the extent that any claim or liability is based upon (a) use of the System in conjunction with any data, equipment, service, software or resource not provided by Contractor, where the System alone would not be infringing or otherwise be the subject of the claim, (b) any modification to the System not made by or at the direction of Contractor, or (c) use of the System in any unlawful manner or in any manner not authorized under this Contract.

(H) Contractor's Responsibilities Upon Termination or Expiration of the Contract.

(i) Notwithstanding any other term of this Contract, if the Contract is terminated before its expiration and is awarded to another vendor, Contractor shall, at the State's direction, subject to payment by State for such services, develop a transition plan for continued operations to assist the State and its designee in continued collection, processing and use of the data. In the event of such termination, Contractor shall cooperate with the State in the complete and timely transfer of the Encounter Data, Encounter Data Structure and Business Rules to the State's designee.

(ii) Upon expiration of the Contract, Contractor shall, at the State's sole discretion, transfer to the State's designee the Encounter Data, Encounter Data Structure and Business Rules or destroy all Encounter Data in its possession or under its control to the extent feasible.

(iii) For purposes of this Contract, all Encounter Data collected under this Contract, the Encounter Data Structure and the Business Rules are the property of the State. The State shall further own any data as required by state or federal law or regulation or any data use agreements between the State and the Centers for Medicare and Medicaid Services pertaining to Medicare or Medicaid data. The State shall establish and administer policies and procedures for the collection, management, release and final disposition of the Encounter Data.

(iv) Contractor shall use commercially reasonable efforts to complete its transition plan and carry out a timely transfer as soon as practicable upon the State's written request and in no case longer than sixty (60) days.

11 Workers' Compensation and Other Insurance

Contractor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this Contract. Contractor shall not commence work under the Contract until they have obtained all the insurance specified in the solicitation document. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

Further, the Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents

and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

12 Publicity and Endorsement

12.1 *Publicity.* Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

12.2 *Endorsement.* The Contractor must not claim that the State endorses its products or services.

13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Data Disclosure

Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

15 Payment to Subcontractors

(If applicable) As required by Minn. Stat. § 16A.1245, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

16 Termination

16.1 *Termination by the State.* The State or commissioner of Administration may cancel this Contract at any time, with or without cause, upon thirty (30) days' prior written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

16.2 *Termination for Insufficient Funding.* The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice is received by Contractor or effective date of termination, whichever is later. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

17 Minn. Stat. § 181.59

The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or

vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this Contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the Contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Contract.

18 Affirmative Action Requirements for Contracts in Excess of \$100,000 and if the Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business

The State intends to carry out its responsibility for requiring affirmative action by its Contractors.

- 18.1 **Covered Contracts and Contractors.** If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.
- 18.2 **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

18.3 **Minn. R. 5000.3400-5000.3600.**

- (A) **General.** Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
- (B) **Disabled Workers.** The Contractor must comply with the following affirmative action requirements for disabled workers.
- (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

- (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (C) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.
- (D) *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

19 Foreign Outsourcing

Contractor agrees that the disclosures and certifications made in its Location of Service Disclosure and Certification Form submitted with its proposal are true, accurate and incorporated into this Contract by reference.

20 Employee Status

By order of the Governor's Executive Order 08-01, if this Contract, including any extension options, is or could be in excess of \$50,000, Contractor certifies that it and its subcontractors:

1. Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and
2. By the date of the performance of services under this Contract, Contractor and all its subcontractors have implemented or are in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

Contractor shall obtain certifications of compliance with this section from all subcontractors who will participate in the performance of this Contract. Subcontractor certifications shall be maintained by Contractor and made available to the state upon request. If Contractor or its subcontractors are not in compliance with 1 or 2 above or have not begun or implemented the *E-Verify* program for all newly hired employees performing work under the Contract, the state reserves the right to determine what action it may take including but not limited to, cancelling the Contract and/or suspending or debarring the contractor from state purchasing.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.

Signed: *Glenn Mechele*

Date: *12/19/08*

CFMS Contract No. A- *B 23794*

2. CONTRACTOR

The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: *Atkinson*

Title: *PRESIDENT / CEO*

Date: *12/27/08*

By: _____

Title: _____

Date: _____

3. STATE AGENCY

By: *[Signature]*
(with delegated authority)

Title: **David Hovet, Director, Fin. & Fac. Mgmt.**

Date: *12/31/08*

4. COMMISSIONER OF ADMINISTRATION

As delegated to ~~Materials Management Division~~

By: *[Signature]*

Title: *A.M.S.*

Date: *Dec. 31, 2008*

By: _____

Date: _____

Distribution:

Agency

Contractor

State's Authorized Representative - Photo Copy