

CONTRACT FROM THE MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CONTRACT NUMBER: 14-07-4-51-107

Pharmacy Benefits/Claims Management Services
ScriptGuideRX

SECTION 1: PARTIES

THIS CONTRACT, is entered into between the Montana Department of Public Health and Human Services, (hereinafter referred to as the "Department"), whose address, phone number, and email address are 1400 Broadway, P.O. Box 202951, Helena, Montana 59620, 406-444-4744, jnielsen@mt.gov; and ScriptGuideRX, Inc., (hereinafter referred to as Contractor) whose nine (9) digit Federal ID Number is 38-2946808 and whose address, phone number, and email address are 15400 E. Jefferson Avenue, Gross Pointe Park, MI 48230, 313-821-3200 ext 203, iekpenyong@scrtptguiderx.com.

THE PARTIES AGREE AS FOLLOWS:

SECTION 2: PURPOSE.

The purpose of this contract is the delivery of pharmacy benefits management services for the Montana AIDS Drug Assistance Program on a per-claim basis fee schedule.

SECTION 3: TERM OF CONTRACT – CONTRACT CONTINGENT ON FUNDING

- A. The term of this Contract for the purpose of delivery of services is July 1, 2013 through June 30, 2014 unless terminated otherwise in accordance with the sections of this Contract. This Contract may be extended at one year intervals up to a total of seven years if the parties agree to the extension prior to the end of the current term of this Contract.
- B. The term of this Contract is subject to termination at any time during the term of this Contract if the Department determines 1) that the monies to fund this Contract are no longer available as a whole or in part through federal or state appropriation or authorization; or 2) the Contractor is failing as determined by the Department to meet any of the performance, fiscal and reporting requirements under this Contract.
- C. The completion date of performance for purposes of issuance of final payment under this Contract is the date upon which the Department determines that: 1) there remain no further performance requirements or corrective actions to be performed by the Contractor; and 2) all final reports as required under this Contract are appropriately submitted and are satisfactory in form and content as determined by the Department.
- D. The Contractor, after termination for any reason of this Contract, remains subject to and obligated to comply with all legal and continuing contractual obligations arising in relation to its duties and responsibilities under this Contract including, but not limited to, state and federal reporting requirements, record retention, providing access and information for audits, indemnification, insurance, the protection of confidential information, recipient grievances and appeals, and property ownership and use.

SECTION 4. SERVICES TO BE PROVIDED.

- A. The Contractor must provide pharmacy claims management services for the Montana AIDS Drug Assistance Program, which includes the following:
- Claims processing and adjudication on a fee per claim basis.
 - Paying pharmacies for insurance co-pay and deductible costs and passing on those costs, without markup or fees, to the State for reimbursement.
 - Performance reviews and audit participating pharmacies as it deems necessary or as reasonably requested by the State. The Contractor shall report to the State any errors or improper activity detected through such an audit and shall take such corrective action as appropriate to prevent future errors or improper activity.
 - Clinical management services such as formulary management, step therapy, monitoring prior authorization requests, therapeutic duplication edits, and retrospective and concurrent DUR.
 - Coordination of benefits with insurance companies.
 - Work with the State to audit wholesale costs to ensure accurate reflection of ADAP negotiated supplemental rebates from the drug manufacturers. The Contractor will additionally access rebates from the drug manufacturing companies for insured client co-pay costs. The Contractor's rebate percentage fee is listed in Section 5A.
 - Recoupment services (e.g. assistance with back-billing insurances such as Medicaid, when coverage was retroactive).
 - Collaborating with the State on an approach for Trend [Cost] Management including strong emphasis on generics.
 - Abide by the State's formulary list attached at Appendix A (subject to change).
 - Expertise in data analysis and AIDS Drug Assistance Program-specific reporting requirements. Client/patient-level demographic data must be collected in a format usable by the State for quarterly federal reporting.
 - Customize and freely adapt to the specific needs of a small program. The Contractor must offer a hands-on approach provided by dedicated account management and clinical support staff.
 - In addition to interaction with the State and ADAP-specific pharmacies, the Contractor is expected to advise and/or cooperate with case managers at seven sites, a formulary advisory committee, a public planning body, the State, and federal grant officials.
 - Shall communicate various types of claims, eligibility, and other information related to the claims services to and from the State, members, participating pharmacies, and other authorized third persons for purposes of PBM administration.
 - In the event the contractor pays an Invalid Claim or makes an Overpayment, the contractor, at the State's option and discretion, will undertake one or more of the following actions unless the payment of the Invalid Claim or Overpayment is the result of inaccurate or untimely information provided by the State:

- Contact the recipient of the improper payment and request a refund from the recipient. If the recipient fails to refund the amount of the improper payment, the contractor will offset the amount of the improper payment against future payments for Claims submitted by the same recipient.
 - In the event of an overpayment as a result of the contractor's failure to require the dispensing pharmacy to collect the correct amount of co-pay(s) and/or deductible(s), then the contractor will refund the amount of the overpayment to the State provided that the contractor is not precluded by the State from recovering past and/or present Members' non-payment or underpayment of copayments, and the State provides all available address and similar information with respect to past and present Members who benefited from the Member nonpayment or underpayment of the copayment; and/or
 - Reimburse the State
- Respond to inquiries and complaints from participating pharmacies with regard to the contractor services under the subsequent contract.
 - Staff a help desk to provide information to members and participating pharmacies regarding the PBM.
 - Assign an account team to assist the State to answer and resolve questions and issues that arise with respect to the contractor's administration of the PBM.
 - Provide the State a secure, unlimited remote access to a password-protected electronic pharmacy claims processing and reporting system accessible to the PBM, the State, and the designated ADAP pharmacies. The electronic claims system must allow for confidential communications of claims, product cost, individual prescription history, and client demographics. The Contractor will work with the State to accomplish any necessary data transfers.
 - The minimum data set includes full name, date of birth, ID and Social Security numbers, case management area, gender, federal poverty level and race. Full drug utilization and prescription data is also required.
 - Access to this system is to be determined by the State and administered by the contractor (i.e. training, user setup, password reset, technical support, etc.).
 - The Contractor shall provide notification via on-line claims adjudication system to applicable Participating Pharmacies regarding Terminated Members.
- B. Time is of the essence under this contract. Uninterrupted and continuous delivery of the contracted goods and services is required.
- C. All persons and entities the Contractor engages under this contract, including its employees and approved subcontractors, must be appropriately trained, licensed, certified and credentialed as required by law.
- D. The Department and the Contractor, their employees, agents, approved contractors and subcontractors will cooperate with those of the other party, and with other state or federal administrative agency employees and subcontractors at no charge for purposes relating to the administration of the services to be delivered under this Contract.

- E. This contract is predicated in part on the use of the features specified in the Contract, the IFB and the Contractor's proposal and, if applicable, the attachments and materials referred to in those documents, including resources, persons, and personnel qualifications. The Contractor must ensure it will apply those specific resources, persons, personnel qualifications, and other performance features as required. The Contractor may not substitute specified features without written approval of the Department. Substitutions proposed must be equal to or better than those originally proposed, offered or identified.
- F. Department-approved staffing ratios and service delivery patterns are essential for certain good and services. Therefore, as applicable, the Contractor must maintain all staffing ratios, hours of service and service delivery patterns the Department specified, and all time, salary and hourly pay rate data, and personnel records needed to comply with legal and contractual requirements. The Contractor may not vary from specified features without the Department's written approval. The Department may recover retroactive to the date of occurrence any monies paid to the Contractor when the Contractor has failed to maintain required staff ratios, hours of service or service delivery patterns. If the Contractor reduces staff or resources, the Department may require a commensurate reduction of consideration or reimbursement.

SECTION 5. CONSIDERATION AND PAYMENTS

- A. In consideration of the services to be provided through this Contract, the Contractor is to receive from the Department reimbursement on the specified payment schedule for services rendered in accordance with the following reimbursement fees.
 - 1. Service Fees. The Department shall pay the service fee of \$XXXX per claim. Contractor will bill the Department twice a month electronically or by mail. Contractor shall also make claims detail available as of the date of the invoice. The Department's obligation to pay invoices from contractor is not in any way contingent on The Department's receipt of payment from other sources. The Department will pay in full, via electronic funds transfer, all invoices submitted by contractor within 10 days of the date of receipt of the invoice. Invoices that are not paid within 10 days of the date of receipt of the invoice shall be deemed late.
 - 2. Contractor will assess a 15% fee on all rebated acquired on behalf of the State.
 - 3. Late fees: Payment for invoices deemed late will accrue interest from the invoice date at a rate of (1.5%) per month, or prorated portion of a month, on the outstanding balance.
 - 4. Any fees and charges for services not specifically listed in this Schedule or in the body of this Agreement will be mutually agreed upon by contractor and the Department prior to performance of the service. Upon request by the Department, contractor will submit a written estimate of the fees and charges for the service in question, and the Department will notify contractor in writing, whether or not it will accept or reject contractor's offer for performing the services in question.
- a. Non-Monetary Obligations.
 - i. The Department is responsible to timely provide all the Department information to contractor in the mutually agreed manner, media and format.

