

A G R E E M E N T

for

The Operation and Enhancement of the Louisiana Medicaid Management
Information System (LMMIS) through a
Fiscal Intermediary Type Arrangement

between

The Louisiana Department of Health and Hospitals (DHH)

and

Agreement

This Agreement (the "Agreement") is made as of _____ by and between _____ (the "Contractor") a corporation, and the Louisiana Department of Health and Hospitals (the "Department").

WITNESSETH:

WHEREAS, the Congress of the United States has enacted Title XIX of the Social Security Act (42 U.S.C. 1396 et. seq.) (the "Act") for the purpose of establishing Louisiana's Medicaid Program;

WHEREAS, the Act designates the U.S. Department of Health and Human Services (the "DHHS") to be the Federal agency to administer the Act and the programs thereunder;

WHEREAS, the Department has been designated as the sole Louisiana state agency to administer the Medicaid Program;

WHEREAS, pursuant to the Act and the regulations thereunder, a comprehensive plan for the Program has been adopted (the "State Plan");

WHEREAS, under the Louisiana Revised Statutes (R.S. 39:198(D), 39:1551-39:1736) the Department has the authority to enter into this Contract;

WHEREAS, funds have been requested to be included in the Appropriation Bill for the fiscal _____ for the purpose of this Contract by the Louisiana Legislature;

WHEREAS, the Department requires certain supporting administrative services as hereinafter provided;

WHEREAS, Contractor is experienced in the functions to be undertaken by it in this Contract, is equipped to perform promptly, efficiently, and effectively its duties hereunder, and is willing to do so in furtherance of the public interest;

WHEREAS, as a result of a competitive procurement, the Department has selected the Contractor to perform the services specified herein subject to the terms and conditions hereof; and

NOW THEREFORE, in consideration of the foregoing recitals and of the mutual covenants contained herein, the Department and the Contractor hereby agree as follows:

ARTICLE I - CONTENT OF CONTRACT AND PRECEDENCE

A. Content

The Contract between the Department and the Contractor Fiscal Intermediary shall include:

1. This Agreement and all Appendices
2. The Solicitation for Proposal (SFP) which includes its Addenda, Amendments, the Questions and Answers
3. The Contractor's Proposal

B. Incorporation by Reference

The SFP and the Contractor's Proposal are incorporated into and are made a part of the Contract by reference.

C. Order of Precedence

The Contract shall to the extent possible be construed to give effect to all provisions contained therein; however, where provisions are in conflict, the intent of the parties shall give first priority to provisions of the Contract excluding the incorporated SFP and the Proposal; second priority to the provisions of the SFP; and third priority to the provisions of the Proposal.

D. Article and Section Headings

The article and section headings used herein are for reference and convenience only. An article is designated by an upper case Roman numeral. A section is designated by an upper case letter.

ARTICLE II - TERM

The Contract shall be effective and binding on the Contractor and the Department upon the approval of DHHS and the Director of State Purchasing, Division of Administration. The

effective date of the Contract shall be the day all approvals have been obtained. The Department shall use its best efforts to obtain such approvals as soon as is practicable. The term of this Contract is ninety-six (96) months, which shall be divided into one period of sixty (60) months—immediately followed by three (3) successive twelve (12) month periods. At the end of the first period of the Contract (sixty (60) months, three (3) one year options of (12) month periods can be exercised by the Department. The Contract is subject to DHHS approval, the availability of State and/or Federal funds, and appropriations by the Louisiana Legislature. Whenever it becomes apparent to the Department that State and/or Federal funds will not be available for payment of the Contractor's charges or for payment of claims thereunder, the Department shall give timely written notice thereof to the Contractor and shall make public announcement thereof. In such event, the Contractor may suspend the performance of any or all of the Contractor's obligations under the Contract during such period as such funds are unavailable. Such suspension shall be removed by the Department by written notice to the Contractor when such funds become available. In the event of any such suspension, the Department shall reimburse the Contractor for all reasonable costs incurred by the Contractor as a result of such suspension.

