

STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

This Professional Services Contract (PSC) is made and entered into by and between the State of New Mexico **Human Services Department**, hereinafter referred to as the "HSD", and **Health Management Systems (HMS)**, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the duties and activities as described in Exhibit A, Scope of Work, and in accordance with all pertinent Federal and State statutes, regulations, rules and/or procedures, including any supplemental directives issued by the Centers for Medicare & Medicaid Services (CMS).

B. Services will be performed in New Mexico.

C. The Contractor shall substantially perform the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, HSD may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise HSD of specific steps it will take to achieve these results and the proposed timetable for implementation.

2. Compensation.

A. The HSD shall compensate the Contractor in accordance with Section 27-2-29.1 NMSA 1978, attached as Exhibit C, Compensation Under Contingent Fee Contracts.

B. The Contractor is entitled to payment only after recovery has been made. The HSD will pay the Contractor a percentage of the revenues or savings generated as a direct result of the Contractor's activities, as described in Exhibit B, Contractor Contingency Fees. The New Mexico gross receipts tax levied on the amounts payable under this PSC shall be paid by the Contractor. Payment is subject to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and approval by the DFA. All invoices **MUST BE** received by the HSD no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.

C. The Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HSD finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon

certification by the HSD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the HSD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS PSC SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This PSC shall terminate four (4) years after the date set forth below upon which it is executed by DFA unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This PSC may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this PSC, the HSD's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the HSD is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this PSC. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this PSC may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the HSD or if, during the term of this PSC, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS PSC.*

B. Termination Management. Immediately upon receipt by either the HSD or the Contractor of notice of termination of this PSC, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this PSC without written approval of the HSD; 2) comply with all directives issued by the HSD in the notice of termination as to the performance of work under this PSC; and 3) take such action as the HSD shall direct for the protection, preservation, retention or transfer of all property titled to the HSD and records generated under this PSC. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the HSD upon termination and shall be submitted to the HSD as soon as practicable.

5. Appropriations.

The terms of this PSC are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this PSC. If sufficient appropriations and authorization are not made by the Legislature, this PSC shall terminate immediately upon written notice being given by the HSD to the Contractor. The HSD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the HSD proposes an amendment to the PSC to unilaterally reduce funding, the Contractor shall have the option to terminate the PSC or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the HSD and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this PSC. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this PSC or assign any claims for money due or to become due under this PSC without the prior written approval of the HSD.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this PSC without the prior written approval of the HSD.

9. Release.

Final payment of the amounts due under this PSC shall operate as a release of the HSD, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this PSC.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this PSC shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the HSD.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this PSC shall become the property of the State of New Mexico and shall be delivered to the HSD no later than the termination date of this PSC. Nothing developed or produced, in whole or in part, by the Contractor under this PSC shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the PSC. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

13. Amendment.

A. This PSC shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the HSD proposes an amendment to the PSC to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the PSC, pursuant to the termination provisions contained herein, or to agree to the reduced funding.

14. Merger.

This PSC incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written PSC. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this PSC.

15. Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin,

ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this PSC. If the Contractor is found not to be in compliance with these requirements during the life of this PSC, the Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this PSC, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this PSC, the Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this PSC.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this PSC may be terminated by the HSD.

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the term of the PSC and effect and retain them for a period of five (5) years from the date of final payment under this PSC. The records shall be subject to inspection by the HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this PSC shall not foreclose the right of the HSD to recover excessive or illegal payments.

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the HSD and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this PSC, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this PSC. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this PSC is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the HSD and the Risk Management Division of the New Mexico General Services Department by certified

mail.

21. New Mexico Employees Health Coverage.

A. If the Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, the Contractor certifies, by signing this PSC, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than the effective date of the contract if the expected annual value in the aggregate of any and all contracts between the Contractor and the State exceed \$250,000 dollars.