- ii. The Department is responsible for the accuracy and completeness of all The Department Information provided to contractor.
- iii. The Department is required to provide such other and further data and/or information as may be reasonably requested by contractor to enable contractor to satisfy its various obligations under the terms of this Agreement.
- iv. The Department will be granted online access to update Member eligibility at any time. Otherwise The Department is responsible to communicate eligibility and coverage information promptly upon request by contractor and to notify contractor of updates and changes contractor as soon as is practicable after the Department becomes aware of changes in eligibility and/or coverage.
- v. The Department is responsible for promptly reviewing reports generated by contractor pursuant to this Agreement. The Department must communicate any and all errors to contractor as soon as is practicable after The Department's receipt of the reports, but in no event later than ninety (90) days after the Department's receipt of the report. If contractor receives no written notification of errors within such ninety (90) day period, the reports shall be conclusively acknowledged and deemed as accurate.

b. Compensation

- i. The Department shall make payments to contractor as specified in Section 3 of this Agreement regarding The Department's monetary obligations to contractor. Contractor shall accept the compensation set forth in Section 3 as full compensation for all Prescription Drugs, administrative services and other duties under this Agreement.
- ii. The Department shall have no obligation to compensate contractor Non-Covered Services. In the event of Non-Covered Services, contractor shall advise the Member that the services are not covered benefits under the Pharmacy Benefit Plan and that the services will be provided only upon an agreement between contractor and the Member as to the scope of services and financial responsibility for payment for the services
- iii. Participating Pharmacies shall look solely to contractor for compensation for Prescription Drugs provided to Members.
- iv. Contractor agrees that they will not have any claim against or bill, charge, or seek any compensation, remuneration or reimbursement from the Department for costs incurred in providing Prescription Drugs to Members under this Agreement or performing administrative services or other duties under this Agreement, except as expressly delineated in this Agreement.
- v. Contractor shall not enter into cost-sharing arrangements or collect any cost-sharing amounts or deductibles from Members, including copayments, for Prescription Drugs unless such arrangement and amount are approved in advance by the Department. Contractor shall be responsible for the appropriate billing and collection of any applicable copayments.

- B. Erroneous and Improper Payments. The Contractor may not retain any payments made by the Department that are erroneously made or improperly obtained by the Contractor, its employees, or its agents. An erroneously made payment or improperly received payment is a debt of the Contractor owing to the Department. The Contractor must immediately notify the Department upon determination that a payment may be erroneous or improper. The Contractor is obligated to return an erroneous or improper payment within 30 days of the Department's request that the payment be returned. If the Contractor does not return the payment, the Department may deduct the payment from any future payments to be made to the Contractor. The Department may recover an erroneous or improper payment by a means available under legal authorities or through this Contract.
- C. The total reimbursement provided to the Contractor for the purposes of this Contract shall not exceed \$350,000.
- D. Sources of Funding
The sources of the funding for this Contract are \$84,000 from the state special tobacco prevention fund and for the balance, federal grants from the U.S. Department of Health and Human Services) in the amounts of \$60,000 under federal grant number X09HA20253, and \$206,000 under federal grant number X07HA00006-23-01.

SECTION 6. CONFLICTS OF INTEREST AND ANTITRUST VIOLATIONS

- A. The Contractor must:
 - 1. comply with applicable state and federal laws, rules and regulations regarding conflicts of interest in the performance of its duties under this Contract;
 - 2. cooperate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under this Contract;
 - 3. establish safeguards to prohibit its board members, officers and employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain; and
 - 4. have no interest nor acquire any direct or indirect interest that would conflict in any manner or degree with its performance under this Contract.
- B. This contract is subject to immediate termination if the Contractor engages in any violation of state or federal law relating to:
 - 1. mail fraud, wire fraud, making false statements, price fixing and collusion to fix prices under the Sherman Act, 15 U.S.C. §§ 1-7 and engagement in kickback schemes in violation of the Anti-Kickback Act, 41 U.S.C. §§ 51-58; and
 - 2. colluding with other contractors in a noncompetitive manner to gain unfair advantage in providing services at a noncompetitive price in violation of 18-4-141, MCA.
- C. The Contractor may not enter into any Contract or other arrangement for the use, purchase, sale lease or rental of real property, personal property or services funded with monies of this Contract if an employee, administrator, officer or director of the Contractor may receive a financial or other valuable benefit as a result. The Department may grant exceptions to this prohibition where it determines that the particular circumstances warrant the granting of an exception.

SECTION 7. REPORTING OF FALSE CLAIMS, FRAUD, AND OTHER CRIMINAL MATTERS

- A. The Contractor, its employees, agents and subcontractors must immediately report any credible evidence of misconduct involving federal funds under this Contract, including any false claim under the federal False Claims Act (31 U.S.C. §§ 3729-3733), to the Office of Inspector General for the federal Department of Health & Human Services, the federal Department of Education or the federal Department of Agriculture, as applicable.
- B. The Contractor must report to the Department or other state authority any credible evidence that a violation of the Montana False Claims Act, at Title 17, chapter 8, part 4, MCA, has been committed.

SECTION 8. CREATION AND RETENTION OF RECORDS

- A. During the term of this Contract and for eight (8) years after its completion date, the Contractor must maintain all records, (written, electronic or otherwise) documenting compliance with the requirements of the Contract and its attachments, and with state and federal law, relating to performance, monetary expenditures and finances.
- B. If any litigation, reviews, claims or audits concerning the records are begun before the expiration of the eight (8) year period, the Contractor must continue to retain them until such litigation, reviews, claims or audits are resolved. The Contractor must provide authorized state and federal entities, including Montana DPHHS, the U.S. Departments of Health and Human Services, Agriculture, Energy and Education, their auditors, investigators and agents, with timely and unrestricted access to all of the Contractor's records, materials and information including any and all audit reports with supporting materials and work documents related to the delivery of goods and services provided under this Contract for purposes of audit and other administrative activities and investigations. Access must be provided in a format acceptable to those authorized entities, who may record and copy any information and materials necessary for any administrative activity, investigation and audit or other administrative activity or investigation.
- C. The Contractor must provide the Department and its authorized agents with reasonable access to records the Contractor maintains for purposes of this Contract. The Contractor must make the records available at all reasonable times at the Contractor's general offices or other location as agreed to by the parties.
- D. Records developed for the purposes of delivery of human services under this Contract are the property of the Department and must be developed, maintained, retained, transferred and disposed of as provided in this Contract or as otherwise directed by the Department. Records pertaining to the delivery of medical services are not subject to this requirement except to the extent expressly provided for in this Contract or as a necessary feature of the delivery of a human service such as medical evaluations for purposes of eligibility and service delivery of vocational rehabilitation services.

SECTION 9. ACCOUNTING, COST PRINCIPLES AND AUDIT

- A. Accounting Standards

The Contractor must maintain a system of accounting procedures and practices that (1) permits timely development of all necessary cost data in the form contemplated by the contract type, (2) is adequate to allocate costs in accordance with Generally Accepted Accounting Principles (GAAP); and (3) complies with any other accounting requirements the Department specifies.

The Contractor must maintain a system of accounting procedures and practices sufficient for the Department to determine to its satisfaction that the system that (1) permits timely development of all necessary cost data in the form contemplated by the contract type, (2) is adequate to allocate costs in accordance with Generally Accepted Accounting Principles (GAAP); and (3) complies with any other accounting requirements the Department specifies.

B. Internal Controls

The Contractor must maintain and document an adequate system of internal controls that address: 1) the control environment, 2) the risk environment, 3) the risk assessment, 4) the control activities, 5) information, communications, and monitoring.

C. Separate Accounting of Funding

The Contractor must separately account for and report the source, the receipt, and the expenditure of the different types of program funding received from the Department under this Contract. Except as may be expressly allowed for under this Contract, each different fund must be accounted for separately and may not be diverted or commingled.

D. Audits and Other Investigations

The Department and any other legally authorized federal and state entities and their agents may conduct administrative activities and investigations, including audits, to assure the appropriate administration and performance of the Contract; and the proper expenditure of monies, delivery of goods, and provision of services pursuant to the Contract. The Contractor will provide the Department and any other authorized governmental entity and their agents access to and the right to record or copy any and all of the Contractor's records, materials and information necessary for the conduct of any administrative activity, investigation or audit. Administrative activities and investigations may be undertaken and access shall be afforded under this section from the time the parties enter the Contract until the expiration of eight (8) years from the completion date of the Contract. M.C.A. 18-1-118.

E. Corrective Action

If directed by the Department, the Contractor must take corrective action to resolve audit findings. The Contractor must prepare a corrective action plan detailing actions the Contractor proposes to undertake to resolve those audit findings. The Department may direct the Contractor to modify the corrective action plan.

