Jim Doyle
Governor

Karen E. Timberlake
Secretary

State of Wisconsin
Department of Health Services

DIVISION OF HEALTH CARE ACCESS AND ACCOUNTABILITY
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CONTRACT for SERVICES

ENROLLMENT SERVICES CENTER

This contractual agreement is entered into for a period of three (3) years beginning December 1, 2008, and ending November 30, 2011, with an option by mutual agreement of the Agency and Contractor, to renew for one (1) additional two-year period and five (5) subsequent one-year periods, by and between the State of Wisconsin as represented by the **Department of Health Services** (DHS), on behalf of the Division of Health Care Access and Accountability (DHCAA), whose principal business address is One West Wilson Street, PO Box 309, Madison, WI 53707-0309, herein referred to as *the State*, and **Automated Health Systems**, whose principal business address is 300 Arcadia Court, 9370 McKnight Road, Pittsburgh, PA 15237, hereinafter referred to as *the Contractor*.

Unless otherwise agreed to by the parties, the terms and conditions of the Contract shall remain in full force and effect throughout any and all renewal periods.

WHEREAS, the State wishes to purchase services from the Contractor as it is authorized to do so by Wisconsin law; and

WHEREAS, the Contractor is engaged in furnishing the desired services;

NOW THEREFORE, in consideration of the mutual undertakings and agreements herein set forth and which the Parties hereby acknowledge constitute good and valuable consideration sufficient to establish this Contract as a binding legal obligation under applicable law, the Parties hereby agree as follows:

I. DEFINITIONS

Unless otherwise defined herein, the definition of any term requiring such can be found in the RFB or in the applicable law(s).

Contract: the collected documents describing the agreement between the parties, including the body of this Contract, the attachments, the provisions of the RFB along with its amendments and its Questions and Answers documents as posted, the provisions of the Contractor's Technical and Cost Bids, as accepted by the State, and any written clarifications thereof, and any other documents incorporated by reference into this Contract as if fully set forth herein.

Days: calendar days, unless otherwise noted.

RFB: the Request for Bids and all Attachments thereto, as issued by the State under the title of RFB: 1634 DHCAA-JS and clarified and amended throughout the procurement process.

II. FUNCTIONS AND DUTIES OF THE CONTRACTOR

A. General Contractual Responsibilities

1. Effect and maintain liaison and fully cooperate with designated State staff with respect to the direction and performance of Contractor's contractual responsibilities. The State's Contract Administrator will be Elias Soto.

2. Assume complete financial responsibility and liability for payment to creditors for costs incurred by Contractor in the performance of contractual obligations.

3. No later than three (3) days from the date of discovery of any problem which may jeopardize the successful or timely completion of its obligations, notify the Contract Administrator in writing of the problem, including in such notice Contractor's recommendation for expeditious resolution of the problem.

4. Refer to the Contract Administrator any suspected fraudulent or abusive practices Contractor encounters in the performance of its contractual activities. Produce, on a timely basis, reports and other documentation reflecting information or data possessed by the Contractor which is in need of investigation or document suspected instances of fraud or abuse in any of the programs administered.

B. Copyright Ownership

All right, title, and interest in all copyrightable materials that the Contractor may conceive or originate, either individually or jointly with others, and that are designed or developed with State or Federal funds in the course of performing this Contract will be the property of the State and are by this Contract assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor agrees to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials in any and all countries. Where applicable, works of authorship created by the Contractor, either individually or jointly with others, for the State in performance of this Contract will be considered "works made for hire" as defined in the U.S. Copyright Act.

C. Compliance with Applicable Laws and Policies

1. General

The Contractor and its subcontractors shall comply with all applicable Federal and State laws and State policies and standards that are in effect during the term of this Contract and that in any manner affect the work performed, with particular emphasis on the confidentiality provisions of federal food stamp law and federal and state Medicaid and other public benefits laws. In addition, the Contractor shall comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, Parts 160, 162 and 164, to the extent those regulations apply to the services the Contractor provides or purchases with funds provided under this contract. The Contractor has been deemed a "Business Associate" and will be required to sign a Business Associate Agreement.

2. Drug-Free Workplace

The Contractor will provide a drug-free workplace, in accordance with the Drug-Free Workplace Act of 1988 and implemented in 45 CFR Part 76 Subpart F for grantees, as defined in 45 CFR Part 76, Section 76.606 and 76.610.

3. Affirmative Action/Civil Rights Compliance.

Within fifteen (15) working days after the Contract is awarded, the Contractor will submit to the DHS Affirmative Action/Civil Rights Compliance Office a copy of the Contractor's Civil Rights Compliance Plan. The DHS standards for Affirmative Action/Civil Rights Compliance are located at:

http://dhs.wisconsin.gov/civilrights/index.htm

The Civil Rights Compliance Plan contains four components: Affirmative Action, Nondiscrimination, Civil Rights, and Language Access.

The Plan outlines its policies and procedures to meet the requirements under Title VI and VII of the Civil Rights Act of 1964, and as amended in 1991; Sections 503 and 504 of the Rehabilitation Act of 1973; Title VI XVI of the Public Service Health Act; the Age Discrimination Act in Employment of 1967 and Age Discrimination Act of 1975; the Omnibus Budget Reconciliation Act of 1981; the Americans with Disabilities Act of 1990; and the Wisconsin Fair Employment ss.11.31 to 111.395 Wis. Stats., and s.16.765 Wis. Stats., and ADM 50.

a. No otherwise qualified person may be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of race, color, national origin, religion, sex, disability or age. Providers who receive funding from the Centers for Medicare and Medicaid Services (CMS), whether directly from DHS or through one of its contractors/grantees, will not discriminate against otherwise qualified persons based on their political affiliation. This policy covers eligibility for and access to service delivery and treatment in all programs and activities.

b. No otherwise qualified person may be excluded from employment, be denied the benefits of employment, or otherwise be subject to discrimination in employment in any manner or term of employment on the basis of race, creed, color, national origin, ancestry, age, gender, disability, arrest or conviction records, sexual orientation, marital status, and membership in the military reserve. The Wisconsin Fair Employment Act also prohibits discrimination based upon the following: the results of honesty or genetic tests that are not administered for job-related purposes, and the use of lawful or unlawful products outside work hours. All employees are expected to support goals and programmatic activities relating to non-discrimination in employment.

c. The Contractor will post the Equal Opportunity Policy in conspicuous places available to applicants for and recipients of services, applicants for employment, and employees. The complaint process will be conducted according to State Standards and will be made available in languages and formats understandable to applicants, clients, and employees. The language access requirements for persons with disabilities and persons who have limited English proficiency are found in greater detail on the website listed above.

d. The Contractor agrees that its service providers and their subcontractors will comply with the employment and service delivery guidelines in the Civil Rights Compliance Plan requirements issued by DHS.

e. Requirements stated herein apply to any and all subcontracts. The Contractor has primary responsibility to take constructive steps to ensure the compliance of its subcontractors.

D. Contract Management

1. Records

Documentation and materials developed or acquired by the Contractor pertaining to work performed under this Contract will become the property of the State. All records, books and documents, including electronic storage media, relating to financial matters will be maintained in accordance with generally accepted accounting procedures and practices that sufficiently and properly reflect all revenues and expenditures of funds provided by the State under the Contract.