B. The Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. The Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: www.insurenewmexico.state.nm.us/.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); the Contractor agrees these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

22. Employee Pay Equity Reporting.

The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this PSC, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If the Contractor has 250 or more employees the Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, the Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should the Contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the Contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. The Contractor also agrees to levy this requirement on any subcontractor(s)

performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. The Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the Contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. The Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. The Contractor acknowledges that this subcontractor requirement applies even though the Contractor itself may not meet the size requirement for reporting and be required to report itself. Notwithstanding the foregoing, if this PSC was procured pursuant to a solicitation, and if the Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this PSC.

23. Invalid Term or Condition.

If any term or condition of this PSC shall be held invalid or unenforceable, the remainder of this PSC shall not be affected and shall be valid and enforceable.

24. Enforcement of PSC.

A party's failure to require strict performance of any provision of this PSC shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this PSC shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Notices.

Any notice required to be given to either party by this PSC shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the HSD: Frankie Vigil, Program Manager
 Medical Assistance Division/Quality Assurance Bureau
 P.O. Box 2348
 Santa Fe, NM 87504-2348
 frankie.vigil@state.nm.us

To the Contractor: Elizabeth Conway, Vice President
 Health Management Systems, Inc.

2122 East Highland Avenue, Ste. 225
Phoenix, AZ 85016
econway@hms.com

26. Authority.

If the Contractor is other than a natural person, the individual(s) signing this PSC on behalf of the Contractor represents and warrants that he or she has the power and authority to bind the Contractor, and that no further action, resolution, or approval from the Contractor is necessary to enter into a binding contract.

27. Debarment and Suspension.

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this PSC the Contractor certifies by signing this PSC, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this PSC, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this PSC, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HSD relied when this PSC was entered into by the parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this PSC. As such at all times during the performance of this PSC, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this PSC for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

(1) The Contractor shall provide immediate written notice to the HSD's Program Manager if, at any time during the term of this PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances.

(2) If it is later determined that the Contractor's certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD, the HSD may terminate the PSC.

C. As required by statute, regulation or requirement of this contract, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to the HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD may refuse to approve the use of the subcontractor.

28. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93 or Subparts B and C of 7 C.F.R. Part 3018, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

B. The Contractor, by executing this PSC, certifies to the best of its knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this PSC imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this PSC Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of the HSD, termination of the PSC.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, parties have executed this PSC as of the date of signature by the DFA Contracts Review Bureau, below.

By: Sidonie Squier
Sidonie Squier, Secretary
Human Services Department

Date: 4/26/11

By: [Signature]
Office of General Counsel
Human Services Department

Date: 4/18/11

By: Marti Davis
Contractor

Date: 4/12/11

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 02-958489-002

By: Julie Acio
New Mexico Taxation and Revenue Department

Date: 4/27/11

By: Mark Bant, Assistant AG
New Mexico Attorney General
In accordance with 27-2-29.1 NMSA 1978

Date: 5-13-11

This PSC is approved by the DFA Contract Review Bureau:

By: Paul Kippert
Contracts Review Bureau
New Mexico Department of Finance and Administration

Date: 5/17/11

Exhibit A

Scope of Work

The Scope of Work for this contract includes all the Mandatory Specifications outlined on pages 32 through 44 of Request for Proposals # 11-630-8000-0002 issued by New Mexico Human Services Department on November 15, 2010 and attached hereto and incorporated herein by reference as Exhibit D.

The following work specifications supplement or clarify the Mandatory Specifications:

A. The Contractor shall perform the following work:

- 1) Performance of data matches with commercial insurers and other alternative data bases to identify third party resources of Medicaid recipients. The third party resources to be identified are those previously unknown to the Human Services Department (HSD). These data exchanges shall identify other health care coverage that is primary in order to enable the Department to cost-avoid claims where primary coverage is available and recover reimbursement from primary health care coverage where payment has already been made.
- 2) Use data mining to select provider claims for review, request and review medical and financial records, identify over/underpayments for recovery, and testify in defense of the HSD's administrative actions in the event of an appeal. The retrospective claim review activities provided in this section may be used to comply with the mandate of the Patient Protection and Affordable Care Act for expansion of the Recovery Audit Contractor (RAC) program to Medicaid. In that case, the contractor will be expected to conform to federally mandated RAC requirements when issued by the Federal government.
- 3) Supplement the HSD's recovery activities; pursue post payment recovery including estate and credit balance recovery; and identify new casualty/liability cases.