F. Reimbursement for Sums Owing

The Contractor must reimburse or compensate the Department in any other manner as the Department may direct for any sums of monies determined by an audit or other administrative activity or investigation to be owing to the Department.

G. Federal Financial Requirements

1. The Contractor must maintain appropriate financial, accounting and programmatic records necessary to substantiate conformance with federal requirements governing fund expenditures, even if this Contract is not cost / budget based.
2. The Contractor must comply with the audit requirements in 45 CFR 74.26(d) and the cost and accounting principles and procedures for commercial organizations in 48 CFR 31 concerning the use of the funds provided under this Contract in the version in effect on the date both parties sign this Contract. As a "for-profit" organization, the Contractor may either have an audit that meets the requirements contained in the Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" or the Government Auditing Standards. 45 CFR 74.26(d).

SECTION 10. REAL AND PERSONAL PROPERTY

A. Procurements undertaken by the Contractor with the consideration for this Contract are subject to the requirements and conditions of this Section. Custom software developed with consideration for this Contract in addition to this Section is also subject to the requirements and conditions of the "Software Ownership And Licenses" Section.

B. For purposes of this Section the following definitions based on the pertinent federal regulations apply:

"Equipment" means tangible nonexpendable personal property, including exempt property, charged directly to the Contract having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit unless lower limits are otherwise established.

"Intangible property" means, but is not limited to, trademarks, copyrights, patents, and patent applications and such property as loans, notes and other instruments of property ownership, whether considered tangible or intangible.

"Personal property" means property of any kind except real property. It may be tangible, having physical existence, such as equipment and supplies, or intangible, having no physical existence, such as data, copyrights, patents, or securities.

"Property" means, unless otherwise stated, real property, equipment, and intangible property.

"Real property" means land, including land improvements, structures, and appurtenances thereto, but excludes movable machinery and equipment.

C. Property to be used for the purposes of carrying out the duties and responsibilities provided for in this Contract may be purchased with funds from this Contract only if authorized by the Department through the terms of this Contract.

D. Property purchased with federal funding must be purchased, managed, subject to regular inventory and marking processes, and disposed of in accordance with the pertinent provisions at 45 CFR §§ 74.32, 74.34, 74.35, 74.36, and 74.37 and 45 CFR §§ 92.31, 92.32, 92.33 and 92.34.

- E. At such time as the Contractor no longer Contracts to deliver services to the Department, the Contractor must deliver, as may be required by legal authorities or as may be directed by the Department, title to and possession of any property purchased with contractual monies to the Department or to any entity designated by the Department.
- F. All patent and other legal rights in and to inventions arising out of activities assisted by funds from this Contract must be available, in accordance with 37 CFR Part 401 and any other applicable legal authority, to the public for royalty-free and nonexclusive licensing. The Contractor must notify the Department promptly in writing of any invention conceived or actually reduced to practice in the course of performance of this Contract.
- G. The Department and any federal agency from which funds for this Contract are derived have, in accordance with 45 CFR §74.36 and 45 CFR §92.34, a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use for Department and agency purposes any written, audio or video material developed under this Contract.

SECTION 11. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

- A. The Contractor may not agree to assign, transfer, delegate or subcontract this contract in whole or in part, or any right or duty arising under this contract, unless the Contractor submits a written request to the Department's liaison and the Department gives its express written approval to the assignment, transfer delegation or subcontract. Any agreement to assign, transfer, delegate or subcontract to which the Department does not give its express written approval is null and void; does not make the Department a party to that agreement; and creates no right, claim or interest in favor of any party to that agreement against the Department.
- B. An assignment, transfer, delegation or subcontract entered into by the Contractor must be in writing, must be subject to the terms and conditions of this Contract, and must contain any further conditions as may be required by the Department.
- C. The Contractor must immediately notify the Department of any litigation concerning any assignment, transfer, delegation or subcontract.
- D. In accordance with the sections of this Contract regarding indemnification, the Contractor must indemnify and hold the Department harmless with respect to any suit or action arising out of or brought by any party to an assignment, transfer, delegation or subcontract.

SECTION 12. INDEMNIFICATION

- A. The Contractor shall, at its sole cost and expense, indemnify, defend, and hold harmless the State of Montana, its officials, agents, and employees from any breach of this contract; from any matters arising from the performance of this contract; and from any failure by the Contractor, its officers, agents and employees to comply with any federal, state, and local laws, regulations, and ordinances applicable to the services or work to be provided under this Contract, to the work environment, or to employment practices.
- B. This indemnification applies to any claims, obligations, liabilities, costs, attorney's fees, losses or suits resulting from any acts, errors, omissions or negligence, whether willful or not, of the

Contractor, its employees, agents, subcontractors, or assignees and any other person, firm, or corporation performing work, services, or providing materials under this contract.

- C. The Department must give the Contractor notice of any allegation of liability and at the Contractor's expenses the Department shall cooperate in the defense of the matter. The Department may proceed to undertake its own defense if the Contractor fails to fulfill its obligations as the indemnitor under this section, and in such case the Contractor must reimburse the Department for any and all costs to the Department resulting from settlements, judgments, losses, liabilities, and penalties and for all the costs of defense incurred by the Department, including attorney fees, investigation, discovery, experts, and court costs.

SECTION 13. LIMITATIONS OF STATE LIABILITY

Any liabilities of the State of Montana and its officials, employees and agents are governed and limited by the provisions of Title 2, chapter 9, MCA, for all acts, omissions, negligence, or alleged acts or omissions, negligent conduct, and alleged negligent conduct related to this Contract.

SECTION 14. INSURANCE COVERAGE

A. GENERAL REQUIREMENTS

1. The following definitions apply for the purposes of this section.
 - a. "Contractor's agents" is including subcontractors, representatives, assignees, volunteers and any other person, partnership, corporation, or other legal entity performing work or services, or providing materials under this Contract on behalf of Contractor.
 - b. "Claim" is including both actual and alleged claims, demands, and legal causes of action.
2. The Contractor must acquire and maintain adequate liability insurance coverage in the forms and amounts stated in this Section to assure the State of Montana that there is insurance coverage for any potential losses, damages, and other expenses that may arise in the Contractor's performance of this Contract.
3. The Contractor must provide the Department with a copy of the certificate of insurance prior to performance showing compliance with the requisite coverage and at the request of the Department shall provide copies of any insurance policies pertinent to the requisite coverage, any endorsements to those policies, and any subsequent modifications of those policies.
4. The Contractor must maintain the insurance required in this Section throughout the time period of this Contract. The required insurance may not be canceled, allowed to expire, changed, reduced, or restricted for any reason during the term of this Contract unless and until the insurance carrier has given the Department's liaison 30 days' written notice prior to the notice of cancellation, expiration, change, reduction, or restriction of coverage and the Contractor has obtained written commitment for replacement coverage that is in conformance with the requirements of this Section and proof of that replacement coverage is given with the notice to the Department. The Contractor must

notify the Department immediately of any material change in insurance coverage and must provide to the Department copies of any new certificate or of any revisions to the existing certificate issued.

5. The Contractor is responsible for paying all premiums and deductibles for each insurance policy required by this Contract. Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department, the Contractor must
 - a. reduce or eliminate such deductibles or self-insured retentions in relation to the State, its officials, employees, and volunteers; or
 - b. procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
6. Each insurance policy required in this Section must be purchased from an insurance carrier authorized to do business in the State of Montana with an A.M. Best's rating of no less than A-, or through a qualified self-insurer plan implemented in accordance with Montana law and subject to the approval of the Department.
7. Each insurance policy required in this Section shall provide be the primary insurance as it concerns the State of Montana, its officials, agents, employees, and volunteers and must apply separately to each project or location. Any insurance or self-insurance maintained separately by the State of Montana, its officials, employees, agents, and volunteers is in excess of the Contractor's insurance and shall not contribute with it.
8. Except for professional liability insurance, the Contractor's insurance must include coverage for its subcontractors, or the Contractor must furnish to the Department copies of separate certificates of insurance and endorsements for each subcontractor. Except for professional liability insurance, Contractor's insurance coverage must also specify that the State, including its officials, employees, agents and volunteers, is covered as additionally insured for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor's officers, employees and agents and of the Contractor's performance, the services and products, and the completed operations; and arising in relation to the premises owned, leased, occupied, or used by the Contractor.
9. The Contractor's insurance coverage under any insurance policy necessary for performance of this Contract is the primary insurance in respect to the State of Montana, including its officials, agents, employees, and volunteers and must apply separately to each project or location. Any insurance or self-insurance maintained by the State of Montana, its officials, employees, agents, and volunteers is in excess of the Contractor's insurance and does not contribute with it.
10. If the total of losses for submitted claims exceeds the aggregate amount of insurance coverage a Contractor has, the Contractor must prospectively procure additional coverage based upon those increased claims.