Contractor and its subcontractors shall retain and safeguard all pertinent records, documents and other material prepared or utilized in the performance of contractual responsibilities for a period of five years following expiration or termination of contract. Contractor shall not use or disclose any records, information or material developed or acquired in the performance of its Contractual obligations for purposes not directly related to Contractor's performance under this Contract, without the prior written approval of the State. The said pertinent records shall be delivered to the State upon request.

At any time during the Contract and for five years following the expiration or termination of the Contract, the Contractor and its subcontractors shall permit authorized personnel designated by either the United States Department of Health and Human Services, United State Department of Agriculture, Comptroller General, or the Wisconsin Department of Health Services to have access at reasonable times to any of the Contractor's pertinent books, documents, electronic media, and records of any kind, involving transactions relating to this Contract. Access shall include the right to examine, audit, excerpt, transcribe or reproduce, any of the subject material. Contractor shall have the right to reproduce said material on the Contractor's premises at a cost not to exceed the cost that would have been incurred if the materials were reproduced off the Contractor's premises. If the information requested is in electronic format, Contractor will provide copies of the media as may be requested by the State.

Notwithstanding the above, access and examination of records which relate to (1) litigation or the settlement of claims arising out of the performance of this Contract, or (2) costs and expenses of this Contract as to which exception has been taken by the State, CMS, DHHS, USDA, OIG, Comptroller General or any of their authorized representatives, shall continue at least until such appeals, litigation, claims or exceptions have been disposed of. The Contractor further agrees that the substance of this clause shall be inserted in each subcontract.

Upon expiration or termination of the Contract and at the request of the State, the Contractor will cooperate with the State to facilitate the transfer of any records or documents during the required retention period.

2. Monitoring

The Contractor will provide reports, as requested by the State, including status, progress, program, and financial reports, that will be used for monitoring progress or performance of the contractual services.

The Contractor will permit access to its premises, upon reasonable prior notice, persons duly authorized by the State or Federal government and to interview any employees of the Contractor to be assured of satisfactory performance of the requirements of the Contract. Such inspection will not unduly interfere with the Contractor's performance under the Contract. Following any such inspections, the State will provide the Contractor with a list of its comments with regard to the manner in which said services are being performed. The Contractor will develop and implement a corrective action plan, as directed by the State.

3. Audits

The Contractor will, as applicable, ensure that the funds received from the State under this Contract and all other funds, regardless of the source, used to finance the services to be performed under this Contract receive annual audits pursuant to Office of Management and Budget Circular A-133. This requirement applies to its subcontractors, as well. Said audits will be performed by an independent Certified Public Accountant (CPA) or accounting firm, as applicable, in accordance with the generally accepted government auditing standards covering financial and compliance audits. The audit will ensure that all related party transactions are disclosed.

The Contractor will assume full financial liability for any and all audit exceptions chargeable to the Contractor and its subcontractors under this Contract. The State has the right under this Contract to withhold payment or reimbursement to the Contractor in order to satisfy any financial chargeback made by any of the personnel authorized hereunder to audit and examine the financial books, records, procedures and accounts of the Contractor and its subcontractors.

The Contractor will secure an annual SAS 70 examination on its operations and provide the report of this examination to the State within 30 days of the completion of the audit.

4. Insurance

The Contractor will provide liability insurance coverage on a comprehensive basis and hold such liability insurance at all times during the existence of the Contract. The Contractor accepts full responsibility for identifying and determining the type(s) and extent of liability insurance necessary to provide reasonable financial protection for the Contractor and the State to be served under the Contract. Upon the execution of the Contract, the Contractor will furnish the State written verification supporting both the determination and existence of such insurance coverage, including Certificates of Insurance for all types of insurance required under this paragraph. The State reserves the right to require additional insurance.

The Contractor will maintain all required insurance for its employees, including workers' compensation insurance.

5. Privacy and Confidential Information

This Section is in addition to the responsibilities and obligations imposed on the Contractor through any Business Associate Agreement between the State and the Contractor. In the event of a conflict between this Section and the BAA, the BAA will have precedence.

Definitions

"*Confidential Information*" means all tangible and intangible information and materials accessed or disclosed in connection with this Agreement, in any form or medium (and without regard to whether the information is owned by the State or by a third party), that satisfy at least one of the following criteria: (i) Personally Identifiable Information; (ii) Individually Identifiable Health Information; (iii) non-public information related to the State's employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information designated as confidential in writing by the State.

"*Individually Identifiable Health Information*" means information that relates to the past, present, or future physical or mental health or condition of the individual, or that relates to the provision of health care in the past, present or future, and that is combined with or linked to any information that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Personally Identifiable Information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the individual's date of birth; (d) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (e) the individual's DNA profile; or (f) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical characteristic.

"Corrective Action Plan" means a plan communicated by the State to the Contractor for the Contractor to follow in the event of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this Agreement, or in the event that any Confidential Information is lost or cannot be accounted for by the Contractor.

Duty of Non-Disclosure and Security Precautions

Contractor shall not use Confidential Information for any purpose other than the limited purposes set forth in the Agreement. Contractor shall hold the Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents *("Representatives"* who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement). Contractor shall be responsible for the breach of this Agreement by any of its Representatives.

Contractor shall institute and/or maintain such procedures as are reasonably required to maintain the confidentiality of the Confidential Information, and shall apply the same level of care as it employs to protect its own confidential information of like nature.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed.

If requested by the State, Contractor shall return or destroy all Individually Identifiable Health Information and Personally Identifiable Information it holds upon termination of this Agreement.

Limitations on Obligations

The obligations of confidentiality assumed by Contractor pursuant to this Agreement shall not apply to the extent Contractor can demonstrate that such information:

a. is part of the public domain without any breach of this Agreement by Contractor;
b. is or becomes generally known on a non-confidential basis, through no wrongful act of Contractor;
c. was known by Contractor prior to disclosure hereunder without any obligation to keep it confidential;
d. was disclosed to it by a third party which, to the best of Contractor's knowledge, is not required to maintain its confidentiality;
e. was independently developed by Contractor; or
f. is the subject of a written agreement whereby the State consents to the disclosure of such Confidential Information by Contractor on a non-confidential basis.

Legal Disclosure

If Contractor or any of its Representatives shall be under a legal obligation in any administrative, regulatory or judicial circumstance to disclose any Confidential Information, Contractor shall give the State prompt notice thereof (unless it has a legal obligation to the contrary) so that the State may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor and its Representatives shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.

Unauthorized Use, Disclosure, or Loss

If Contractor becomes aware of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this Agreement, or if any Confidential Information is lost or cannot be accounted for, Contractor shall notify the State's (Contract Manager/Contact Liaison/Privacy Officer) within the same business day the Contractor becomes aware of such use, disclosure, or loss. Such notice shall include, to the best of the Contractor's knowledge at that time, the persons affected, their identities, and the Confidential Information disclosed.

The Contractor shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Contractor shall

reasonably cooperate with the State's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its Confidential Information, including complying with a reasonable Corrective Action Plan.