B. Performance Indicators:

- 1) Recover amounts equal to or exceeding the projections in the contractor's proposal for the term of the contract.
- 2) Provide a system for effective communication with a variety of entities including but not limited to employers, providers, recipients and insurance carriers.
- 3) Secure any necessary approvals, clearances, and information from CMS and other state agencies (i.e. Data Match Agreements, Waivers for timely filing, State Insurance Commission approval, etc.)
- 4) Propose and provide assurances of adequate cash control procedures in the contractor's processes of deposit of funds and disposition of recoveries to the accounts receivable files.

- 5) Submit monthly invoices to the HSD based on finalized recoveries (those that the provider does not challenge or that have completed administrative appeals process).
- 6) Receive approval from the HSD of the contractor's electronic and manual procedures for verifying the accuracy of individuals matched and the individual's complete coverage prior to updating the HSD eligibility file.
- 7) Submit notification letters, demand notices and report templates to HSD for review and approval prior to implementation.
- 8) Prior to sending demand notices, validate findings and present full results of data matches for review and approval prior to initiating any recoveries.
- 9) Participate in in-person and/or teleconference meetings with provider groups, health care associations and others designated by HSD to review Contractor's methodologies, results and recommendations.
- 10) Collaborate with HSD in the development and implementation of a Medicaid Recovery Audit Contractor (RAC) Program to comply with all requirements and expectations set forth in Section 6411 of the Affordable Care Act, Expansion of the Recovery Audit Contractor Program, and in accordance with guidance from CMS.
- 11) Activities shall not overlap, interfere with and/or duplicate any past, present or ongoing activities of the HSD or its Medicaid Management Information System (MMIS) contractor.
- 12) The contractor shall not distribute, sell, or publish any data, findings, results, or other information acquired by the Contractor through its work on this project without HSD's prior written approval.

Through satisfactory completion of the Scope of Work set forth above and submission of acceptable deliverables contemplated under this PSC, the Contractor will assist the HSD to meet the portions of its Strategic Plan set forth in monitoring and oversight of the HSD Infrastructure. Task 6.6 "Administrative Effectiveness" dictates that the Medical Assistance Division improve program efficiencies and improve support for non-contracted databases

Exhibit B

Contractor Contingency Fees

Note: Contractor fees are based upon a percentage of recovered funds

<u>Service</u>	<u>Percentage of Recoveries</u>
Third Party Liability	8.9%
Program Integrity/Retrospective Review	10.5%
Revenue Enhancement	12.9%

Exhibit C

Compensation Under Contingent Fee Contracts

27-2-29.1 NMSA 1978. Compensation under contingent fee contracts; suspense fund created.

A. For the purpose of making disbursements and distributions pursuant to this section, the "human services department reimbursement suspense fund" is created in the state treasury.

B. When pursuing a claim arising under Section 27-2-23 or 27-2-28 NMSA 1978, in addition to other available alternatives, the department may contract with a person to represent the department on a contingent fee basis if the contract:

(1) is approved by the attorney general;

(2) provides that all amounts received by the contractor as satisfaction of the claim shall be transferred to the department and deposited into the human services department reimbursement suspense fund to the credit of the department; and

(3) provides that, upon the direction of the secretary of human services, the compensation due to the contractor shall be disbursed from the suspense fund to the contractor.

C. After a disbursement to a contractor pursuant to Paragraph (3) of Subsection B of this section, the balance of each deposit into the human services department reimbursement suspense fund shall be distributed to the general fund and shall be appropriated to the department for the purpose of reimbursing the department for the public assistance from which the claim arose and, if required, for reimbursing the federal government.