A. Contract Life

The Contract life is from the effective date of the Contract until the date the Contract expires or is terminated, except as otherwise expressed. The Contractor shall begin _____ . The Contractor shall perform all other requirements of the SFP for the term of the Contract.

B. Option to Renew

At the end of the first period of the Contract (sixty (60) months), the Department shall have the option to separately renew such Contract for each of three (3), twelve (12) month periods

The option to renew shall be based on the Contractor's satisfactory performance (as determined by the Department) during the first period of the Contract (sixty (60) months), and the convenience of the Department. At the option of the Department, the Contractor will be required to accept one year renewals of the Contract for no more than three successive years after the first sixty (60) month period of this Contract.

The Department's decision regarding its option to renew the Contract shall be made in accordance with the provisions of Louisiana R.S. 39:198(D)

ARTICLE III - TERMINATION

The continuation of this contract is contingent upon the continuation of an appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract or if such appropriation is reduced by the veto of the governor or by any means provided in the Appropriation Act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriations for the year from exceeding revenues for that year or for any other lawful purpose and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

A. Cause (Default)

State may terminate this agreement for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Agreement, or failure to fulfill its performance obligations pursuant to this agreement, provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure

or, in the case of failure which cannot be corrected in (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the Agreement shall terminate on the date specified in such notice. The State may require forfeiture of the performance bond and may seek any other remedies under law.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this agreement, provided that the Contractor shall give the State written notice specifying the State's failure and a reasonable opportunity for the State to cure the defect.

B. Convenience

The State may terminate this Agreement at any time by giving thirty (30) days written notice to the Contractor of such termination or negotiating with the Contractor an effective date.

The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

C. Bankruptcy

The Contract is also subject to termination upon filing a petition under Federal Bankruptcy Law or thirty (30) days after the filing of such petition by or against the Contractor, unless such petition shall have been dismissed during such thirty (30) day period, provided all other provisions of the contract are met or satisfied. If the Contract is terminated under this provision, the performance bond shall be forfeited.

D. Refusal of State to Exercise Option

The Department may terminate the Contract by refusal to exercise its option to renew. The Department shall notify the Contractor prior to the expiration of the initial or any subsequent periods as to whether or not the Department is going to exercise its option to renew, and in accordance with Louisiana R.S. 39:198.

ARTICLE IV - RIGHTS UPON TERMINATION OR EXPIRATION

A. The Department's Rights

1. In the event the Contract is terminated for any reason, or upon expiration of any of the periods of the Contract, the Department shall retain ownership of the LMMIS. Upon written request from the Department, the Contractor shall provide at no additional cost, within thirty (30) days of notice of termination or of expiration of the Contract, copies of those computer systems programs, files, and documentation (including but not limited to user manuals, work manuals, operations manuals, systems and programming documentation, load modules, required systems libraries and link libraries, and other documentation relating thereto) that are useful to initiation and continued operation of the LMMIS. In the event the termination of the Contract is based on the Contractor's willful or intentional failure to comply with the terms therein, including bad faith actions contributing to such failure, the Contractor shall be required to furnish the Department at no additional cost and immediately upon request, copies of the aforementioned programs, files and documentation. All files, source code, load modules, and required system libraries and link libraries will be turned over to the Department in machine readable form, where applicable, and in good condition.
2. The Contractor shall assist, prior to the expiration or termination of this

Contract, in the transition to another Contractor as defined in Section 2.1 of the SFP without additional cost to the Department.

B. Contractor's Rights

1. In the event the Contract expires or the Contract is terminated for cause, the Department shall pay the Contractor all amounts due for claims paid prior to the effective date of the expiration or termination.
2. In the event the Contract is terminated for convenience by the Department, the Department shall pay the Contractor:
 - a. All amounts due for claims paid prior to the effective date of such termination: and
 - b. Its reasonable and allowable termination costs determined in accordance with the principles of Title 45 CFR Part 74 and (41 CFR 1-15.105-42), which costs shall include, without limiting the generality of the foregoing, the reasonable costs of terminating orders, subcontracts, employment contracts, and the remaining rental or termination costs under unexpired leases reasonably necessary to the Contractor's performance under the SFP.