If the unauthorized use, disclosure, or loss is of Personally Identifiable Information, or reasonably could otherwise identify individuals, Contractor shall, at its own cost, take any or all of the following measures that are directed by the State as part of a Corrective Action Plan:

a. Notify the affected individuals by mail or the method previously used by the State to communicate with the individual. If the Contractor cannot with reasonable diligence determine the mailing address of the affected individual and the State has not previously contacted that individual, the Contractor shall provide notice by a method reasonably calculated to provide actual notice.
b. Notify consumer reporting agencies of the unauthorized release.
c. Offer credit monitoring and identity theft insurance to affected individuals from a company, and under terms, acceptable to the State for one year from the date the individual enrolls in credit monitoring.
d. Provide a customer service or hotline to receive telephone calls and provide assistance and information to affected individuals during hours that meet the needs of the affected individuals, as established by the State.
e. Adequately staff customer service telephone lines to assure an actual wait time of less than five (5) minutes for callers.

If the unauthorized use, disclosure, or loss is of Individually Identifiable Health Information, Contractor shall, at its own cost, notify the affected individuals by mail or the method previously used by the State to communicate with the individual. If the Contractor cannot with reasonable diligence determine the mailing address of the affected individual and the State has not previously contacted that individual, the Contractor shall provide notice by a method reasonably calculated to provide actual notice. In addition, the Contractor will take other measures as are directed by the State as part of a Corrective Action Plan:

Liquidated Damages: Equitable Relief: Indemnification
Indemnification: In the event of a breach of this Section by Contractor, Contractor shall indemnify and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its subcontractors, employees and agents, in violation of this Section, including but not limited to costs of monitoring the credit of all persons whose Confidential Information was disclosed, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the

State in the enforcement of this Section. In addition, notwithstanding anything to the contrary herein, the Contractor shall compensate the State for its actual staff time and other costs associated with the State's response to the unauthorized use or disclosure constituting the breach.

Equitable Relief: The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

Liquidated Damages: The Contractor agrees that an unauthorized use or disclosure of Confidential Information may result in damage to the State's reputation and ability to serve the public interest in its administration of programs affected by this Agreement. Such amounts of damages which will be sustained are not calculable with any degree of certainty and thus shall be the amounts set forth herein. Assessment under this provision is in addition to other remedies under this Agreement and as provided in law or equity. The State shall assess damages as appropriate and notify the Contractor in writing of the assessment. The Contractor shall automatically deduct the damage assessments from the next appropriate monthly invoice, itemizing the assessment deductions on the invoice.

Liquidated Damages shall be as follows:

a. $1000 for each individual whose Confidential Information was used or disclosed;

b. $2500 per day for each day that the Contractor fails to substantially comply with the Corrective Action Plan under this Section

Compliance Reviews

The State may conduct a compliance review of the Contractor's security procedures to protect Confidential Information under Section _ (the audit section) of this Agreement.

Survival

This Section shall survive the termination of the Agreement.

6. Subcontractors

The Contractor may not enter into a subcontract for work to be performed under the Contract if the subcontract value would exceed ten percent (10%) of the annualized value of the base Contract between the Contractor and the State without prior written approval of the State, which approval will not be unreasonably withheld. The State may rescind the approval during the term of the Contract for good cause. The Contractor will provide copies of all contracts with these subcontractors, excluding pricing or proprietary information, forty-five (45) business days prior to the effective date of such subcontracts. Upon receipt, the State will have twenty (20) business days to review such contracts and provide in writing to the Contractor any concerns regarding the level of service that is required of such subcontractors by the Contractor in meeting its contractual obligations to the State. If the State expresses concerns, the Contractor agrees to resolve any such concerns in these subcontracts. The Contractor will address each concern in writing to the State no later than twenty (20) business days from receipt of the State's concerns. Approval by the State of any subcontract will not be deemed in any event or in any manner as a provision for the incurring of any obligation by the State in excess of the total dollar amount in the Contract.

All subcontracts are subject to the same conditions of the Contract between the State and the Contractor and to any conditions of approval the State may deem necessary.

The Contractor is solely responsible for Contract performance by all of its subcontractors, and subcontractors must adhere to the same standards required of the Contractor.

7. Staffing

The State reserves the right to require replacement of any individual working under the Contract for reasonable cause, as determined by the State.

8. Reports

The Contractor shall provide the State with written reports that are clear, concise and useful for the audience for whom they are intended. The reports shall be composed in a manner consistent with State specifications. All reports shall be provided in electronic formats compatible with software applications in use by the State (i.e., MS WORD, EXCEL, etc) as well as in hard copy, as specified by the State. The Contractor is responsible for assuring that it completely understands the specifications and requirements for all reporting and other activities under the contract.

Where required, the Contractor shall provide supporting documents such as attachments for the report.

9. Travel

The State assumes no liability for any accident or injury that may occur to the Contractor's employees, agents, subcontractors or personal property while en-route to or from government facilities or during any travel associated with or mandated by the terms of the Contract.

III. FINANCIAL MATTERS

A. Costs and Payments

Payment for services provided in accordance with the terms and conditions of this contract shall not exceed **$2,759,284.00** for the initial one-year period beginning December 1, 2008, and ending November 30, 2009. Amendments to this Contract will be issued to prescribe the limit of funding for years two and three of the Contract. In no case, however, shall the annual payment for services exceed the dollar limitations of the accepted Bid.

The Contractor will report actual costs of the project monthly and reimbursement of that amount will be processed. Monthly payments to the Contractor will be generally limited to one-twelfth (1/12) of the annualized contract with exceptions to this limitation allowed for material fluctuations in contractor outlays as the project develops.

Invoices will be submitted to the Division of Health Care Access and Accountability, Attn: Elias Soto, 1 West Wilson Street, Room 265, P.O. Box 309, Madison, WI 53701-0309. Invoices must itemize categories of expenses actually incurred, including personnel services, fringe benefits, program supplies, operational costs, travel, and other direct and indirect costs. The State will issue payment to the Contractor within thirty days or notify the Contractor, in writing, of questioned items on the invoices.

B. Taxes

The Contractor will be responsible for payment of taxes on the funds received under this Contract, which will be identified under the Contractor's actual tax identification number(s).

C. Overpayments

The Contractor will return to the State any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor by the State. The Contractor will return any overpayment to the State within forty (40) days after either discovery by the Contractor or its

independent auditor or notification by the State of the overpayment. In the event the State first discovers an overpayment has been made, the State will notify the Contractor by letter of such a finding. At its discretion, the State may recover the overpayments by deducting the overpayment amount from any money otherwise payable to the Contractor.

D. Withholding and Deduction

1. Withholding

The State has the right to withhold any and all payments due the Contractor if the Contractor fails to perform consistent with this Contract, fails to meet a provision of this Contract, or if the State reasonably determines such withholding to be necessary to protect the State against potential losses or liabilities, including potential Federal disallowance or sanctions. The payments to be withheld will be in an amount the State determines necessary to cause the Contractor to correct its failures or to protect the State against potential losses or liabilities and will be withheld until the failure to perform or meet the Contract provision is cured, or until the potential loss or liability ceases. The State will withhold funds pursuant to this section only after the State has given notice of intent to withhold funds and the reasons for withholding continue after fourteen (14) days of such notification.

2. Deduction

The State makes payments only for services that are actually provided and that meet the terms and conditions of this Contract. Therefore, the State has the right to reduce its total financial obligations to the Contractor by the amount being withheld if, at the expiration or the termination of the Contract, the Contractor has not yet cured its failures or caused the potential losses or liabilities to cease. In addition, the State has the right to reduce its total financial obligations to the Contractor by an amount equal to the amount imposed against the State as a Federal disallowance or sanction that is attributable to the Contractor's performance or failure to perform.