Exhibit D**Mandatory Specifications as per RFP 11-630-8000-0002****V. MANDATORY SPECIFICATIONS AND REQUIREMENTS**

In this section, HSD lists the major categories it will utilize to evaluate Offerors proposals. Offerors must meet all mandatory requirements listed in the RFPs and/or the contracts. The Offeror must provide all requested information and answer all questions. Failure to meet this requirement may result in a determination of non-responsiveness by the Procurement Manager.

Offerors proposals shall consist of two parts: a technical proposal and a cost proposal. The Offeror's technical proposal should include a clear narrative description to each mandatory specification. The narrative must include an understanding of the statement of work and a description of the methodology that the Offeror will utilize to meet the scope of work. The narratives along with required attachments will be evaluated and awarded points accordingly.

A. PROGRAM ADMINISTRATION AND SUPPORT**1. Organizational Capacity and Experience – General Expectations**

The Offeror shall demonstrate the organizational capacity and experience to perform the activity or activities included in their proposal(s). The Offeror, and its subcontractors, must be able to meet all administrative requirements related to appropriate state licensure, solvency, reporting and compliance with all applicable federal and state laws and regulations. The Offeror shall effectively coordinate its proposed activities with a variety of entities, state agencies and providers and will demonstrate the ability to build and maintain effective working relationships with a wide range of stakeholders.

MANDATORY REQUIREMENTS

The Offeror shall:

Perform all of its proposed activities within the United States;

Demonstrate an organizational structure that is designed to fulfill the requirements of this RFP, including administrative staffing of key positions;

State the approach it intends to use to achieve each objective including major activities and resources utilized for each work statement, as well as State involvement;

Clearly explain the use of subcontractors for any work described in this RFP. Major subcontractors shall be identified by name, address, type of activity and brief description of the project;

Guarantee that all subcontractors will incorporate the provisions of the Terms and Conditions of the contract and this RFP. Offeror shall be wholly responsible for the entire performance of the Scope of Work.

MANDATORY QUESTIONS AND/OR REQUESTS FOR INFORMATION

A1. Provide the name and address of the offering company/organization and its parent company (if applicable), including any “doing business as” either in New Mexico or in other locations.

A2. Provide a table of the organization or organizational chart including an explanation of the functions of the significant operating units.

A3. Provide a detailed description of the Offeror’s organizational structure, history, legal structure, ownership, affiliations, and locations(s). Depict the Offeror’s relationship to any parent, subsidiary, and related organizations and placement within the organizational structure. Identify any legal entity having an ownership interest of five percent (5%) or more. Identify significant subcontracts and assignment relationships.

A4. Provide the names, titles, job descriptions, qualifications/credentialing and resumes of the Offeror’s corporate and NM based CEO, CFO, CIO and Medical or Clinical Director, as appropriate;

A5. Provide the names, titles, job descriptions and resumes of key personnel that will lead the Offeror’s New Mexico activities; New Mexico staff assigned to liaison with Medicaid stakeholders; and New Mexico staff that will work with HSD/MAD staff. If any such positions are not currently filled or individuals are not committed to these positions, the Offeror must provide the job qualifications of each position.

A6. Describe which services will be delivered by a subcontractor or third party vendor.

A7. Provide documentation of any applicable accreditations or national affiliations that the Offeror may have and describe activities to maintain this accreditation or affiliation during the term of this contract.

A8. Identify, in table format, all of the Offeror’s publicly-funded contracts for Medicaid/Children’s Health Insurance Program (CHIP) and/or other low-income individuals within the last five (5) years. For each prior experience identified, please provide a brief description of the scope of work; the duration of the contract; the primary contact name, phone number, and email address; the number of members and the population types (e.g., Temporary Assistance to Needy Families (TANF), Aged, Blind,

Disabled (ABD), individuals eligible for both Medicaid and Medicare (duals), and CHIP; the annual contract payments; and the role of subcontractors, if any. This table shall include contracts held by the Offeror, the Offeror's parent organization, affiliates, and subsidiaries.

A9. List any pending lawsuit or bankruptcy petitions, any lawsuit or bankruptcy that has been concluded within the last five years, or any current investigation of the Offeror, its parent, affiliates, or subsidiaries that may be relevant to the operation of this program. Include a brief description of each item listed.