B. General Liability Insurance

1. The Contractor must have primary general liability insurance coverage that covers tort and other claims of liability arising from personal harm or losses, bodily injuries, death, or damages to or losses or real and personal property or for other liabilities that may be claimed in relation to the Contractor's performance. The insurance must cover claims that may be caused by any act, omission, or negligence of the Contractor of the Contractor's officers, employees, or agents.
2. General liability insurance coverage must have combined single limits for bodily injury, personal harm or loss, and property damage or loss of \$1,000,000 per occurrence and \$2,000,000 per aggregate year, or as established by statutory tort limits of \$750,000 per claim and \$1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities or towns pursuant to 2-9-108, MCA.

C. Professional or Errors and Omissions Liability Insurance

1. The Contractor must have professional insurance to cover such claims as may be caused by an error, omission, or other negligent act of the Contractor as a professional and any other employed or subcontracted professional staff involved in providing the contracted services.
2. At minimum, the coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year.
3. If occurrence coverage is not available or is cost prohibitive, the Contractor may provide "claims made" coverage if:
 - a. the commencement date of this Contract does not fall outside the effective date of insurance coverage; and
 - b. the claims made policy has a three-year tail for claims that are filed after the cancellation or expiration date of the policy.

SECTION 15. COMPLIANCE WITH BUSINESS, TAX, LABOR, AND OTHER LEGAL AUTHORITIES

- A. The Contractor assures the Department that the Contractor is legally authorized under state and federal business and tax legal authorities to conduct business in accordance with this Contract.
- B. The Contractor and its employees, agents and subcontractors are not employees of the State and the Contractor may not in any manner represent or maintain the appearance that they are employees.
- C. The Contractor must maintain coverage for the Contractor and the Contractor's employees through workers' compensation, occupational disease, and any similar or related statutorily required insurance program at all times during the term of this contract. The Contractor must provide the Department with proof of necessary insurance coverage as it may be issued to the

Contractor and must immediately inform the Department of any change in the status of the Contractor's coverage.

- D. If the Contractor has received an independent Contractor certification from the Montana Department of Labor and Industry as to the Contractor for workers' compensation and other purposes, the Contractor must provide the Department with a copy of the current certification and must immediately inform the Department of any change in the status of the Contractor's certification. This requirement is not applicable if the Contractor's occupation under Montana law is a recognized professional occupation that when practiced as an independent business may be conducted without the independent contractor certification.
- E. The Contractor and its employees, agents and subcontractors must report to the Department or other appropriate state authority any credible evidence that an act in violation of the Montana False Claims Act, at Title 17, chapter 8, part 4, MCA, has been committed.
- F. The Contractor, as a Contractor for the State, must comply on an on-going basis with the Montana prevailing wage requirements in Title 18, chapter 2, part 4, MCA unless the services contracted for are "human services" or one of the other exclusions from the prevailing wage requirement.
- G. The Contractor may not use a person as an independent Contractor in the performance of its duties and responsibilities under this Contract unless that person is currently certified in accordance with Montana legal authorities as an independent Contractor and remains so, or is otherwise exempt under Montana legal authorities from the requirement to possess an independent contractor certification.
- H. The Contractor is solely responsible on an on-going basis for and must meet all labor, health, safety, and other legal requirements, including payment of all applicable taxes, premiums, deductions, withholdings, overtime and other amounts, which may be legally required with respect to the Contractor, the Contractor's employees, and any persons providing services on behalf of the Contractor under this Contract.
- I. The Contractor must comply on an on-going basis with all applicable federal and state legal authorities, executive orders, federal administrative directives, federally approved waivers for program administration, regulations and written policies, including those pertaining to licensing.
- J. The Contractor shall only employ, contract or otherwise engage personnel who are authorized to work in the United State in accordance with applicable federal and state laws.
- K. The section of this Contract regarding indemnification applies with respect to any and all claims, obligations, liabilities, costs, attorney fees, losses or suits involving the Department that accrue or result from the Contractor's failure to comply with this section, or from any finding by any legal authority that any person providing services on behalf of the Contractor under this Contract is an employee of the Department.

SECTION 16. CIVIL RIGHTS

A. Discrimination Prohibited Under Federal and State Authorities

The Contractor may not discriminate in any manner against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin

in the performance of this Contract or in the delivery of state services or funding on behalf of the State. The Contractor may not receive funds from the State if the Contractor engages in discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

B. Compliance with Federal and State Authorities

The Contractor must comply, as applicable, with the provisions of:

1. The Montana Human Rights Act (49-2-101, *et seq.*, MCA);
2. The Montana Governmental Code of Fair Practices (49-3-101, *et seq.*, MCA);
3. The federal Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*), prohibiting discrimination based on race, color, or national origin;
4. The federal Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), prohibiting discrimination based on age;
5. The Education Amendments of 1972 (20 U.S.C. 1681), prohibiting discrimination based upon gender;
6. Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794), prohibiting discrimination based upon disability;
7. The federal Americans with Disabilities Act of 1990 (42 U.S.C. 12101, *et seq.*), prohibiting discrimination based upon disability;
8. The Vietnam-Era Veterans Readjustment Assistance Act (38 U.S.C. 4212);
9. The federal Executive Orders 11246 and 11375 and 41 CFR Part 60, requiring equal employment opportunities in employment practices; and
10. The federal executive Order 13166 requiring facilitation of access for persons with limited English proficiency to federally funded services.

C. Civil Rights Violations

The Department may undertake any and all actions, including contract termination, necessary to remedy any prohibited discriminatory action by the Contractor or to remedy any failure by the Contractor to carry out an affirmative action as required in federal or state legal authorities.

SECTION 17. FEDERAL REQUIREMENTS

A. Generally.

Prior to signing this Contract, the Contractor must sign and submit to the Department OMB Form 424B (Rev. 7-97) (known as "Assurances – Non-Construction Program") and the Department's "Certification of Compliance with Certain Requirements for Department of Public Health & Human Services (May 2011)". The Contractor must comply with and ensure its subcontractors' compliance with the applicable federal requirements and assurances in those forms, including any related reporting requirements. The Contractor is responsible for determining which requirements and assurances are applicable to the Contractor

B. Political and Lobbying Activities

1. Except as expressly permitted by state and federal legal authorities, the Contractor, its employees and agents may not use any monies received under the terms of this Contract to make payments for salaries, expenses or otherwise related to:

- a. any political activities;
 - b. publicity or propaganda, or the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or a state legislature, except for presentations to the U.S. Congress or a state legislative body or one or more of its members as an aspect of normal and recognized executive-legislative relationships;
 - c. the awarding of any federal Contract, grant or loan, the making of any cooperative agreement or the extension, continuation, renewal, amendment or modification or any federal Contract, grant, loan or cooperative agreement; and
 - d. influencing or attempting to influence:
 - i. a member, officer or employee of the U.S. Congress or of any branch of any state or local legislative body, an employee of a member or officer of the U.S. Congress or of any branch of any state or local legislative body;
 - ii. any legislation or appropriations pending before the U.S. Congress or a state or local legislative body; or
 - iii. any officer or employee of any federal or state agency.
2. If the Contractor, is employees or agents pay any funds other than the monies received under this contract to any person for influencing or attempting to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress or an employee of a member of the U.S. Congress in connection with this Contract, the Contractor must complete and submit to the Department the federally required form, "STANDARD FORM LLL". The Contractor must cooperate with any investigation undertaken regarding the expenditure of funds for political or lobbying activities.

C. Reporting for Compliance with the Federal Transparency Act.

1. The following definitions apply for the purpose of with this Section:
 - a. "Entity" includes a corporation, an association, a partnership, a limited liability company, a limited liability partnership, a sole proprietorship, a nonprofit corporation, any other legal business entity, a tribe or tribal entity, an institution of higher education and a state or local government. It does not include a natural person and performance is not related to any business or nonprofit organization that the person may own, control or operate.
 - b. "Federal award" includes monies received by the Department through federal grants and contracts, and includes the expenditure of federal monies under cooperative agreements, including all forms of Medicaid payments. It does not include payments and reimbursements made to vendors of supplies, equipment, maintenance and other routine services.