The State has the right to deduct from funds otherwise payable to the Contractor any amounts due the State from the Contractor for any other reason specifically provided under this Contract.

E. Accounting Systems

The Contractor shall maintain an accounting system in accordance with generally accepted accounting principles and in accordance with appropriate Federal guidelines for the purpose of audit and examination of any books, documents, papers, and records maintained in support of this Contract. All funds under this

Contract shall be fully accounted for separately and independently of any other funds of the Contractor. The Contractor shall establish and maintain separate ledgers and checking accounts for the revenues from this Contract, wherein funds shall be clearly identifiable. All disbursements shall be supported by an invoice approved and signed by an appropriate Contractor's representative to document receipt of the materials or services. A separate Accounts Receivable file shall be maintained for each carrier to whom billings are directed and the state shall have access to review it in Wisconsin at any time during normal business hours.

IV. CONTRACTOR COMMITMENTS AND CERTIFICATIONS

A. Debarment

The Contractor certifies that neither the Contractor nor any of its owners, officers, principals, agents or employees, whether paid or voluntary, neither is or has been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs nor has been proposed for debarment, suspension or exclusion. The Contractor further certifies the same for its subcontractors or their owners, officers, principals, agents or employees.

The Contractor will immediately notify the State if during the term of the Contract it or its subcontractor or any of the persons listed in the paragraph above are proposed for debarment, suspension or exclusion from participation in a federal assistance program.

B. Political Activity and Lobbying

The Contractor will comply with all applicable provisions of the Federal "Hatch Act," as amended.

The Contractor warrants and represents to the State that no Federal or State funds, including but not limited to the funds received from the State under this Contract, have been paid or will be paid, either directly or indirectly, for any partisan political activity or to further the election or defeat of any candidate for public office. The Contractor further agrees that if any other funds from any source are used for such purposes as are described hereinabove in this paragraph, the Contractor will immediately disclose same in writing to the State.

The Contractor warrants and represents to the State that no Federal or State funds, including but not limited to the funds received from the State under this Contract, have been paid or will be paid, either directly or indirectly, to lobby, influence or attempt to influence any federal or state agency or any member of Congress or any State's legislature concerning any state or Federal statute, legislation, grant, loan, cooperative agreement or any other matter pending before the Congress or before any State legislature.

C. Conflict of Interest

The Contractor certifies that it does not presently have any interest, and will not acquire any interest, direct or indirect, that will conflict in any manner or degree with its performance under this Contract. The Contractor will not employ or contract with any entity or person that has such a known conflict.

D. Infringement

The Contractor represents that to the best of its knowledge none of the software to be used, developed, or provided pursuant to the Contract violates or infringes upon any patent, copyright, or any other right of a third party. In the event of any action brought against the State in which infringement of a U.S. patent or copyright is claimed, the Contractor will indemnify the State against any expenses, costs or damages incurred by the State on account of such claim, provided that:

- The Contractor is notified of any claim within fifteen (15) work days after the State becomes aware of it; and

- The Contractor is afforded an opportunity to participate in the defense, or in the negotiation of a settlement, of such claims. The Contractor shall have the right to disapprove any negotiated settlement. No limitation of liability provision of the Contract shall apply to the indemnification provided by this Section.

In the event such a claim occurs or in the Contractor's opinion is likely to occur, the Contractor will, at its option and expense, either procure for the State the right to continue using the software or to replace or modify the same so that it becomes non-infringing within a reasonable period of time mutually agreed to between the State and the Contractor.

V. CONTRACT PERFORMANCE; DELIVERABLES

The Contractor must provide the services and comply with all the requirements and specifications contained in the RFB, as amended.

Contractor acknowledges that time is of the essence in the performance by the Contractor. By means of a Service Adjustment Authorization (SSA), negotiated and signed by both parties, the State will advise the Contractor as to the date on which full implementation of the services are to begin and will direct the Contractor to begin implementation on that date. In so doing, the State will adjust the deliverable dates cited in Attachment V, B-1 through B-8 of the RFB, to coincide with the designated implementation date.

All clarifications regarding scope of services, targeted service levels, and delivery parameters necessitated during the contract period will be similarly issued, negotiated,

and signed using the SSA methodology. All SSA's will become part of this Contract upon signature by both parties.

VI. DAMAGES AND INDEMNIFICATION

A. Liability; Indemnification

The Contractor agrees to be liable for all claims, suits, judgments, or damages, including court costs and attorney's fees, arising out of the acts or omissions of the Contractor and its agents, subcontractors, and employees in the course of the operation of the Contract.

Further, the Contractor agrees to indemnify and defend the State against all claims, suits, judgments, or damages, including court costs and attorney's fees, arising out of acts or omissions of the Contractor and its agents, subcontractors, and employees in the course of the operation of the Contract.

Upon notice of any claim against the State for which the Contractor has agreed to defend the State, the State will provide prompt notice of said claim to the Contractor. The State will provide reasonable assistance in defense of claims. Any proposed settlement will be subject to review and approval by the State.

B. Damages

1. Damages in General.

   The Contractor shall be liable to the State for all direct damages that may be incurred by the State as a result of the Contractor's acts or failure to perform in conformance with the Contract.

   If the State elects to not exercise a damage clause in a particular instance, this decision shall not be construed as a waiver of the State's right to pursue associated damages or other remedies, including contract termination, for failure to meet performance requirements in the future.

2. Liquidated Damages

   The State declares, and the Contractor acknowledges, that the State may suffer damages due to the Contractor's delay or failure to perform in accordance with the terms and conditions of this Agreement. Since it is impractical and difficult to accurately fix actual damages sustained in the event of any such delay or failure, the parties agree that damages sustained from the following causes shall be in the amount set forth in this section as liquidated damages and not as a penalty.

The State will notify the Contractor in writing of the assessment of liquidated damages. The Contractor shall not be liable for liquidated damages when delays or failures arise from causes that are not primarily the responsibility of the Contractor or result from causes beyond the reasonable control of Contractor (Force Majeure). At the State's option, the following liquidated damages may be deducted by the State from any monies due and payable to the Contractor:

Damages may be assessed by the State, in the amount of $2,500 per working day, not to exceed one-half the total annual amount of the Contract, for every day past the scheduled implementation date informed by Section V of this Contract.

VII. STOP AND CORRECT

A. Stop Services

In addition to its other remedies, the State has the right at any time to order that the services of the Contractor or any of its subcontractors be fully or partially stopped, if, in the reasonable judgment of the State, the services fail to comply with the terms and conditions, including without limitation the performance requirements in the RFB. The Contractor will receive from the State advance written notice of the reasons for the order and a description of the actions that must be taken in order to correct the noncompliance.

B. Correction

If the State determines that a noncompliance by the Contractor with any term or provision of this Contract is occurring, it has the right to demand immediate correction while permitting the Contractor to continue to provide services under this Contract. The Contractor will, without additional cost to the State, correct or revise all errors or deficiencies in any Contract work.

In addition, if the Contractor fails to commence such correction and diligently prosecute the same to completion, the State may directly or through another contractor, correct any noncompliance without prejudice to any other remedy it may have. The Contractor will directly reimburse the State for all reasonable and necessary costs incurred by the State, including procurement-related costs to correct such noncompliance, or the State may deduct these costs from payment otherwise due the Contractor.