ARTICLE V – INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by the Contractor, its agents, employees, partners or subcontractors in the performance of this contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due solely to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require the Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon the State's unauthorized modification or alteration of a Product, Material, or Service.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the state's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such

item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Agreement as being “without limitation”, and regardless of the basis on which the claim is made, Contractor’s liability for direct damages, shall be the greater of 100,000 the dollar amount of the Contract, or two (2) times the charges for products, materials, or services rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits or lost institutional operating savings.

The State may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, and may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

ARTICLE VI - ALTERATIONS OF CONTRACT

A. Contract Modifications

Any alterations, variations, modifications or waivers of provisions of the Contract shall be valid only when they have been reduced to writing, duly signed and approved, and attached to the original copy of the Contract. No claim for services furnished by the Contractor which are not specifically defined in the Contract will be allowed by the Department. Duly signed and approved shall mean when signed by the Secretary of the Department, the Division of Administration, the duly authorized representative of the Contractor's company, and upon approval of the proper State and Federal agencies.

B. Renegotiation

In the event the laws of the State of Louisiana or the United States or the rules, regulations, and guidelines of any agency of the State or Federal government should be so amended or judicially interpreted as to render infeasible the fulfillment of this Contract on the part of either party, or if any such State or Federal statute or implementing regulation promulgated pursuant thereto should make it mandatory that Contractor furnish a category of Medicaid Program benefits or services not contemplated or considered in establishing the charges herein in order for the Department to be in conformity with said State or Federal law or regulations issued pursuant thereto, then the appropriate provisions of the Contract shall be renegotiated in good faith by the Department and the Contractor in accordance with State and Federal law and regulations.

C. Omissions

In the event that the Department or the Contractor discovers any material omission in the provisions of the Contract which is believed to be essential to the successful performance of the Contract, each shall inform the other in writing, and the Department and the Contractor shall thereafter promptly negotiate in good faith with respect to such matters for the purpose of making such reasonable adjustments as shall be necessary to perform the objective of the Contract.

D. Severability

If any provision or item of the Contract or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of the Contract which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of the Contract are hereby declared severable.

ARTICLE VII - DUTIES

A. Contractor Duties

The Contractor shall perform all its responsibilities and services described in the Contract.

B. Department Duties

The Department shall perform all its responsibilities and services described in the Contract.

ARTICLE VIII - ADMINISTRATIVE PROCEDURES

A. Mutual Consent

The Department and Contractor agree that this Contract supersedes all previous contracts, agreements, negotiations, and all other communications between the parties with respect to the subject matter of this Contract, except those included as part of this Contract or those included as a part of the SFP and the Contractor's Proposal.

The Contract in its composite form shall contain all of the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of the Contract, shall be deemed to exist or to bind any of the parties. In the event of a conflict, the Department and Contractor will engage in good faith negotiations to resolve the matter.

B. Notice

Other than notices relating to day to day operations between the Contractor and the Department, all other notices, unless stated otherwise, required or permitted under the Contract shall be effective upon receipt, and shall be delivered in hand and a receipt granted or shall be sent by registered or certified mail, return receipt requested, and addressed to the Secretary of the Department, or the agent designated in this agreement and at the location stated for such purpose by the Department.

Either party hereto may change its address for notice purposes upon ten (10) days written notice to the other given as aforesaid.

C. Books and Records

The Contractor shall maintain books, records, documents, audits, and other evidence pertaining to the Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Contractor agrees to preserve and make available to the Department such records within thirty (30) days of the Department's written request and shall deliver such records to the Department's central office in Baton Rouge, Louisiana, without additional expense. At the Department's option, the Contractor shall allow for a reasonable number of persons designated by the Department to inspect, audit, or reproduce such records at the location where the Contractor's records are normally maintained within thirty (30) days of the Department's written request without additional expense to the Department. It is understood by both parties that internal cost records shall remain private but shall be disclosed to the public to the

extent required under State and Federal Law.