- c. "Total compensation" includes the cash and noncash dollar value earned by the official/executive during the contractor's past fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus;
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments;
 - iii. Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees;
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans
 - v. Above-market earnings on deferred compensation which is not tax-qualified; and
 - vi. Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.
2. The Contractor will submit to the Department the following information related to the monies paid pursuant to this Contract in the time and manner the Department directs in fulfillment of the reporting requirements of the Federal Funding Accountability And Transparency Act (FFATA or Transparency Act), P.L. 109-282, as amended by Section 6202(a), P.L. 110-252-1:
 - a. name of the entity receiving the award;
 - b. the pertinent NAICS code for the Contractor's business activity;
 - c. the Data Universal Numbering System (DUNS) identifier assigned to the Contractor or other unique identifier of the entity receiving the award;
 - d. the DUNS identifier or other unique identifier assigned to the parent entity of the recipient, should the recipient be owned by another entity;
 - e. award title;
 - f. descriptive purpose of the funding action;
 - g. the amount of the award;
 - h. the transaction type;
 - i. the funding agency;
 - j. the Catalog of Federal Domestic Assistance number for grant derived program funding;
 - k. the program source;
 - l. the location of the entity receiving the award, including four data elements for the city, State, Congressional district, and country; and
 - m. the location of the primary place of performance under the award, including four data elements for city, State, Congressional district, and country.
3. The Contractor must mail to the Department each year during the term of the Contract an "Officers/Executive Compensation Report" (the Compensation Report) if the Contractor has:

reported gross income in the previous tax year totaling \$300,000 or more; consideration for this Contract totaling \$25,000 or more at the signing of or any time during the term of the Contract;
annual gross revenues totaling more than \$25,000,000; and federal awards which constitute 80% of the Contractor's annual gross revenues.

- a. The Compensation Report will present (1) the individual names and total compensation of the five most highly compensated officers/executives of the Contractor for the most recent full calendar year and (2) the Contractor's Data Universal Numbering System (DUNS) number issued through Dun and Bradstreet. The most highly compensated officers/executives reporting is limited to persons who are engaged in governance and management and is not including highly compensated professionals such as physicians who do not participate substantively in governance or management.
- b. The Contractor is to submit the Compensation Report to the Department by the end of the month following the month in which the total of the monies obligated through this Contract is at \$25,000 or more, whether occurring at the time of signing or at some later date due to a contractual amendment. The Contractor must continue to submit the Compensation Report annually during the term of the Contract on the anniversary of the initial date of submittal, even if the total consideration for the Contract is later amended to be less than \$25,000.
- c. The Contractor will submit the Compensation Report to the Department by first-class mail addressed as follows:

DPHHS
Attn: BFSD-FFATA Reporting
PO Box 4210
Helena, MT 59604-4210
- d. In lieu of the Report, the Contractor may submit to the Department the most currently available public report of compensation information as reported to:
 - i. the Security and Exchange Commission (SEC) under sections 13(a) or 15(d) of the Securities Exchange Act of 1934 through the Contractor's annual proxy statement; or
 - ii. the Internal Revenue Service under section 6104 of the Internal Revenue Code of 1986 through Section VII of the Contractor's Form 990.
- e. The Contractor does not need to report the compensation information of its top 5 officers/executives if the federal government designates that information as classified and not subject to public release.

SECTION 18. CONFIDENTIALITY OF PERSONAL INFORMATION AND COMPLIANCE WITH THE FEDERAL HIPAA AND HITECH PRIVACY AND SECURITY REQUIREMENTS

- A. The following definitions apply for the purpose of this section.

1. "Personal information" means information appearing in any form, whether written, electronic or otherwise, concerning a person who is:
 - a. a consumer or recipient of services delivered by a departmental program;
 - b. otherwise the subject of a departmental activity; or
 - c. a departmental employee.

2. "Confidential personal information" means personal information which federal or state legal authorities or regulations protect from general public access and release. "Confidential personal information" includes but is not limited to the name, social security number, driver's license number, street and postal addresses, phone number, email address, medical data, protected health information as defined for purposes of the federal Health Insurance Portability and Accountability Act (HIPAA) and Health Information for Economic and Clinical Health Act (HITECH), programmatic individual eligibility information, programmatic individual case information, programmatic payment and benefit information and information obtained from the IRS or other third parties that is protected as confidential.

B. Confidential Personal Information Held by the Contractor

During the term of this Contract, the Contractor, its employees, subcontractors and agents must treat and protect as confidential all material and information the Department provides to the Contractor or which the Contractor acquires on behalf of the Department in the performance of its contractual duties and responsibilities which contain personal information or confidential personal information and must use or disseminate such materials and information only in accordance with the terms of this Contract and any governing legal and policy authorities.

C. Security of Confidential Personal Information.

In its use and possession of confidential personal information, the Contractor must conform with security standards and procedures meeting or exceeding current best business practices. Upon the Department's request, the Contractor will allow the Department to review and approve any specific security standards and procedures of the Contractor.

D. Notice by Contractor of Unauthorized Disclosures or Uses of Confidential Personal Information.

Immediately upon discovering any unauthorized disclosure or use of confidential personal information by the Contractor, its employees, subcontractors, agents, the Contractor must confidentially report the disclosure or use to the Department in detail, and must undertake immediate measures to retrieve all such confidential personal information and to prevent further unauthorized disclosure or use of confidential personal information.

E. Notice by Contractor of Investigations, Complaints, Litigation Concerning the Use and Protection of Confidential Personal Information.

1. The Contractor must provide the Department with written notice within five work days of the Contractor receiving notice of any of the following:

- a. any complaint lodged with, investigation initiated by, or any determination made by any federal entity [including the federal Department of Health and Human Services' Office of Civil Rights (OCR) and the federal Department of Justice] related to any purported non-compliance by the Contractor with the federal HIPAA and HITECH Acts and their implementing regulations; or
- b. any administrative action or litigation initiated against the Contractor based on any legal authority related to the protection of confidential information.

2. With its notice, the Contractor must provide the Department with copies of any relevant pleadings, papers, administrative or legal complaints and determinations.

F. Contractor Compliance with the Federal HIPAA and HITECH Acts and the Implementing Regulations Governing the Use and Possession of Personal Healthcare Information.

1. If the Contractor uses or possesses individually identifiable personal healthcare information for purposes related to the performance of an services provided under this Contract, the Contractor must comply with the privacy and security requirements of the federal HIPAA of 1996 and HITECH Acts enacted as part of the American Recovery and Reinvestment Act of 2009, and the regulations implementing those requirements as they apply to the Contractor.

2. If the Contractor is a Business Associate as defined at 45 CFTR 160.103, it must comply with the privacy and security requirements for functioning as a Business Associate of the Department or as a "Covered Entity" under federal HIPAA and HITECH. In addition to executing this Contract, the Contractor must execute the Business Associate Agreement attached to this Contract.

3. The Contractor must sign the Department's Certification Form attached to this Contract as Attachment ____, certifying that the Contractor is in full compliance with applicable HIPAA and HITECH requirements as a Covered Entity or a Business Associate, as those terms are defined at 45 CFR 160.103.

SECTION 19. PUBLIC INFORMATION AND DISCLAIMERS

A. Before the Contractor uses, publishes, releases or distributes them to the public or to local and state programs, the Department must review and approve all products, materials, documents publications, press releases and media pieces (in any form, including electronic) the Contractor or its agents produce with contract monies to describe and promote services provided through this Contract.

B. The Contractor may not access or use personal, confidential, or privileged information obtained through the Department, its agents and contractors, unless the Contractor does so:

1. in conformity with governing legal authorities and policies;
2. with the permission of the persons or entities from whom the information is to be obtained; and
3. with the review and approval by the Department prior to use, publication or release.

Privileged information includes information and data the Department, its agents and contractors produce, compile or receive for state and local contractual efforts, including those

local and state programs with which the Department contracts to engage in activities related to the purposes of this Contract.

- C. The Contractor may not use monies under this Contract to pay for media, publicity or advertising that in any way associates the services or performance of the Contractor or the Department under this Contract with any specific political agenda, political party, a candidate for public office, or any matter to be voted upon by the public. Media includes but is not limited to commercial and noncommercial print, verbal and electronic media.
- D. The Contractor must inform any people to whom it provides consultation or training services under this Contract that any opinions expressed do not necessarily represent the position of the Department. All public notices, information pamphlets, press releases, research reports, posters, public service announcements, web sites and similar modes of presenting public information pertaining to the services and activities funded with this Contract prepared and released by the Contractor must include the statement:

“This project is funded in whole or in part under a Contract with the Montana Department of Public Health and Human Services. The statements herein do not necessarily reflect the opinion of the Department.”
- E. The Contractor must state the percentage and the monetary amount of the total program or project costs of this Contract funded with (a) federal monies and (b) non-federal monies in all statements, press releases, and other documents or media pieces made available to the public describing the services provided through this Contract.

SECTION 19. CONFIDENTIALITY OF PERSONAL INFORMATION AND COMPLIANCE WITH THE FEDERAL HIPAA AND HITECH PRIVACY AND SECURITY REQUIREMENTS

A. Generally,

The Contractor, during and after the term of this Contract, must protect in accordance with applicable legal and policy authorities confidential personal consumer/recipient and departmental employee information obtained and used in the performance of contractual duties and responsibilities under this Contract.

B. Confidential Personal Information Held By The Contractor

All material and information containing consumer/recipient or departmental employee personal information provided to the Contractor by the Department or acquired by the Contractor on behalf of the Department, whether verbal, written, electronic and other media, or in other forms, is to be regarded as confidential information and may only be used or disseminated by the Contractor, its employees, subcontractors, agents or others for the purposes allowed for under this Contract and any governing legal and policy authorities.