VIII. CONTRACT AMENDMENT

Except where mandated by a change in State or Federal law or court order, any modification to or amendment of the original Contract requires the mutual written consent of the parties.

IX. EXPIRATION; TERMINATION; TURNOVER

A. Expiration

Unless sooner terminated, the Contract will expire on November 30, 2011 or, in the event the State elects to renew the Contract, on the expiration date specified in the renewal agreement.

B. Termination.

1. The Contract may be terminated by mutual written agreement of the parties.

2. The Contract may be terminated by the State for the following reasons:

   - For cause, upon a failure of Contractor to comply with the terms and conditions of this Contract, provided that the State shall give Contractor written notice specifying Contractor's breach. In the event that thirty (30) days after the receipt by Contractor of such notice, Contractor shall not have remedied said breach or, for a breach which cannot reasonably be corrected in thirty (30) days, commenced in good faith to correct said breach and thereafter proceeded diligently to complete such correction, the State may, by giving written notice to Contractor, terminate the Contract as of the date specified in the notice. The following will constitute Contractor breach under this paragraph in addition to other Contractor breaches:

   - fails to follow the sales and use tax certification requirements of s. 77.66, Wis. Stats.;

   - has a delinquent Wisconsin tax liability;

   - fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or,

   - fails to maintain and keep in force all required insurance, permits or licenses required in this Agreement.

   The State may terminate this Contract for cause but without providing an opportunity to cure if the Contractor:

   - is or becomes a federally debarred contractor;

   - is presently identified on the list of parties excluded from federal or state procurement and non-procurement contracts;

- intentionally or through lack of reasonable care, releases the State's Confidential Information; or

- files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity.

Termination for cause by the State shall, in addition to any other rights the State may have, require reimbursement of the State's reasonable termination costs.

- For convenience if the State shall have reasonably and in good faith determined that termination would be in the best interest of the State, provided that State shall give Contractor no less than ninety (90) days prior written notice. The State shall afford the Contractor reasonable opportunity to present arguments that termination is not in the best interest of the State. Termination by State pursuant to this subsection shall create an obligation upon State to reimburse Contractor the cost of contractual services performed prior to the date of termination plus any termination expenses incurred with the prior written approval of the State.

- If required by a change in federal or state law or by court order to the extent said charge necessitates termination in whole or in part.

- By the State, in whole or in part, whenever funding from State or Federal sources is withdrawn, reduced, or limited. The State will not incur liability beyond the payment of those services agreed to and provided through the date of termination of the Contract for lack of appropriation of funds. The State is the final authority as to the availability of funds and will provide as much notice of termination under this provision to the Contractor as is reasonably possible. Notwithstanding the foregoing, the contract will continue in full force and effect during any period of sixty (60) days or less wherein funds are temporarily unavailable either from State or Federal funding sources.

3. The Contract may be terminated by the Contractor for the following reasons:

- For cause, upon a failure of State to comply with the terms and conditions of this Contract, provided that Contractor shall give the State written notice specifying State's breach. In the event that (i) the alleged breach is related to payment for Contractor's services and within ten (10) days of receipt of notice, the State shall not have contested, remedied or taken action to remedy the breach alleged or (ii) the alleged breach does not relate to payment for Contractor's services and within thirty (30) days of receipt of notice the State

shall not have either contested or remedied said breach, or for breach which cannot be reasonably remedied in thirty (30) days, commenced in good faith effort to correct said breach, then Contractor may, by giving thirty (30) days advance written notice, terminate the Contract. Termination by Contractor under this subsection shall impose on the State an obligation to reimburse Contractor the cost of services performed up to the date of termination and reasonable, direct and fixed termination costs incurred by the Contractor, such as unavoidable rent, utilities, severance pay and/or equipment costs.

- For convenience if written notice is delivered by the Contractor to the State not less than ninety (90) days prior to the effective date of said termination.

4. Unless otherwise directed, Contractor will continue providing the services delineated in Attachment V of the RFB until the date of termination.

Contractor shall meet any obligations that are imposed under this Contract upon termination, including providing copies at the State's request of any documents, work papers, records, magnetic media, or reports of any kind relating to the services delivered under this Contract.

C. Turnover.

1. Turnover Responsibilities

The parties acknowledge that the continuing provision of high quality services requires that there be no disruption of services during a turnover from the Contractor to the State or to a successor contractor, if any, at the expiration or termination of this Contract. Accordingly, the Contractor will cooperate fully in providing for an orderly and controlled transition to the State or to a successor contractor and will minimize any disruption in the services to be performed under this Contract.

2. Continuation

Notwithstanding any other provision in this Contract, the Contractor shall continue providing Contract services until the State determines that the State or a successor contractor is prepared to fully assume the Contractor's duties and obligations under this Contract. All the terms and conditions of the Contract will apply during this continuation period.

3. Staff

The Contractor shall maintain the staffing requirements in this Contract until the State or a successor contractor fully assumes the Contractor's responsibilities under this Contract.

4. Management

The Department's Contract Administrator will oversee the turnover by coordinating turnover activities and approving the turnover plan. The Contractor shall designate a person responsible for coordinating its turnover responsibilities and will assign staff as the State determines is necessary to assist in the turnover. Status meetings including staff from all parties involved in the turnover will be held as frequently as the State determines is necessary.

5. Turnover Plan

The Contractor shall provide the State with a plan for the complete turnover of its responsibilities under the Contract in a manner to allow for uninterrupted continuation of services and will revise the plan until acceptable to the State. The Contractor shall submit the plan at one of the following times, depending upon which applies: no less than 60 days prior to the Contract's expiration; within 10 working days of notice of termination by the State; or, along with Contractor's notice of termination. The plan will include provisions for the transfer of all client-related information held by the Contractor or its subcontractors and not also held by the State.

X. MISCELLANEOUS PROVISIONS

A. Anti-Trust Violations

The Contractor and the State recognize that overcharges resulting from antitrust violations are, in actual economic practice, usually borne by the State. Therefore, the Contractor hereby assigns to the State any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to the State.

B. Assignment and Acquisition

The Contractor may not assign or transfer this Contract or any of its rights hereunder or delegate any of its duties and obligations hereunder without the prior written consent of the State, which will not be unreasonably denied or delayed, provided that any permitted assignment will neither operate to relieve the Contractor of any of its duties and obligations hereunder nor affect any remedies available to the State that may arise from any breach of the provisions of this

Contract by the Contractor. Any attempted assignment, transfer or delegation in contravention of this section of the Contract will be null and void.

The Contractor will notify the State of any merger or acquisition that the Contractor determines will affect its ability to provide any of its duties and obligations under this Contract.

C. Authority

The Contractor has no authority to bind, obligate, or commit the State by any representation or promise without the prior written approval of the State. Likewise, the State has no authority to bind, obligate, or commit the Contractor by any representation or promise without the prior written approval of the Contractor.

D. Authorization

Both the Contractor and the State have full power and authority to enter into and perform their respective duties and obligations under this Contract, and the person signing this Contract on behalf of each party has been properly authorized and empowered to enter into this Contract and to bind each party to each and every one of the terms and conditions set forth herein as well as to ensure that each party has all required legal right and power to perform all acts called for by this Contract in Wisconsin and elsewhere.