D. Records Retention

The Contractor shall maintain such records for a period as prescribed in 45 CFR Part 74.53(B) or three years from the end of the fiscal year within which the services were delivered, whichever is longer. Records involving matters of litigation shall be retained for one (1) year following the termination of such litigation or as prescribed in the preceding sentence, whichever is longer. Upon completion of this contract, or if terminated earlier, all records, reports, worksheets and any other material related to this contract shall become the property of the Department.

E. Inspection of Records

The Contractor agrees to make such records available for inspection, audit, or reproduction to any representative of the Department, the Legislative Auditor of the State of Louisiana, Division of Administration, the Secretary of the United States Department of Health and Human Services, and/or the Comptroller General of the United States at all reasonable times within the required period of retention.

F. Monitoring

The Department has the right to free and uninhibited access to the Contractor's premises to inspect, monitor, or evaluate the work being performed. Further, the Department has the right to demand and obtain access without prior notice to the Contractor.

G. Confidentiality and Security

Non-public information obtained by the Contractor under the Contract will be treated as confidential in accordance with 45 CFR 205.50 and other applicable Federal and State requirements. Information so obtained will not be used in any manner except as necessary for the proper discharge of the Contractor's obligations.

The Federal government and the State require that all information pertaining to recipients, providers, health facilities, and associations shall be treated as confidential. In order to maintain confidentiality and security, the Contractor shall establish, subject to review and approval by the Department, confidentiality rules; security badge procedures, facility access procedures, and procedures including security for electronic data processing facilities as defined in Section 2.1 of the SFP. Contractor shall provide procedures for maintaining records of every query directed against an individual's records, including the identity of persons or organizations making that query if applicable. Any data, regardless of means of recording, compiled under the Medicaid Program may not be released to anyone without written permission from the Secretary of the Department or his designee. Contractor and Contractor personnel shall at all times comply with all security regulations in effect at the Department's premises which are made known in writing by the Department to the Contractor.

Non-public or proprietary information obtained by the State under the Contract shall be treated as confidential to the extent permitted by State and Federal Law.

Attached hereto, as Appendix A, is a draft of a HIPAA Business Associate Addendum. Contractor will sign the HIPAA, or one substantially similar as drafted by the Department, upon award of the contract.

H. Resolution of Disputes

Any issues or provisions of the Contract in dispute between the Department and the

Contractor which, in the judgment of either party to the Contract, may materially affect the performance of such party shall be reduced to writing and delivered to the other party. The Department and the Contractor shall promptly thereafter negotiate in good faith and use every reasonable effort to resolve such dispute in a mutually satisfactory manner. Those disputes not resolved by agreement shall be decided by the Secretary of the Department, who shall reduce his decision in writing and furnish a copy thereof to the Contractor.

The Contractor may file a complaint with the Division of Administration in accordance with Louisiana R.S. 39:1673 et seq. if it so chooses upon receipt of the Secretary's decision.

During such proceedings, the Contractor shall act in good faith to perform all the duties including those issues in dispute described in the Contract.

I. Hold Harmless Agreement

The Contractor agrees to indemnify, defend, and hold harmless the Department from any claims or liabilities arising out of any breach of the Contract by the Contractor, its agents or employees.

ARTICLE IX - SUBCONTRACTS

Any subcontracts deemed necessary by the Contractor must have prior written approval from the Department, which approval shall not be unreasonably withheld. The Department will respond to any request for approval hereunder in a timely manner. Notwithstanding any subcontract, the Contractor shall maintain prime responsibility for all services required of the Contractor by the Contract.

When requesting approval for subcontractor(s) and consultants, the Contractor shall provide the Department with letters of agreement, contracts, or some other form of commitment which demonstrates the subcontractor's willingness to undertake its portion of this Contract. In addition, a description of all requirements and responsibilities pertaining to the subcontractor shall be provided.

Suppliers of rental equipment, maintenance agreements and routine purchase orders necessary for purposes of the Contract shall not be considered subcontractors.