C. Confidential Personal Information Defined

Personal information is personal information concerning a person: 1) who is a consumer or recipient of services delivered by a departmental program, 2) who is otherwise the subject of a departmental activity, or 3) who is a departmental employee. Confidential personal information is personal confidential information that, under one or more federal or state legal authorities or regulations, is protected from general public access and release. Confidential personal information

may be in a form: 1) that expressly serves to identify a person; 2) that based upon various descriptive aspects can be used to identify a person; or 3) that is descriptive of a person's personal medical, physical, social, psychological, financial, eligibility for public services or benefits, or other personal circumstances. Personal information may appear in writing, electronic or in any other form. Confidential personal information may include but is not limited to a person's name, social security number, driver's license number, street and postal addresses, phone numbers, email address, medical data, health information, protected health information as defined for purposes of the federal HIPAA and HITECH Acts, programmatic individual eligibility information, programmatic individual case information, programmatic payment and benefit information, and information obtained from the IRS or other third parties that is protected as confidential.

D. Contractor Compliance With the federal HIPAA And HITECH Acts And The Implementing Regulations Governing The Use And Possession Of Personal Healthcare Information.

- i. The Contractor, in relation to individually identifiable personal healthcare information used or possessed by the Contractor for or related to the purposes of performance under this Contract, must comply with the privacy and security requirements of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the regulations implementing the HIPAA requirements at 45 CFR Parts 160 and 164 and the Health Information Technology For Economic And Clinical Health Act (HITECH), enacted as part of the American Recovery And Reinvestment Act of 2009, and the regulations implementing the HITECH requirements as they may be applicable to the Contractor and the services provided through this Contract.
- ii. The Contractor, if a Business Associate as defined at 45 CFR 160.103, may not proceed to enter into this Contract or continue to perform under this Contract with the Department unless it is in compliance with the privacy and security requirements of federal HIPAA and HITECH necessary for its function as a Business Associate of the Department or as a Covered Entity. A Business Associate may provide one or more services that encompass legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, and financial functions and activities and may include: claims processing or administration; data analysis, processing or administration; utilization review; quality assurance; billing; benefit management; practice management; and repricing. As a Business Associate the Contractor must comply with the further requirements and limitations that either appear in this Contract as the section "Business Associate Obligations" or appear with this Contract as an attached agreement titled "Business Associate Agreement". If the Department has attached a Business Associate Agreement to this Contract, the Contractor must execute that Agreement in addition to this Contract.
- iii. The Department's Certification Form, attached to this Contract as Attachment B, must be signed by the Contractor. That form, containing various requirements necessitating the Contractor's certification, provides for the Contractor's certification of its determination that, if it is legally subject, either as a Covered Entity or as a Business Associate as defined at 45 CFR 160.103, to the federal HIPAA and HITECH privacy and security requirements established in federal statutes and regulations, it is fully in compliance with those requirements as they may be applicable.

E. Security Of Confidential Personal Information

The Contractor in its possession and use of confidential personal information for purposes of performance under this Contract must implement and use at all times electronic and other security measures, standards, and procedures that meet or exceed current best business practices among like entities and operations, are compatible with the technology and programs of the Department, and, if requested by the Department, have been reviewed and approved by the Department.

F. Notice By Contractor Of Unauthorized Disclosures Or Uses Of Confidential Personal Information

The Contractor must immediately report to the Department in a confidential manner and with particular detail any unauthorized disclosures or uses of confidential personal information possessed by the Contractor, its employees, subcontractors, agents or others for the purposes of performance under this Contract.

G. Remedial Action

Upon discovery or notice that in the Contractor's possession or handling of confidential personal information there has been a breach of confidentiality, the Contractor must undertake immediate measures to prevent further breach and to retrieve from the breach any written, electronic media or other tangible forms of the confidential information, to rectify any significant harm to the Department, and to protect the affected individual persons from further harm that may arise out of the breach.

H. Notice By Contractor Of Investigations, Complaints, Litigation Concerning The Use And Protection Of Confidential Personal Information

The Contractor must notify the Department in writing within five work days in the event that 1) the Contractor receives notice of a complaint lodged with, of an investigation initiated by, or of a determination made by the Office of Civil Rights (OCR) of the Department of Health and Human Services, the federal Department Of Justice, or other federal entity that the Contractor is not in compliance with the federal HIPAA and HITECH Acts and the implementing regulations, or that 2) the Contractor receives notice of an administrative action or litigation initiated against the Contractor based on any legal authority pertaining to the protection of confidential information. The Contractor must provide the Department with a copy of any notice along with a copy of the relevant administrative or legal complaint and/or determination.

I. Cause For Termination

Failure of the Contractor to be in compliance with this section or the Department's policies or federal and state legal authorities protecting confidential personal information, inclusive of the federal HIPAA and HITECH Acts and the implementing regulations governing the protection of confidential personal healthcare information, is cause for termination of this Contract by the Department.

SECTION 20: BUSINESS ASSOCIATE OBLIGATIONS

a. Business Associate Status

The Department is subject to and must comply with provisions of the HIPAA privacy regulations. The Department has determined that in its entirety it is a covered entity as defined in those regulations. Under the HIPAA privacy regulations, the Contractor, as an entity that performs or assists in the performance of an administrative or data function for the Department involving the use or disclosure of protected health information (PHI) for the Department, is acting as a business associate of a covered entity.

b. Definitions That Apply To This Section

Terms used, but not otherwise defined, in this Section have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 USC §1320d-d8, and its implementing regulations at 45 CFR Parts 160, 162 and 164 (the "HIPAA Regulations"); and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and its attendant regulations and guidance (the "HITECH Act").

c. Status As A Business Associate

The Contractor agrees it is a Business Associate (as that term is defined at 45 CFR §160.103) of the Department and agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 USC §1320d-d8, and its implementing regulations at 45 CFR Parts 160, 162 and 164 (the "HIPAA Regulations"); and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and its attendant regulations and guidance (the "HITECH Act"). The Contractor must not use or disclose PHI, including E-PHI, other than as permitted or required by this Contract or as law. The Contractor must use appropriate safeguards to prevent use or disclosure of PHI and E-PHI other than as provided for by this Contract.

d. Obligations Of Contractor As A Business Associate

The Contractor, as a business associate of the Department, must:

- i. implement appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information as such safeguards are set forth in the Security Regulation and to prevent use or disclose of the Protected Health Information other than as provided for by this Section;
- ii. mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of Protected Health Information by the Contractor in violation of the requirements of this Section;
- iii. report to the Department any use or disclosure of the Protected Health Information not provided for by this Contract of which it becomes aware, including that the Contractor shall promptly report to Covered Entity any security incident of which it becomes aware, and at the request of Covered Entity shall identify: the date of the security incident, the scope of the security incident, the Contractor's response to the Security incident, and the identification of the party responsible for causing the security incident, if known;
- iv. ensure that any agent of the Contractor including a subcontractor, to whom the Contractor provides Protected Health Information that the Contractor received from, or

created or received by the Contractor on behalf of the Department agrees to the same restrictions and conditions that apply through this Section to the Contractor with respect to such information;

- v. provide at the request of and subject to the time and manner directions of the Department access for the Department or, as directed by the Department, for a person, for the purposes of this Contract to Protected Health Information in a Designated Record Set in order to meet the requirements under 45 CFR §164.524 and Section 13405(e) of the HITECH Act;
- vi. make any amendment(s) to Protected Health Information in a Designated Record Set that the Department directs or agrees to pursuant to 45 CFR §164.526 at the request of the Department or a person, and in the time and manner prescribed by the Department;
- vii. make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by the Contractor on behalf of, the Department available to the Department, or to the Secretary of the Federal Department of Health and Human Services, in a time and manner prescribed by the Department or designated by the Secretary, for purposes of the Secretary determining the Department's compliance with the Privacy Regulation, the Security Regulation and the HITECH Act;
- viii. document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Department to respond to a request by a person for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528 and Section 13405(c) of the HITECH Act;
- ix. provide to the Department or a person, in time and manner prescribed by the Department, information collected in accordance with subsection 21.D.iii. to permit the Department to respond to a request by a person for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528. The Contractor must document such disclosures of PHI and collect information related to such disclosures as would be required for the Department to respond to a request by a person for an accounting of disclosures of PHI in accordance with 45 CFR §164.528 and Section 13405(c) of the HITECH Act. Notwithstanding 45 CFR §164.528(a)(1)(i), the Contractor must document disclosures of PHI made through an electronic health record to carry out treatment, payment or health care operations as provided by 45 CFR §164.506 in the three years prior to the date on which the accounting is requested, and to collect information related to such disclosures as required by the Secretary in regulation pursuant to Section 13405(c)(2) or the HITECH Act;
- x. provide to Department or a person, within twenty days of the Department's request, information collected in accordance with this paragraph, to permit the Department to respond to a request by a person for an accounting of disclosures of PHI in accordance with 45 CFR §164.528 and the HITECH Act;
- xi. implement a response program, in compliance with Section 13402 of the HITECH Act and the regulations implementing such provisions, currently Subpart D of Part 164 of Title 45 of the Code of Federal Regulations, or such regulations as may be in effect

from time to time, that specifies the actions to be taken when the Contractor detects or becomes aware of unauthorized access to information systems. The response program must include the following features.