A10. For the Offeror's (to include the Offeror's parent organization, affiliates and subsidiaries) contracts listed in the table under A7, has the other contracting party notified the Offeror that it has found the Offeror to be in breach of the contract (failed to meet a contract requirement)?

If yes:

- a. Please provide a description of the events concerning the breach, specifically addressing the issue of whether or not the breach was due to factors beyond the Offeror's control.
- b. Was a corrective action plan (CAP) or its equivalent imposed? If so, describe the steps and timeframes in the CAP and whether the CAP was completed.
- c. Was a sanction imposed? If so, please describe the sanction, including the amount of any monetary sanction (e.g., penalty or liquidated damage)
- d. Was the breach the subject of an administrative proceeding or litigation? If so, what was the result of the proceeding/litigation?

A11. Provide a preliminary work plan identifying the key tasks to be completed by the Offeror and the State as well as outstanding issues that need to be addressed before contract implementation, with estimated timeframes and responsible parties.

A12. If using a subcontractor for work described in the RFP, describe the proposed subcontractor activities.

A13. Provide the Offeror's most recently audited financial statements. Include the parent company's most recently audited financial statements, if applicable. In addition,

A14. Provide the Offeror's two most recent unaudited internally prepared quarterly financial statements with preparation dates indicated. Include the parent company's two most recent statements, if applicable.

A15. Provide assurance that the work required to support and conduct the

services the Offeror is proposing will be conducted within the United States.

A16. Describe how the Offeror will coordinate services with other Medicaid contractors, such as the Fiscal Agent, the SALUD! MCOs, the Statewide Entity for behavioral health, and CoLTS contractors, and with other entities under contract with other State Agencies that may also be involved in proposed activities or products.

A17. Describe how the Offeror has coordinated services for a similar client.

A18. Describe how the Offeror intends to provide adequate administrative, clinical and financial support staff at all times.

A19. Describe the Offeror's training activities, both for the Offeror's own staff and for clients' staff. Describe how the Offeror identifies training needs, and implements and conducts training.

A20. Describe the Offeror's experience with similar clients in responding to issues raised by providers, Medicaid recipients and other citizens affected by the Offeror's activities. Include how the problems or issues were communicated to the Offeror, timeliness of response and the resolution process.

2. Management of Information – General Expectations

The Offeror will be responsible for managing information in order to provide the services and meet the requirements necessary to support the activity or activities included in the Offeror's proposal.

The Offeror is further responsible for ensuring that its subcontractors and major providers are able to meet these same requirements.

MANDATORY REQUIREMENTS

The Offeror shall:

Coordinate with HSD/MAD's Fiscal Agent to the extent necessary to meet the requirements of this procurement.;

Have the organizational capability to review and analyze associated elements related to Medicaid services, claims, fee-for-service activities, and encounters under the MCO or the SE models;

Send analyzed data to HSD in a report or series of reports in a format to be prescribed by HSD.

If required, demonstrate the ability to receive, store, and use files, as applicable, from the Department.

Comply with HIPAA regulations, as required.

Ensure that its subcontractors have sufficient systems capability to meet HSD/MAD's system requirements.

MANDATORY QUESTIONS AND/OR REQUESTS FOR INFORMATION

A21. Describe the Offeror's available clinical and administrative support resources that will ensure that the above requirements are met.

A22. Describe the Offeror's capacity to produce ongoing or ad hoc reports that may be required in the performance of the scope of work included in their proposal.

A23. Provide examples of reports used with other clients similar to the Department regarding the activities performed or products delivered under similar contracts. Include a description of each report, its intended use by the client, and the periodicity of the report.

A24. Describe the Offeror's capacity to maintain and retain secure clinical and financial records. Plan to establish appropriate restrictions and safeguards against unauthorized access to clinical and financial records entrusted to Offeror's staff.

A25. What protocols and procedures will the Offeror and its subcontractors follow to ensure appropriate release of member information, in accordance with federal Health Insurance Portability and Accountability Act (HIPAA) standards?