ARTICLE X - INDEPENDENT CAPACITY OF CONTRACTOR

The Contractor, its officers, employees, subcontractors, or any other agent of the Contractor in performance of the Contract will act in an independent capacity and not as officers or employees of the State of Louisiana or of the Department, nor shall they hold themselves out to be State employees.

ARTICLE XI - NON-ASSIGNABILITY

The Contractor shall not assign or delegate the benefits or the burden of the Contract either in whole or in part or in any other manner without the prior written consent of the Commissioner of Administration. Failure to receive consent of the Commissioner of Administration can result in cancellation of the contract upon a thirty-day notice.

ARTICLE XII - PERSONNEL ASSIGNMENTS

A. Contractor's Employees

The Department reserves the right to require the Contractor to reassign or transfer any specified Contractor employees engaged under the Contract. The Department will not

exercise such authority unreasonably.

B. Key Personnel

The Contractor will assign key personnel to this project as described in the Proposal. During the term of the Contract, the Contractor may replace any such key person with an equally qualified person upon the written approval of the Secretary of the Department, according to the terms provided in Section 2.1.4 the SFP. Such approval shall not be unreasonably withheld. The Department approves Contractor assignment of key personnel proposed by Contractor in its proposal or interviewed by the Department as part of the proposal evaluation process.

ARTICLE XIII - CONTRACTOR'S LIABILITY FOR CLAIMS PAYMENT

The Department agrees to hold harmless the Contractor, its officers, directors, and agents against any liability resulting from any claim paid or denied in good faith by the Contractor if payment action was reasonably taken as a result of or based on information or instructions given to the Contractor by the Department, its authorized employees, or agents.

Payments made to the Contractor under this Contract determined by audit or Department review to be ineligible for reimbursement and for which payment has been made to Contractor shall be reimbursed by the Contractor in cash payments or deducted from future payments to the Contractor by the Department.

ARTICLE XIV - CERTIFICATION GUARANTEE

The Contractor and the Department agree that obtaining and maintaining DHHS certification of the Louisiana MMIS as qualifying for seventy-five percent (75%) FFP is a primary objective of the Contract. Therefore, the Department and the Contractor agree:

- A. The Contractor will provide and maintain the CMS Certifiable System; contingent upon the State fulfilling its responsibilities related to certification, will provide an operational system that will be federally certifiable for seventy-five percent (75%) Federal Financial Participation (FFP) under 42 CFR 433.116 and throughout the term of the Contract.
- B. The Contractor will on a timely basis provide all information, data, forms, systems, systems modifications, documentation, correspondence, consultation, and training of Department staff needed to assist the Department in obtaining and/or maintaining DHHS certification of the Louisiana MMIS.
- C. The Contractor shall make every reasonable effort to assist the Department in obtaining ninety percent (90%) FFP for enhancements made to Louisiana MMIS.

ARTICLE XV - PROPRIETARY RIGHTS

A. Ownership of the Louisiana MMIS

The Contractor agrees that free of any additional charges, all rights to software, hardware, and source code or modifications thereof and associated documentation designed, developed, and installed for the LMMIS is the property of the State of Louisiana except that the U.S. Department of Health and Human Services reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to do so, such software, modifications and documentation. The parties acknowledge that software not developed or designed by Contractor in whole or in part with state or federal funds under this or any other prior agreement between the parties may be proprietary to the Contractor or third parties and that it may not be possible to convey such proprietary software to the Department. When

conveyance of title to the Department for software is required, the Contractor will convey to the State the maximum license rights permitted under any third party proprietary software license. Contractor will convey a perpetual, non-exclusive personal license to the Department for its use.

B. Project Property, Equipment and Furniture

It is the expressed purpose of the Department to maintain continual operation of the Louisiana MMIS System without interruption at such time termination or expiration of the Contract occurs. The Contractor hereby agrees to the following, at the sole option of the Department subject to approval by the Commissioner of Administration:

1. The Contractor shall make the Department a "sub-lessee" to any or all lease agreements executed by the Contractor for the rental or use of all facilities, movable and immovable property, equipment, and furniture used in the operation of the Louisiana MMIS, or shall be required to negotiate an option for fair and reasonable consideration with any and all lessors to such lease agreements exercisable by the Department to assure such lease or lease agreements extend beyond the termination or expiration date of the Contract.