- a. The Contractor must notify the Department, by facsimile or telephone, of any breach or suspected breach of its security related to areas, locations, or computer system which contain unsecured PHI, including, without limitation, any instance of theft, unauthorized access by fraud, deception, or other malfeasance or inadvertent access (an "incident") in accordance to 45 CFR §164.410 as promptly as possible, upon having reason to suspect that an Incident may have occurred or determining the scope of any such incident, but in no event later than two (2) calendar days upon having reason to suspect that an incident may have occurred;
 - b. In the event of any such incident, the Contractor must provide to the Department, in writing, such details concerning the incident as the Department may request, and shall cooperate with the Department, its regulators and law enforcement to assist in regaining possession of such unsecured PHI and prevent its further unauthorized use, and taken any unnecessary remedial actions as may be required by the Contractor to prevent other or further incidents;
 - c. If the Department determines that it may need to notify any person(s) as a result of such incident that is attributable to the Contractor's breach of its obligations under this Section, the Contractor must bear all reasonable direct and indirect costs associated with such determination including, without limitation, the costs associated with providing notification to the affected person, providing fraud monitoring or other services to affected persons and any forensic analysis required to determine the scope of the incident;
 - d. The Contractor must update the notice provided to the Department under this Section of such incident to include, to the extent possible and as soon as possible working in cooperation with the Department, the identification of each person whose unsecured PHI has been, or is reasonably believed by the Contractor to have been accessed, acquired, used or disclosed during the incident and any of the following information the Department is required to include in its notice to the person pursuant to 45 CFR §164.404(c):
 1. A brief description of what happened, including the date of the Incident and the date the discovery of the incident, if known;
 2. A description of the types of unsecured PHI that were involved in the Incident (e.g., Social Security Number, full name, date of birth, address, diagnosis);
 3. Any steps the person should take to protect themselves from potential harm resulting from the Incident;
 4. A brief description of what is being done to investigate the Incident, mitigate the harm and protect against future incidents;
 5. Contact procedures for persons to ask questions or learn additional information which shall include a toll-free number, an e-mail address, Web site, or postal address;
 6. Such additional information must be submitted to the Department immediately at the time the information becomes available to the Contractor;
- xii. limit its use and disclosure of PHI created or received by the Contractor from or on behalf of the Department to uses or disclosures as are permitted to the Contractor under the applicable requirements of 45 CFR §164.504(e) and the HITECH Act. The

Contractor must also comply with the additional requirements of Subtitle D of the HITECH Act that relate to privacy and that apply to covered entities also will apply to the Contractor and are incorporated into this Section by reference; and

- xiii. comply with a person's request under 45 CFR §164.522(a)(1)(i)(A) that the Contractor restrict the disclosure of the person's PHI.

e. Permitted Uses, Disclosures And Limitations

Except as otherwise limited in this Section, the Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the Department for the following purposes, if such use or disclosure of Protected Health Information would not violate the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 USC §1320d-d8, and its implementing regulations at 45 CFR Parts 160, 162 and 164 (the "HIPAA Regulations"); and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and its attendant regulations and guidance (the "HITECH Act") if done by the Department or the minimum necessary policies and procedures of the Department:

- i. Assist medical case managers, medical prescribers or pharmacy technicians with medication details
- ii. Provide Department with utilization data

B. Use and Disclosure For Contractor's Purposes

- i. The Contractor may use and disclose PHI that is created or received by Contractor from or on behalf of the Department only if such use or disclosure, respectively, complies with each applicable requirement of 45 CFR §164.504(e) and the HITECH Act. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that apply to covered entities also will apply to the Contractor and are incorporated into this Section by reference.
- ii. The Contractor may use Protected Health Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor provided that the disclosures are:
 - a. required by legal authorities;
 - b. expressly authorized in this Section by the Department;
 - c. the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by legal authorities or for the purpose for which it was disclosed to the person; and
 - d. the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.
- iii. The Contractor may only use Protected Health Information to provide Data Aggregation services to the Department as permitted by 42 CFR §164.504(e)(2)(i)(B) and expressly authorized in this Section by the Department.
- iv. To the extent otherwise permitted by this Section, a communication that is described in the definition of Marketing in 45 CFR §164.501(1)(i), (ii) or (iii) for which the Department receives or has received Direct or Indirect Payment (excluding payment for Treatment) in exchange for making such communication, shall not be considered a Health Care

Operation unless:

1. Such communication describes only a drug or biologic that is currently prescribed for the recipient of the communication and any payment received in exchange for making such a communication is reasonable in amount; or
2. The communication is made by the Contractor on behalf of the Department and the communication is otherwise consistent with this Section. No communication may be made by the Contractor without prior written authorization by the Department.

C. Obligations Of The Department

- i. The Department must notify the Contractor of any limitation(s) in its notice of privacy practices of the Department in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Contractor's use or disclosure of Protected Health Information. A copy of the Department's Notice of privacy practice is attached to this contract and incorporated herein.
- ii. The Department must notify the Contractor of any changes in, or revocation of, permission by a person to use or disclose Protected Health Information, to the extent that such changes may affect the Contractor's use or disclosure of Protected Health Information.
- i. The Department must notify the Contractor of any restriction to the use or disclosure of Protected Health Information that the Department has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect the Contractor's use or disclosure of Protected Health Information.
- ii. The Department, except as may be expressly agreed to by the parties and stated in this Section, may not request the Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulation of done by the Department.

D. Term and Termination

- i. Term. The Term of this Section shall be effective as of the effective date of the Contract, and shall terminate when all of the Protected Health Information provided by the Department to the Contractor, or created or received by the Contractor on behalf of the Department, is destroyed or returned to the Department, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Subsection.
- ii. Termination for Cause. Upon the Department's knowledge of a material breach by the Contractor, the Department, at its sole discretion, must:
 1. provide an opportunity for the Contractor to:
 - a. cure the breach; or
 - b. end the violation and terminate this Contract if the Contractor does not cure the breach; or
 - c. end the violation within the time specified by the Department; or
 - d. immediately terminate this Contract if the Contractor has breached a material term of this Section and cure is not possible; or

- e. if neither termination nor cure are feasible, the Department must report the violation to the Secretary.
- iii. Upon the Contractor's knowledge of a material breach by Department, the Contractor must either:
 - 1. notify the Department of such breach in reasonable detail, and provide an opportunity for the Department to cure the breach or violation; or if cure is not possible, the Contractor may immediately terminate this Section; or
 - 2. if neither termination nor cure is feasible, the Contractor shall report the violation to the Secretary.
- iv. The Department may unilaterally terminate this Section of the Contract with the Contractor upon thirty (30) days written notice in the event (i) the Contractor does not promptly enter into negotiations to amend this Section when requested by the Department pursuant to the terms of this Section, or (ii) the Contractor does not enter into an amendment to this Section providing assurances regarding the safeguarding of PHI that department, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA Regulations and/or the HITECH Act.

E. Effect of Termination.

- i. Except as provided in this subsection, upon termination of this Contract, for any reason, the Contractor shall at the Department's sole discretion return or destroy all Protected Health Information received from the Department, or created or received by Contractor on behalf of the Department. This Section shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall retain no copies of the Protected Health Information.
- ii. In the event that the Contractor determines that returning or destroying the Protected Health Information is infeasible, the Contractor must provide to the Department notification of the conditions that make return or destruction infeasible. Upon written agreement by the Department that return or destruction of Protected Health Information is infeasible, the Contractor must extend the protections of this Section to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains such Protected Health Information.

F. Miscellaneous

- i. Regulatory References. A reference in this Section to a section in the Privacy Regulation or Security Regulation means the section as in effect or as amended.
- ii. Amendment. The Parties agree to take such action as is necessary to amend this Section from time to time as is necessary for the Department to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 USC §1320d-d8, and its implementing regulations at 45 CFR Parts 160, 162 and 164 (the "HIPAA Regulations"); and

the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and its attendant regulations and guidance (the "HITECH Act").

- iii. Survival. The respective rights and obligations of the Contractor under this Section shall survive the termination of this Section.
- iv. Interpretation. Any ambiguity in this Section shall be resolved to permit the Department to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 USC §1320d-d8, and its implementing regulations at 45 CFR Parts 160, 162 and 164 (the "HIPAA Regulations"); and the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and its attendant regulations and guidance (the "HITECH Act").