The Contractor will notify the State in writing of any changes in the person or persons authorized to sign amendments to the Contract on behalf of Contractor.

E. Binding Effect

Each party agrees that this Contract binds it and each of its officers, employees, agents, independent contractors, and representatives.

F. Choice of Law

The Contractor agrees to be bound by the laws of the State of Wisconsin and to bring any legal proceedings arising under the Agreement in a court of the State of Wisconsin. For the purpose of Federal jurisdiction, in any action in which the State of Wisconsin is a party, venue shall be in the United States Western District Court for the State of Wisconsin.

G. Conflicts Among Documents; Order of Precedence

In the event that there is a conflict in the requirements laid out by the various documents that inform this Contract, the following order of precedence will apply:

- Federal laws, regulations and policies, as amended;
- State laws, regulations and policies, as amended;
- The terms and conditions in the body of this Contract, including all attachments and incorporations, as amended;
- RFB Question and Answer documents as posted;
- The RFB and Attachments, as amended;
- The Contractor's response to the RFB, including the Cost Bid, as accepted.

A higher-order document will supersede a lower-order document to the extent necessary to resolve any inconsistencies. An inconsistency does not exist solely because a higher-order document is silent on a matter that is addressed in a lower-order document.

H. Cooperation of Parties and Dispute Resolution Process

The parties agree to act in good faith to fully cooperate with each other in connection with the performance of their respective duties and obligations under this Contract.

When a material dispute involving neither the payment provisions of this Contract nor any matter that causes or creates significant potential financial losses or liability for the other party arises, the sole and exclusive method available to the parties of resolving such dispute is for either party to request a review by the Administrator of the State's Division of Health Care Access and Accountability. If this review does not result in the satisfactory resolution of the dispute, either party may request a review with the Deputy Secretary of DHS.

The parties will also use the process described above for the resolution of any dispute regarding the payment provisions of this Contract or for any matter that causes or creates significant potential financial losses or liability for the other party. However, if the parties are unable to resolve such a dispute to their mutual satisfaction, both parties will have available to them all rights and remedies that exist under this Contract and applicable Federal and State laws and regulations, including without limitation the right to litigate the dispute in any court of competent jurisdiction.

The existence of a dispute notwithstanding, both parties agree to continue without delay to carry out all of the respective duties and obligations under this Contract that are not affected by the dispute. The Contractor further agrees to abide by the interpretation of the State's Contract Administrator regarding the matter in dispute, pending final determination.

I. Documentation

Notwithstanding any provision in this Contract to the contrary, the standards, formats and forms for all documentation required of Contractor hereunder shall be mutually agreed upon by State and Contractor and shall, including all criteria developed or revised by the Contractor for work performed under the Contract, become the property of the State.

J. Entire Agreement and Acknowledgment of Understanding

The State and the Contractor agree that this Contract is the complete and exclusive statement of agreement between the parties relating to the subject matter of this Contract. The State and the Contractor further agree that this Contract supersedes all proposals, letters of intent or prior agreements, oral or written, and all other communications and representations between the parties relating to the subject matter of this Contract.

K. Force Majeure

The Contractor shall be excused from performance hereunder for any period that it is prevented from providing, arranging for, or paying for services arising out of causes beyond the control and without fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, strikes by other than the Contractor's employees, and freight embargoes. In all cases, the failure to perform must be beyond the control of, and through no fault or negligence of, the Contractor.

L. Headings

The headings throughout this Contract are for reference purposes only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Contract.

M. Hiring of Employees

The Contractor will not, for purposes of providing services under this Contract, knowingly engage (as a full-time, part-time or other member of the professional staff) any persons who are or have been at any time during the term of this Contract in the employ of the State without the prior written approval of the State, which will not be unreasonably denied or delayed. Likewise, the State will not, for purposes of providing services under this Contract, knowingly engage (as a full-time, part-time or other member of the professional staff) any persons who are or have been at any time during the term of this Contract in the employ of the Contractor without the prior written approval of the Contractor, which will not be unreasonably denied or delayed.

N. Independent Capacity of Contractor

The Contractor shall perform under the terms of the Contract as an independent Contractor and not as an employee, representative, or agent, of either the DHS or the State of Wisconsin. Neither the State of Wisconsin nor the Department of Health Services shall assume any responsibility for liability Contractor may incur directly, or indirectly, as a result of its performance under this Contract.

O. Non-waiver

Any failure or delay by either party to exercise or partially exercise any right, power, or privilege under this Contract will not be deemed a waiver of any such right, power, or privilege under this Contract. Any waivers granted by either party for current breaches will not indicate a course of dealing with or excusing other or subsequent breaches.

P. Notices

Notice will be deemed given by the parties under this Contract if in writing and delivered personally, by facsimile, or mailed by first-class, registered, or certified mail, postage prepaid, to the parties at the addresses shown below.

Any notice required or permitted to be given to a party will be in writing and addressed as follows:

In case of notice to the State:

Elias Soto, Director
Bureau of Operational Coordination (BOC)
Division of Health Care Access and Accountability (DHCAA)
Department of Health Services
PO Box 309
Madison, WI 53701-0309

Phone: (608) 266-0203
EliasN.Soto@dhs.wisconsin.gov

In case of notice to the Contractor:

Frederick H. Hanks, Vice President - Operations
Automated Health Systems
9370 McKnight Road, Ste. 300
Pittsburgh, PA 15237

Phone: (412) 367-3030 ex. 2221
FHanks@Automated-Health.com

Q. Promotion of Minority Business

The State is committed to the promotion of minority business in the state's purchasing program and therefore the Contractor will be encouraged to purchase services and supplies for performance under this Contract from minority businesses certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development. The Contractor shall submit a quarterly report of purchases of such supplies and services.

R. Remedies

Except as otherwise provided herein, no remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given there under, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

S. Right to Publish

The Contractor will be allowed to make public oral presentations, and to write and have such writing published subject to the State's review and approval before public release of the information on subjects associated with the work under this Contract.

T. Severability

If any provision of the Contract is found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.

U. Survival

The provisions regarding confidential information and indemnification survive the expiration or termination of the Contract, along with any other provisions contained in this Contract that by their language, sense and context are intended to survive.

XI. CONDITIONS OF THE PARTIES OBLIGATIONS

A. Contingency

This contract is contingent upon authorization of Wisconsin and United States law. Any material amendment or repeal of the same affecting relevant funding or authority of the State shall serve to revise or terminate this agreement, except as further agreed to by the parties hereto.

B. Lawful Powers

The State and the Contractor understand and agree that no clause, term or condition of this contract shall be construed to supersede the lawful powers or duties of either party.

C. Signatures

This agreement becomes null and void if the time between the earlier dated signature and the later dated signature on this agreement exceeds sixty (60) days inclusive of the two signature dates.

Contractor's Authorized Representative
Name: Joseph W. Nocito
Title: Chief Executive Officer

Date 12/01/08

Contractor's Contract Administrator
Name: Frederick H. Hanks
Title: Vice President - Operations

Date 12/01/08

State's Authorized Representative:
Jason A. Helgerson
State Medicaid Director

Date _____

State's Contract Administrator:
Elias Soto, Director
Bureau of Operational Coordination

Date _____

Attachment I

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is incorporated into the existing Underlying Contract (Contract) Agreement between **Automated Health Systems** (Business Associate) and the **Department of Health Services, Division of Health Care Access and Accountability** (Covered Entity) effective December 1, 2008, and terminates any prior existing Business Associate Agreements.