The duration of such sub-lease or option shall be negotiated between the Contractor and the Department immediately prior to the termination or expiration date of the Contract.

2. The Contractor shall further contract with the Department for the use of all movable or immovable property, equipment, and furniture owned by the Contractor and located in the Parish of East Baton Rouge and used in the operation of the Louisiana MMIS System for fair and reasonable consideration the duration of such Contract to extend beyond the termination or expiration date of the Contract.

The duration of such Contract shall be negotiated between the Contractor and the Department immediately prior to the termination or expiration date of the Contract. If the parties cannot agree then the Secretary shall decide.

The Contractor shall furnish copies to the Department of all current lease agreements executed by the Contractor for all facilities, movable and immovable property, equipment, and furniture located in East Baton Rouge Parish and used in the operation of the Louisiana MMIS and supply and maintain an updated inventory of such property, equipment, and furniture for Departmental purposes. The Contractor shall supply such information within ten (10) business days of execution of the lease agreements or modifications.

ARTICLE XVI - PAYMENT FOR SERVICES

A. Payment Procedure

The Contractor agrees to bill the Department monthly by the tenth day of each month for all billable services as defined in Section 2.3 of the SFP during the preceding calendar month. The Department agrees to authorize and effect payment to the Contractor for all approved services within thirty (30) calendar days after the receipt of the Contractor's invoice

Payments will be made in accordance with the attached Pricing Forms (see Appendix B)

B. Miscellaneous Payment Provisions

1. The Contractor shall agree that the responsibility for payment of taxes from the funds thus received under this Contract shall be Contractor's obligation and identified under the Contractor's actual Federal and State tax identification number.
2. The Contractor shall agree that in consideration for the goods delivered or services performed, the Department shall make all checks payable to the order of the Contractor in the amount as expressed or specified in the Contract.
3. The Contractor shall agree that the Contract is subject to and conditioned upon the availability and appropriation of Federal and/or State funds and that no liability or obligation for payment will develop between the parties or to the Department or any official thereof until the Contract has been approved by the DHHS and the Director of State Purchasing, Division of Administration.

C. Withholding in Last Month of Payment

During the transition to a new Contractor, for the last month of the Contract, the Department shall withhold seventy-five percent (75%) of the final payment to the Contractor for a maximum of sixty (60) days from the due date of such amount to ensure that the outgoing Contractor fulfills its contractual obligations, some of which may extend past the term of the Contract, such as the production of all SURS, MARS, and other reports (system and manual); 1099's; and which must include claims from the last payment cycle for which the Contractor is responsible. In consideration of this clause, it is recognized that the Contractor is not responsible for the production of the aforementioned reports, tapes or optical media for the last payment cycle of the previous Contractor.

ARTICLE XVII - EMPLOYEE CONTRACTS

Except for key personnel as specified in the SFP, the Contractor is prohibited from requiring other employees to enter into any Contract with the Contractor which prevents or prohibits these other employees from becoming employees of the State or the successor Contractor.

ARTICLE XVIII - MISCELLANEOUS PROVISIONS

A. Fund Use

No funds provided under the Contract shall be used to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Legislature or any local governing authority.

B. Anti-Kickback Clause

The Contractor hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that the Contractor or any sub-contractor shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

C. Civil Rights

The Contractor shall abide by the requirements of Title VII of the Civil Rights Act of 1964, and shall not discriminate against employees because of color, race, religion, sex, handicap, or national origin. Furthermore, both parties shall take Affirmative Action pursuant to Executive Order #11246 and the National Vocational rehabilitation Act of 1973 to provide for positive posture in employing and upgrading persons without regard to race, color, religion, sex, handicap, or national origin, and shall take Affirmative Action as provided in the Vietnam Era Veteran's Readjustment Act of 1974. Both parties shall also abide by the requirements of Title VI of the Civil Rights Act of 1964 and the Vocational Rehabilitation Act of 1973 to ensure that all services are delivered without discrimination because of race, color, national origin, or handicap.