RECIPIENT GRIEVANCES AND APPEALS

- A. The Contractor must inform applicants for recipients of services provided through this Contract of any right there may be to present grievances to the Contractor and the Department or to receive a fair hearing.
- B. If an appeal for a fair hearing is filed, the Contractor must appear, if requested by the Department, to present evidence in any hearing that may be held.
- C. The Contractor, as directed by the Department, must provide services in accordance with the decision in a fair hearing concerning services provided by the Contractor to a recipient of services.

SECTION 21. COMPLIANCE WITH APPLICABLE LAWS, RULES AND POLICIES

The Contractor must comply with all applicable federal and state laws, executive orders, regulations and written policies, including those pertaining to licensing.

SECTION 22: TOBACCO-FREE WORKPLACE AND OTHER RESTRICTIONS

- A. The Contractor must provide a tobacco-free workplace. The Contractor must provide to the Department its policy for the implementation of a tobacco-free workplace.
- B. The Contractor and its subcontractors during the term of this contract may not: 1) perform any work involved in the production, processing, distribution, promotion, sale, or use of tobacco products or the promotion of tobacco companies; or 2) accept revenues from the tobacco industry or subsidiaries of the tobacco industry.

SECTION 23. CONTRACTOR COOPERATION AND DEPARTMENTAL GUIDANCE

- A. Cooperation with the Department and Other Governmental Entities

The Contractor must ensure that Contractor's personnel cooperate with the Department or other state or federal administrative agency personnel at no cost to the Department for purposes relating to the

delivery and administration of the contracted for services including but not limited to the following purposes:

1. The investigation and prosecution of fraud, abuse, and waste;
2. Audit, inspection, or other investigative purposes; and
3. Testimony in judicial or quasi-judicial proceedings or other delivery of information to HHSC or other agencies investigators or legal staff.

B. Departmental Guidance

The Contractor may request guidance from the Department in administrative and programmatic matters that are necessary to the Contractor's performance. The Department may provide such guidance as it deems appropriate. Guidance may include copies of regulations, statutes, standards and policies that are to be compiled with under this Contract. The Department may supply interpretations of such materials and this Contract to assist the Contractor with compliance. A request for guidance does not relieve the Contractor of any obligation to meet the requirements of this Contract. The Department will not provide legal services to the Contractor in any matters relating to the Contractor's performance under this Contract.

SECTION 24. ACCESS TO PREMISES

The Contractor must provide the State of Montana and any other legally authorized governmental entity, or their authorized representatives, the right to enter at all reasonable times the Contractor's premises or other places where contractual performance occurs to inspect, monitor or otherwise evaluate contractual performance. The Contractor must provide reasonable facilities and assistance for the safety and convenience of the persons performing these duties. All inspection, monitoring and evaluation must be performed in such a manner as not to unduly interfere with contractual performance.

SECTION 25. REGISTRATION OF OUT OF STATE ENTITIES

- A. If the Contractor is incorporated in a state other than Montana or in a foreign country and is conducting business in Montana, it may be required by 35-1-1026 and 35-8-1001, MCA to register with the Montana Secretary Of State Office. Further information concerning these requirements may be obtained through the Montana Secretary of State's Office at <http://sos.mt.gov/> or by calling 406.444.3665.
- B. A business entity required to register in the State of Montana must show proof of a current certificate of authority to conduct business prior to entry into or continued performance under this Contract.

SECTION 26. LIAISON AND SERVICE OF NOTICES

- A. Judy L. Nielsen, 406.444.4744/fax 406.444.6842, jnielsen@mt.gov, is the liaison for the Department. Ime Ekpenyong, 313-498-8981, iekpenyong@scriptguyer.com is the liaison for the Contractor. These persons serve as the primary contacts between the parties regarding the performance of this Contract. The State's liaison and Contractor's liaison may be changed by written notice to the other party.
- B. Written notices, reports and other information required to be exchanged between the parties must be directed to the liaison at the parties' addresses set out in this contract.

SECTION 27: FORCE MAJEURE

If the Contractor or State is delayed, hindered, or prevented from performing any act required under this Contract by reason of delay beyond the control of the asserting party including, but not limited to, theft, fire, or public enemy, severe and unusual weather conditions, injunction, riot, strikes, lockouts, insurrection, war, or court order, then performance of the act shall be excused for the period of the delay. "Beyond the control" means an unanticipated grave natural disaster or other phenomenon or event of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight. In that event, the period for the performance of the act shall be extended for a period equivalent to the period of the delay. Matters of the Contractor's finances shall not be considered a *force majeure*.

SECTION 27. CONTRACT TERMINATION

- A. Either party may terminate this Contract without cause and in lieu of any or all other remedial measures available through this Contract. A party terminating with or without cause must give written notice of termination to the Contract liaison for other party at least sixty (60) days prior to the effective date of termination unless the parties agree in writing to a different notice period.
- B. The Department may terminate this Contract in whole or in any aspect of performance under the Contract if:
1. federal or state funding for this Contract becomes unavailable or reduced for any reason;
 2. the Contractor fails to perform in accordance with the terms of the Contract; or
 3. the Contractor fails to perform in accordance with any applicable governing legal authority, including but not limited to:
 - a. the American Recovery and Reinvestment Act of 2009;
 - b. the Government Funding Transparency Act of 2008;
 - c. the Federal Funding Accountability and Transparency Act of 2006;
 - d. the federal and state acts prohibiting false claims;
 - e. the federal and state legal authorities requiring and implementing debarment;
 - f. the federal and state antitrust and other anticompetitive legal authorities including the Sherman Act;
 - g. the federal and state civil rights legal authorities; and
 - h. state licensing legal authorities.
 4. Except as may be otherwise required or necessitated by federal or state legal authorities including the Recovery and Reinvestment Act, the Department must give written notice of termination to the Court liaison for other party at least sixty (60) days prior to the effective date of termination of the Contract unless the parties agree in writing to a different notice period.
- C. Notice of termination given to the Department by the Contractor may only be revoked with the consent of the Department.
- D. Upon expiration, termination or cancellation of this Contract, the Contractor must assist the Department, its agents, representatives and designees in closing out the Contract, and in

providing for the orderly transfer of contract responsibilities and the continued delivery of contract services by the Department or its designee, and shall allow the Department access of the Contractor's facilities, records and materials to fulfill these requirements.

SECTION 29. CHOICE OF LAW, REMEDIES AND VENUE

- A. This Contract is governed by the laws of the State of Montana. In accordance with Montana Code Annotated § 18-1-401, the district courts of the State of Montana have exclusive original jurisdiction to entertain claims or disputes arising out of contracts entered into by the Department.
- B. For purposes of litigation concerning this Contract, venue must be in the First Judicial District in and for the County of Lewis and Clark, State of Montana.
- C. If there is litigation concerning this Contract, the Contractor must pay its own costs and attorney fees.
- D. If there is a contractual dispute, the Contractor agrees to continue performance under this Contract unless the Department in writing explicitly waives performance.
- E. Any remedies provided by this Court are not exclusive and are in addition to any other remedies provided by law.

SECTION 30. SCOPE, AMENDMENT AND INTERPRETATION OF CONTRACT

- A. This Contract consists of 34 numbered pages and two attachments expressly referenced as Attachments A, Montana ADAP Formulary, and Attachment B expressly referenced as Department's Certification Form. This is the entire Contract between the parties.
- B. No statements, promises, or inducements made by either party or their agents are valid or binding if not contained in this Contract and the materials expressly referenced in this Contract as governing the contractual relationship.
- C. The headings to the section of this Contract are convenience of reference and do not modify the terms and language of the sections to which they are headings.
- D. No contractual provisions from a prior Contract of the parties are valid or binding in this contractual relationship.
- E. Except as may be otherwise provided by its terms, this Contract may not be enlarged, modified or altered except by written amendment signed by the parties to this Contract.
- F. If there is a dispute as to the duties and responsibilities of the parties under this Contract, the Contract along with any attachments prepared by the Department, including request for proposal, if any, govern over the Contractor's proposal, if any.
- G. If a court of law determines any provision of this Contract is per se or as applied legally invalid, all other provisions of this Contract remain in effect and are valid and binding on the parties.

- H. Any provision of this Contract that is determined to conflict with any federal or state law or regulation, whether per se or as applied, is inoperative to the extent it conflicts with that authority and is to be considered modified to the extent necessary to conform with that authority.
- I. Waiver of any default, breach or failure to perform under this Contract may not be construed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of a default, breach or failure to perform may not be construed to be a modification of the terms of this Contract unless reduced to writing as an amendment to this Contract.

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By: _____ Date _____
 Richard Opper, Director
 Department of Public Health & Human Services

SCRIPTGUIDERX, INC

BY: _____ Date: _____

_____ as _____
 Harvey Day Title

15400 E. Jefferson Avenue
 Grosse Pointe Park, MI 48230
 313-821-3200 ext. 203
 Federal I.D. Number

Approved as to Form:

 Tia Snyder, Procurement Officer (Date)
 State Procurement Bureau