This Agreement is specific to those services, activities, or functions performed by the Business Associate on behalf of the Covered Entity when such services, activities, or functions are covered by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Services, activities, or functions covered by this Agreement include, but are not limited to:

The Covered Entity and Business Associate agree to modify the Contract to incorporate the terms of this Agreement and to comply with the requirements of HIPAA addressing confidentiality, security and the transmission of individually identifiable health information created, used or maintained by the Business Associate during the performance of the Contract and after Contract termination. The parties agree that any conflict between provisions of the Contract and this Agreement will be governed by the terms of this Agreement.

1. DEFINITIONS

Protected Health Information (PHI) means:

Health information, including demographic information, created, received, maintained, or transmitted by the Business Associate, on behalf of the Covered Entity, where such information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual, that identifies the individual or provides a reasonable basis to believe that it can be used to identify an individual.

PHI excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act (FERPA) and employment records held by the Covered Entity in its role as employer.

For the purposes of this Business Associate Agreement, PHI also includes the definitions of "registration record" and "treatment record" as defined in s. 51.30(1), Stats.:

a. **"Registration records" include all the records of the department, county departments under s. 51.42 or 51.437, treatment facilities, and other persons providing services to the department, county departments or facilities which identify individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism or drug dependence.**

b. "Treatment records" include the registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and by treatment facilities. Such records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a county department under s. 51.42 or 51.437, or a treatment facility if such notes or records are not available to others.

Individual means:

The person who is the subject of protected health information or the personal representative of an Individual as defined and provided for under applicable provisions of HIPAA.

Disclosure means:

The release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

Designated Record Set means:

(1) A group of records maintained by or for a covered entity that is:

(i) The medical records and billing records about individuals maintained by or for a covered health care provider;

(ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

(iii)Used, in whole or in part, by or for the covered entity to make decisions about individuals.

(2) For purposes of this Agreement, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

Incident means:

A use or disclosure of PHI by the Business Associate or subcontractor not authorized by this Agreement or in writing by the Covered Entity. Also included in this definition are any attempted, successful or unsuccessful, unauthorized access, modification, or destruction of PHI, including electronic PHI, or interference with the operation of any information system that contains PHI.

2. PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION

The Business Associate shall not use or disclose any PHI except as permitted or required by the Contract or this Agreement, as permitted or required by law, or as otherwise authorized in writing by the Covered Entity.

3. PERMITTED USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

The Business Associate may use or disclose PHI only for the following purpose(s):

a. for the delivery of the services, program management, activities, or functions contracted for in the Contract; or

b. for meeting contractual or legal obligations as established in any agreements between the parties evidencing their business relationship; or

c. as permitted by HIPAA if such use or disclosure were made by the Covered Entity or otherwise required by applicable law, rule or regulation; or

d. for use in the operations of the Business Associate as provided in paragraph 4 of this Agreement; or

e. as otherwise authorized by the Covered Entity in writing; or

f. data aggregation for the health care operations of the Covered Entity.

Note: For the purposes of the Contract and this Agreement, s. 51.30, Stats., and HFS 92, Wis. Admin. Code, contain provisions that are more stringent than the federal HIPAA statutes and regulations. The Business Associate may disclose PHI without prior written informed consent from the individual or his/her legal representative only to the Covered Entity, the individual or his/her legal representative, to the county staff of the county believed to be the county of responsibility, nursing facility staff of the facility to which the individual is seeking admission or is a current resident, and, if applicable, to the hospital staff where the individual currently is located on an inpatient basis.

4. SAFEGUARDING AND MAINTENANCE OF PROTECTED HEALTH INFORMATION

a. The Business Associate will develop, implement, maintain, and use:

(i) reasonable and appropriate administrative, technical, and physical safeguards to prevent improper use or disclosure of PHI, in any form or media; and,

(ii) reasonable and appropriate administrative, technical, and physical security measures that protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity.

b. The Business Associate will document PHI safeguards and security measures and agrees to provide the Covered Entity with access and review of this documentation if requested by the Covered Entity or an agent of the Covered Entity. Security measures employed by the Business Associate must be sufficient to ensure that the Covered Entity is compliant with the HIPAA privacy and security requirements for those covered services, activities, or functions performed on behalf of the Covered Entity on or before the date such requirements become effective.

c. The Business Associate agrees to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information held by the Business Associate. The Business Associate and Covered Entity agree that all costs associated with performance of these activities will be the responsibility of the Business Associate unless the Covered Entity agrees to be responsible for some or all of the costs associated with the performance of these activities.

5. USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION BY SUBCONTRACTORS AND AGENTS OF THE BUSINESS ASSOCIATE

The Business Associate agrees to require any agent, including subcontractors, to whom the Business Associate provides PHI to comply with the same restrictions and conditions applicable to the Business Associate with respect to PHI. Business Associate further agrees to ensure that any agents or subcontractors, to whom the Business Associate provides PHI received from, or created or received by the Business Associate on behalf of the Covered Entity agrees to the same restrictions and conditions applicable to the Business Associate with respect to such information. This provision does not apply to the use or disclosure of PHI by subcontractors that provide health care treatment to individuals or to other persons or organizations that have entered into an Organized Health Care Arrangement (OHCA) as provided for under the provisions of HIPAA.

6. ACCESS TO PROTECTED HEALTH INFORMATION

At the request of the Covered Entity, the Business Associate agrees to provide access to PHI held by the Business Associate that the Covered Entity has determined to be part of the Designated Record Sets of the programs covered by the Agreement. Access to PHI will be provided to the Covered Entity or to an Individual as directed by the Covered Entity to comply with applicable HIPAA requirements. The Covered Entity may delegate to the Business Associate responsibility for performing any or all obligations related to the Designated Record Set, including those activities required under HIPAA to permit an individual to exercise their HIPAA privacy rights.

7. AMENDMENT OR CORRECTION TO PROTECTED HEALTH INFORMATION

At the direction of the Covered Entity, the Business Associate agrees to amend or correct PHI that the Covered Entity determines is included in the Designated Record Set held by the Business Associate. The Business Associate agrees to complete any amendment or correction to PHI in accordance with HIPAA requirements.

8. REPORTING OF INCIDENTS TO COVERED ENTITY BY BUSINESS ASSOCIATE

The Business Associate agrees to inform the Covered Entity of any Incident covered by this Agreement within one (1) business day of becoming aware of such Incident. The Covered Entity, at its discretion, may require a written report. If a written report is requested by the Covered Entity, the Business Associate agrees to forward a written report to the Covered Entity not more than one (1) business day after such request is made. Written and verbal reports of Incidents will include:

a. a complete description of the circumstances of the Incident;

b. the name of persons assigned to review and investigate the Incident;

c. a description of all PHI used or disclosed during the Incident;

d. the names of persons and organizations involved in the Incident;

e. the actions the Business Associate has undertaken or will undertake to mitigate any harmful effect of the Incident; and,

f. a corrective action plan that includes steps the Business Associate has taken or will take to prevent future similar Incidents from occurring.