A26. Provide protocols and procedures that the Offeror and its subcontractors will follow to notify the Department of any performance problems.

B. SERVICES

1. Third Party Liability (TPL) – General Requirements

The Department is seeking services to provide third party services necessary to identify and verify third party leads for cost saving and recovery purposes, investigate cases with liable third party resources, initiate actions to recover benefits, recover monies for medical care for

which another party is responsible and provide reports of all work performed. The Department is interested in identification and recovery from all possible TPL resources including Federal insurance programs and commercial carriers.

The primary objective is to assist New Mexico in identifying the private health, Medicare, and other third-party resources that are primary to NM Medicaid members, enabling the Department to cost-avoid claims where primary coverage is available. Cost avoidance is the preferred method for reviewing claim records with TPL. This method includes application of edits and audits which check claim information against other information about members, TPL, providers, etc.

Additionally, the Department is interested in recovering reimbursement from primary health care coverage where Medicaid payment has already been made. Post-payment recovery is primarily a back-up process to cost avoidance, and used in situations where cost avoidance is impractical or unallowable.

MANDATORY REQUIREMENTS

The Offeror shall:

1. Provide services to identify and verify third party insurance;
2. Perform routine information comparisons with other government programs, top commercial carriers for the state, credit bureaus and other alternative information sources that the Offeror may propose;
3. Compare information sources to identify new insurance coverage such as Workman's Compensation;
4. Perform complex analysis of information to identify cases where insurance is available to one member of a family but the other members in the family are not covered;
5. Have carrier agreements in place with all major insurance carriers prior to the start of the contract;
6. Present full results of information analysis to the Department for review prior to initiating any recoveries;
7. Initiate actions to recover benefits and/or monies for medical care for which another party is responsible;
8. Bill/rebill Medicare and commercial carriers;
9. Recover/recoup third-party resources available to members following the twelve (12) month MCO right of subrogation;
10. Investigate reasons for nonpayment by other insurers and resubmit claims when appropriate;
11. Perform maintenance of information in order to re-verify insurance coverage information at least quarterly;

12. Maintain records including: third party resource information by member, date specific TPL resources, third party carrier information, and comprehensive written documentation supporting all recoveries billed to third parties;
13. Maintain and store all records relating to recovery and billing activities including: unique identification of recovery records, cost avoided due to established TPL (as defined by the State and/or Federal government), and provide tracking of recoveries and posting to individual claim histories;
14. Receive approval from the Department prior to all submissions of recoveries billed to commercial health insurance plans;
15. Respond to provider inquiries regarding the initial mailings and provide explanations before and after the Medicaid recovery has occurred;
16. Investigate and resolve provider disagreements resulting from voiding of claims.

MANDATORY QUESTIONS AND /OR REQUESTS FOR INFORMATION

B1. Based on the Offeror's understanding of the current structure and functioning of the New Mexico Medicaid program, describe areas that the Offeror believes will be most fruitful and productive to implement.

B2. Submit a coherent and comprehensive sample work plan that provides a detailed description of the activities the Offeror proposes to conduct in order to meet the goals of this initiative. The plan also must include, but is not limited to, specific actions, timeframes and methodologies the Offeror will use to implement those activities; and an indication of estimated revenue or cost savings that may result from those activities.

B3. Provide the process and methodology for identifying and reporting the existence of third party coverage.

B4. Provide the process and methodology for billing, tracking and reporting recoveries of Medicaid funds paid on behalf of eligible Medicaid recipients when other third party resources were/are available.

B5. Provide the process and methodology for identifying provider payments received from Medicaid where third party payments were also paid on the same claim.

B6. Describe methodologies for reducing or recovering Medicaid expenditures for increasing revenues on claims paid by Medicaid for recipients in cases where the recipients' other health insurance has inappropriately refused payment on the claim.

B7. Describe methodologies for reducing or recovering Medicaid expenditures or increasing revenues on claims where the fiscal agent and

the MCOs under contract with the DEPARTMENT have discontinued the pursuit of recovery.