D. Equal Employment Opportunity

The Contractor shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, handicap or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, handicap or national origin. 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 compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices by the Contractor or the Secretary of the Department, setting forth the provision of the nondiscrimination clause.

The Contractor shall, 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 age, race, color, religion, sex, handicap or national origin.

The Contractor will send to each labor union or representative of workers with which he has a collective bargaining arrangement or other contract or understanding a notice advising the labor union or worker's representative of the Contractor's commitment under Section 202 of Executive order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the United States Secretary of Labor.

The Contractor shall 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 United States Secretary of Labor.

The Contractor shall 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 United States Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary of DHHS and the United States Secretary of Labor for purposes of investigation to ascertain compliance with rules, regulations and orders.

In addition, the Contractor will comply with all provisions of Title V, Section 504 of the Social Security Act in regard to providing of access and employment to the handicapped.

E. Compliance with Energy Policy and Conservation Act

The Contractor shall recognize the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with Energy Policy and Conservation Act (P.L. 94-163).

F. Compliance with Clean Air and Water Acts

The Contractor shall adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included in the EPA List of Violating Facilities.

G. Freedom of Choice

The provisions of the Contract shall not alter the right of recipients to the free choice of physician, hospital, or other provider of care, unless such freedom of choice is lawfully restricted by the Department or DHHS. The legal responsibility of providers to patients shall not be affected hereby.

H. Choice of Law

The Contractor agrees to be bound by the laws of the State of Louisiana and the Contract shall be interpreted under Louisiana Law. Any legal proceedings must be brought in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana. For the purposes of Federal jurisdiction in any action in which the State of Louisiana or the Department is a party, venue shall be in the United States District Court for the Middle District of the State of Louisiana.

I. Performance Subject to Law

All services under this Contract shall be performed in accordance with applicable Federal and State laws and regulations in effect at the time such services are provided, and this Contract shall be subject to all such laws and regulations.

ARTICLE XIX - GUARANTEES AND WARRANTIES

A. Performance Bond

1. Within ten (10) calendar days of the effective date of the Contract, the Contractor shall procure, submit to the Department and maintain a performance bond for the Contract life to secure its performance under the Contract in the amount of six million dollars (\$6,000,000). The bond must be obtained from an agent licensed to do business in Louisiana, with all fees current, and appearing on the U.S. Treasury's list of approved sureties.
2. In the event the Department exercises any option to renew beyond the surety shall be granted the right to review the extension of the performance bond, reserving full rights to extend at each instance of extension of the Contract. Refusal of such surety to extend will not relieve the Contractor of its obligation to procure and maintain the performance bond as described above.
3. The performance bond shall be forfeited under the following circumstances:
 - a. If the Contract is terminated during the Contract life for cause or default.
 - b. If the Contract is terminated during the Contract life for bankruptcy as provided in Article III, Section C of this Contract.
4. The performance bond shall not be forfeited if the Contract is terminated during the Contract life for convenience of the Department.

B. Warranty Against Cost Disclosure

The Contractor warrants that it has not discussed or disclosed price or cost data with the Department or other bidders prior to the public opening of the Proposal and that all price and/or cost data have been arrived at independently without consultation, communication, or agreement with any other bidder or competitor. The Contractor also warrants that it has not and will not make any attempt to induce any other person or firm to submit or not to submit a quotation for the purpose of restricting competition.

C. Warranty Against Brokers Fees

The Contractor warrants that it has not employed any company or person other than a bona fide employee working solely for the Contractor or a company regularly employed as its marketing agent to solicit or secure the Contract and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Contractor or a company regularly employed by the Contractor as its marketing agent any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of the Contract. For breach or violation of the warranty, the Department shall have the right to annul the Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fees.

D. Warranty to Comply with State and Federal Regulations

The Contractor warrants that it shall comply with all requirements of the SFP and all State and Federal regulations as they exist at time of Contract and as subsequently amended. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability.