9. MITIGATING EFFECT OF UNAUTHORIZED DISCLOSURES OR MISUSE OF PROTECTED HEALTH INFORMATION

The Business Associate agrees to mitigate, to the extent practicable, any harmful effect known to the Business Associate created by an improper use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement.

10. STATUTORY DUTY OF COVERED ENTITY TO REPORT MATERIAL BREACHES BY BUSINESS ASSOCIATE TO SECRETARY OF HEALTH AND HUMAN SERVICES (HHS)

Business Associate and Covered Entity agree that if the Business Associate engages in a pattern of activity or practice that constitutes a material breach or violation of this Agreement, and the Covered Entity becomes aware of such pattern or practice, the Covered Entity is required to take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are not successful and termination of the Contract is not feasible, the Covered Entity is required to report the problem to the Secretary of HHS.

11. TRACKING AND ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION BY THE BUSINESS ASSOCIATE

a. The Business Associate agrees to track disclosures of PHI as required by the applicable provisions of HIPAA and applicable Wisconsin State law. Specifically, the Business Associate agrees that it will maintain a record of all PHI disclosures made to third parties,

except as provided for by the subsections to this paragraph below. The Business Associate agrees that the following information will be recorded:

(i) the date the PHI was disclosed;

(ii) the name and address, if known, of the person or entity that the PHI was disclosed to;

(iii) a brief description of the PHI disclosed; and

(iv) a brief statement describing the purpose for the disclosure.

b. For repetitive disclosures that the Business Associate makes to the same person or entity for a single purpose, the Business Associate will provide:

(i) the disclosure information as specified in paragraph 13(a)(i-iv) of this Agreement for the first of such repetitive disclosures;

(ii) the frequency, periodicity or number of such repetitive disclosures; and

(iii) the date of the most recent of such repetitive disclosures.

c. The Business Associate will make the record of disclosures available to the Covered Entity within one (1) business day after receiving a request by the Covered Entity.

d. Exceptions from Disclosure Tracking.
The Business Associate is not required to track or record disclosures of PHI, or to provide an accounting of disclosures for PHI meeting the following conditions:

(i) disclosures of PHI that are permitted under this Agreement, or otherwise expressly authorized by the Covered Entity in writing; and

(ii) disclosures of PHI for the following:

(1) for purposes of treatment, payment or health care operations activity of the Covered Entity;

(2) in response to a request from an Individual who is the subject of the disclosed PHI, or to that Individual's Personal Representative;

(3) made to persons involved in health care or payment for health care of the Individual;

(4) for disaster relief notification purposes;

(5) for national security or intelligence purposes; or,

(6) to law enforcement officials or correctional institutions regarding Individuals in custodial situations.

e. Agreement to Obtain Valid Authorization or Informed Written Consent Prior to Disclosure of PHI.

Business Associate agrees to obtain a valid authorization or informed written consent from the individual that is the subject of the PHI disclosure or a personal representative of such individual except for those exceptions listed in this Agreement or otherwise required by law.

f. Disclosure Tracking Time Periods.
Business Associate agrees to maintain and make available to the Covered Entity upon its request information on disclosures of PHI made by the Business Associate for the six-year period preceding the request, but not including disclosures made prior to April 14, 2003, or the date that the Business Associate began performing covered services, activities, or functions on behalf of the Covered Entity, whichever is later.

12. ACCOUNTING TO THE COVERED ENTITY AND TO GOVERNMENT AGENCIES

The Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Covered Entity, or to the Secretary of Health and Human Services (HHS) in a time and manner determined by the Covered Entity or the Secretary or designee, for purposes of determining compliance by the Covered Entity with the requirements of HIPAA. Further, the Business Associate agrees to promptly notify the Covered Entity of communications with HHS regarding PHI and will provide the Covered Entity with copies of any PHI or other information the Business Associate has made available to HHS under this provision.

13. TERM AND TERMINATION OF AGREEMENT

a. The Business Associate and Covered Entity agree that this Agreement becomes effective on December 1, 2008.

b. The Business Associate agrees that if in good faith the Covered Entity determines that the Business Associate has materially breached any of its obligations under this Agreement, the Covered Entity at its discretion, has the right to:

(i) exercise any of its rights to reports, access and inspection under this Agreement, and, or

(ii) require the Business Associate to conduct monitoring and reporting, as the Covered Entity determines reasonably necessary to maintain compliance with this Agreement; and, or

(iii) provide the Business Associate with a defined time period to cure the breach; or

(iv) terminate the Agreement in accordance with applicable state statutes.

c. Before exercising any of these options, the Covered Entity will provide written notice of preliminary determination to the Business Associate describing the violation and the action the Covered Entity intends to take.

14. RETURN OR DESTRUCTION OF PROTECTED HEALTH INFORMATION

Upon termination, cancellation, expiration or other conclusion of this Agreement, the Business Associate will:

a. Return to the Covered Entity, in accordance with Section VIII. of the Contract, or if return is not feasible, destroy all PHI and any compilation of PHI in any media or form. The Business Associate agrees to ensure that this provision also applies to PHI in possession of subcontractors and agents of the Business Associate provided to the agent or subcontractor by the Business Associate. The Business Associate agrees that any original record or copy of PHI in any media is included in and covered by this provision, as are all original or copies of PHI provided to subcontractors or agents of the Business Associate by the Business Associate. The Business Associate agrees to complete the return or destruction as promptly as possible, but not more than sixty (60) calendar days after the effective date of termination of this Agreement. The Business Associate will provide written documentation evidencing that return or destruction of all PHI has been completed. Business Associate agrees to extend the requirements of this provision to contracts entered into with subcontractors and agents that create, receive, or maintain PHI on behalf of the Business Associate.

b. If the Business Associate believes that the return or destruction of PHI is not feasible, the Business Associate shall provide written notification of the conditions that make return or destruction not feasible. If the Business Associate and Covered Entity agree that return or destruction of PHI is not feasible, the Business Associate shall extend the protections of this Agreement to PHI and prohibit further uses or disclosures of the PHI of the Covered Entity without the express written authorization of the Covered Entity. Subsequent use or disclosure of any PHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

15. MISCELLANEOUS PROVISIONS

a. Automatic Amendment: This Agreement shall automatically incorporate any change or modification to HIPAA as of the effective date of the change or modification. The Business Associate agrees to maintain compliance with all changes or modifications to HIPAA as required.

b. Interpretation of Terms or Conditions of Agreement: Any ambiguity in this Agreement shall be construed and resolved in favor of a meaning that permits the Covered Entity and Business Associate to comply with HIPAA.

c. Submission of Compliance Plan: The Business Associate agrees that a HIPAA compliance plan may be requested by the Covered Entity. If requested by the Covered Entity, the Business Associate agrees to provide periodic reports of the progress of the compliance plan. Further, the Business Associate agrees that the plan and progress reports will comply with the requirements of the Covered Entity.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed by their respective representatives.

Business Associate's Authorized Representative — Date: 12/01/08
Name: Joseph W. Nocito
Title: Chief Executive Officer

Business Associate's Contract Administrator — Date: 12/01/08
Name: Frederick H. Hanks
Title: Vice President - Operations

Covered Entity's Authorized Representative — Date
Name: Jason A. Helgerson
Title: State Medicaid Director

Covered Entity's Contract Administrator — Date
Name: Elias Soto
Title: Director, Bureau of Operational Coordination