B8. Describe the Offeror's experience with conducting TPL and other recovery/cost avoidance activities under similar contracts. Include estimated or actual dollar amounts recovered or saved under those contracts.

B9. Describe the Offeror's access to national employer-sponsored health insurance information sources and the frequency with which updates are made to the information maintained by the Offeror.

B10. Describe the Offeror's experience and access to national new hire and state wage files.

B11. Describe the Offeror's ability to transition its TPL efforts and related activities to the Department at the end of the contract period.

2. Program Integrity Retrospective Review, Recovery and Information – General Expectations

The majority of New Mexico Medicaid members are enrolled in managed Care Organizations to receive their services, including behavioral health and long term care services. A small portion of the program is delivered on a fee-for-service basis.

The Department is interested in methodologies to identify providers, through claims and medical record reviews, that have billed for services provided to Medicaid recipients not in compliance with State and Federal regulations and Medicaid billing guidelines. Such methodologies may include the use of statistics to establish norms of care to detect inappropriate or overutilization of services and analysis of encounter data as well as fee-for-service paid claims.

Specifically, the Department seeks a contractor that will determine provider claims for review, request and review medical and financial records, identify over/underpayments for recovery, and testify in defense of the Department's administrative actions in the event of an appeal. The Department may, in its sole discretion, elect to use the retrospective claim review activities provided in this section of the RFP to comply with the mandate of the Patient Protection and Affordable Care Act for expansion of the RAC program to Medicaid. In that case, the contractor will be expected to conform to federally mandated RAC requirements when issued by the Federal Government. **MANDATORY REQUIREMENTS**

The Offeror shall:

1. Conduct activities designed to identify patterns of care services and billing practices across multiple lines of business, member categories, providers, and Managed Care Organizations to identify potential providers for review;
2. Track service levels and usage to ensure that the programs are not incurring costs for inappropriate care and are not paying for fraudulent services;
3. Evaluate current processes and identify pre-payment/pre-adjudication strategies that lead to cost avoidance rather than recoupment;
4. Incorporate strategies that use enhanced analysis of payment editing capabilities such as, but not limited to: American Medical Association (AMA) Standard Editing; Appropriate use of International Classification of Diseases ninth revision (ICD-9) diagnosis and procedure codes; future accommodations for the use of International Classification of Diseases tenth revision (ICD-10) diagnosis and procedure codes; Appropriate use of Current Procedural Terminology (CPT) codes; Appropriate use and validation of modifiers on both professional and facility claims; use current Diagnosis Related Group (DRG) grouper for the appropriate year; use the American Hospital Association "Coding Clinic Guidelines" and, Correct Coding Initiative (CCI) edits on both professional and facility claims as defined by the Center for Medicare and Medicaid Services;
5. Request and perform retrospective reviews of medical and financial records, payment information, and services identified by the Department;
6. Validate through medical record documentation the appropriateness of the services paid;
7. Develop audit plans based on the requirements described in the RFP and/or as directed by the Department;
8. Cease pursuit of a case or audit already in progress upon the request of the Department;
9. Establish quality controls and procedures to identify and validate improper payments;
10. Support the department in any appeals that are requested as a result of audit findings and overpayment requests identified by the Offeror;
11. Have the capability of providing claims data for adjustments and/or voids to the Department for recovery processing or correction of underpayments in a format specified by the Department;

12. Obtain Department approval prior to all written correspondence with providers. Templates of correspondence to be used during this project must be approved by the Department;
13. When requested by the Department, submit written information and testify, as necessary, at any administrative hearings related to claims/reviews conducted by the the selected Offeror;
14. It is anticipated that any services contracted under this proposal will be capable of adapting to the on-going Program Integrity efforts of the Agency. Strategies shall be applied to both FFS claims and MCO encounter data;
15. At the conclusion of the contract period and before the final settlement, make available to the Department all records, files, methodologies and any supplemental documentation that the Department would require in order to process future recoveries or testify in administrative hearings of the same nature as those processed and performed by the selected Offeror during the course of this contract.