E. Warranty of Removal of Conflict of Interest

The Contractor warrants that it, its officers, members or employees presently have no interest and shall not acquire any interest, direct or indirect, which would conflict or compromise in any manner or degree with the performance of its services hereunder. The Contractor further warrants that in the performance of this Contract, the Contractor shall periodically inquire of its officers, members, and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the Department. The Contractor shall warrant that it shall remove any material conflict of interest prior to the signing of the Contract.

F. Warranty of Non-Collusion

The Contractor warrants that it has not entered into any arrangement or agreement with any other bidder or any public officer of the State of Louisiana in which the Contractor has offered or given or is to offer or give another bidder or public officer any sum of money or anything of value. Furthermore, the Contractor has not entered into any arrangement or agreement with any other bidder or bidders which could lessen or destroy free competition in awarding the Contract. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability.

G. Patent and Other Proprietary Right Indemnity

Contractor warrants that all materials and/or products produced hereunder shall not infringe upon or violate any patent, copyright, trade secret, or other proprietary right of any third party. In the event of any claim by any third party against the Department, the Department shall promptly notify the Contractor after becoming aware of such a

claim, and the Contractor shall defend such claim, in the Department's name, but at the Contractor's expense and shall indemnify and hold harmless the Department against any loss, expense, or liability arising out of such claim, whether or not such claim is successful. The Department agrees to fully cooperate with the Contractor in the defense of any such action and recognize that Contractor shall have full control of any defense or settlement of the claim.

H. Warranty of Software Compliance

The Contractor shall warrant that at the end of the contract period, or at any time during the contract period, upon written request of the Department, the Contractor shall turn over to the Department all software programs created in connection with this contract or supplied to the Contractor by the Department. Additionally, the Contractor shall provide the Department with all supporting documentation which shall include at a minimum following information:

- A printed copy of the program design including programming notes and comments,
- A printed instruction guide which clearly and completely explains all functions of the software programs.

ARTICLE XX - PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

A. Delays and Waivers

The Secretary of the Department or his designee may by written notice waive or delay the imposition of any and all liquidated damages as to the breach of a particular obligation, if in the Secretary's or his designee's opinion the events causing the Contractor to be liable for any liquidated damage or liquidated damages were beyond the control of the Contractor. The Secretary of the Department or his designee shall be the sole determiner of such delays and/or waivers and shall exercise this authority in the best interest of the State. Review of this decision shall be in accordance with the Resolution of Disputes as provided for in Article VIII, Section H of this Agreement.

B. Liquidated Damages

Performance standards and their related liquidated damages are defined in Section 4.1 of the SFP. The Department may assess liquidated damages or may pursue any other contract remedy available to the Department whenever the Contractor or its subcontractor fails to achieve an individual performance standard. If the Department assesses liquidated damages, any failure to meet a performance standard set forth under any of Section 4 .1 will also be assessed.

C. Deduction of Liquidated Damages from Payments or Payment of Liquidated Damages

Amounts due the Department as liquidated damages may be deducted by the Department from any money payable to the Contractor pursuant to this Contract or if the liquidated damages exceed amounts due from the Department, the Contractor will be required to make cash payments for the amount in excess. Liquidated damages will be applied in the month after determination of the performance standard violation finding by the Department.

ARTICLE XXI - DESIGNATED AGENT

- A. The agent designated by the Department for receipt of notices regarding the day-to-day operations between the Contractor and the Department shall be the Director of the Bureau of Health Services Financing whose address is 628 North 4th Street, 6th , P. O.

Box 91030, Baton Rouge, LA 70821-9030.

- B. The agent designated by the Contractor for the receipt of notices regarding the day-to-day operations between the Department and the Contractor shall be _____.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives as of the day and year first set forth above.

Fiscal Agent Contractor

BY: _____

STATE OF LOUISIANA
DEPARTMENT OF HEALTH AND
HOSPITALS, SECRETARY

BY: _____

APPROVED:
STATE OF LOUISIANA
DIVISION OF ADMINISTRATION

BY: _____