MANDATORY QUESTIONS AND/OR REQUESTS FOR INFORMATION

- B12. Describe the Offeror's experience with conducting PI and other recovery/cost avoidance activities under similar contracts. Include estimated or actual dollar amounts recovered or saved under those contracts.
 - B13. Based on the Offeror's understanding of the current structure and functioning of the New Mexico Medicaid program, such as the fact that 80% of NM Medicaid enrollees are in managed care, describe areas that the Offeror believes will be most fruitful and productive to implement.
 - B14. Describe the Offeror's approach to ensuring the thorough and accurate identification of overpayments and improper payments.
 - B15. What other programs, policies, and activities would the Offeror suggest to the Department related to increasing revenue and decreasing expenditures that might fit broadly under the PI activity? Provide examples from similar contracts.
 - B16. Discuss the Offeror's experience with the appeals and fair hearing processes that may arise due to denied claims or recoupments.
3. Revenue Enhancement/Expense Reduction – General Expectations

The Offeror shall identify opportunities and conduct activities for

increased revenues and/or reduced expenditures for the Medicaid program or other programs administered by the Department. The Department is less interested in such opportunities that may exist for other State-run programs that are administered by other Agencies or entities as there may be separate contracts to meet these goals.

Activities under the RE/ER umbrella may include, but are not limited to: estate recovery, credit balance recovery, and other activities of a similar nature that either increase revenue or reduce expenditures to the Department.

MANDATORY REQUIREMENTS

The Offeror shall:

Identify services that would enhance functions that are not part of the Department's current operations, planning, or already referenced as a need in this RFP.

Perform any recovery projects or other initiatives as mutually agreed upon and assigned by the Department.

Provide a detailed work plan for each enhancement proposed.

MANDATORY QUESTIONS AND/OR REQUESTS FOR INFORMATION

B17. Describe capability for identifying services that would enhance functions that are not part of the Department's current operations or planning.

B18. The Offeror shall present a coherent and comprehensive plan that provides detail regarding the opportunities for RE/ER and those activities in which the Offeror will engage to meet the goals of this activity. The plan must include, but is not limited to, specific actions and methodologies the Offeror will use to implement those activities; and an indication of estimated revenue or reduced expenditures that may result from those activities.

B.19. Describe other proposed systems and/or cost saving and recovery projects.

B20. Describe the Offeror's experience with conducting RE/ER activities under similar contracts. Include estimated or actual dollar amounts of enhanced revenues or reduced expenditures.

B21. Based on the Offeror's understanding of the current structure and

functioning of the New Mexico Medicaid program and state/federal regulatory mandates, describe areas that the Offeror believes will be most fruitful and productive to implement.

B22. Based on the Offeror's understanding of Departmental policies and procedures or State statutes, what changes to those policies, procedures, or statutes might the Offeror recommend to maximize federal funds and/or save state funds.

B23. Describe the Offeror's experience specific to Estate Recovery.

B24. In previous contracts, how has the Offeror maximized revenue through Estate Recovery while minimizing hardship to the families of deceased Medicaid clients?

B.25. Describe a work plan for performing specific functions in order to pursue recovery from the estates of deceased Medicaid recipients and/or their spouses and from trusts established for Medicaid recipients. Assets for these individuals must be identified and monitored for possible estate recovery.

B26. Describe how the Offeror will adapt its estate recovery efforts to New Mexico's legal, political, economic and social environment. Given the legal environment in New Mexico, please include a description of how the Offeror's estate recovery program would benefit both the Offeror and the Department.

B27. Describe in detail the processes the Offeror proposes to use in its estate recovery program in New Mexico. Include the number of estates the Offeror believes would be eligible for recovery annually and the approximate value of these recoveries. If the Offeror is not proposing estate recovery activities in this activity area, state as such.

B28. Describe the process the Offeror will use to evaluate the status of its estate recovery efforts and inform the Department of the status of those efforts.

B29. What other programs, policies, and activities would the Offeror suggest to the Department related to increasing revenue and/or decreasing expenditures that might fit broadly under the Revenue Enhancement activity? Provide examples from similar contracts.