For Purchasing Use Only:
RFP/CONTRACT # 1763

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF HEALTH CARE FINANCING AND POLICY
1000 East Williams Street, Suite 118
Carson City, Nevada 89701
Phone: (775) 684-3636 Facsimile: (775) 684-3799
Point of Contact: Dorrie Kingsley

And

HEALTH SERVICES ADVISORY GROUP, INC.
1600 E. Northern Avenue, Suite 100
Phoenix, Arizona 85020
Phone: (602) 264-6382 Facsimile: (602) 241-0757
Point of Contact: Dr. Mary Dalton

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners (BOE), services of persons as independent contractors; and
WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners, the United States Department of Health and Human Services, and the Nevada Attorney General. It is contingent upon the availability of both federal and State funds. The contract shall not become effective until and unless the Contractor successfully passes a pre-implementation review by State staff or its agent. Any services provided by the Contractor, or its subcontractors, before such a contract is effective or after it ceases to be effective are provided at the sole risk of the Contractor.

2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.

3. CONTRACT TERM. This Contract shall be effective from **July 1, 2009 subject to Board of Examiners' approval (anticipated to be June 9, 2009) to June 30, 2013.**

4. NOTICE. Unless otherwise specified in paragraph 10, termination shall not be effective until two hundred seventy (270) calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA:	NEGOTIATION DOCUMENT;
ATTACHMENT BB:	STATE SOLICITATION OR RFP #1763 and AMENDMENT #1;
ATTACHMENT CC:	INSURANCE SCHEDULE; AND
ATTACHMENT DD:	CONTRACTOR'S RESPONSE

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost of see Attachments AA & DD per Attachments AA & DD with the total Contract or installments payable: **as invoiced not to exceed $2,217,620.00. The contractual authority, as identified by the not to exceed amount, does not obligate the State of Nevada to expend funds or purchase goods or services up to that amount; the purchase amount will be controlled by the individual using agency's purchase orders or other authorized means of requisition for services and/or goods as submitted to and accepted by the contractor.** The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor The parties' signatures to this contract shall constitute their mutual assent to an administrative fee not to exceed one hundred dollars ($100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.
   a. Books and Records. Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) subject to any deviations prescribed or permitted by an applicable regulatory authority, full, true and complete records, contracts, books, and to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all State and federal regulations and statutes.
   b. Inspection & Audit. Contractor agrees the books, records (written, electronic, computer-related or otherwise), actuarial reports, financial statements, medical records, quality assurance data using the data and information set that the Secretary has specified for use under Part C of Title XVIII, or such alternative data as the Secretary approves in consultation with the State, facilities and accounting procedures and practices of the Contractor, or any subcontractor relevant to this

contract, shall be subject to inspection, examination, copying and audit during regular business hours, at various but necessary times by DHCFP or its contracted examiner(s), the State of Nevada Division of Insurance Division or its contracted examiner(s), the State Board of Health and the State Health Division or its contracted examiner(s), the Attorney General of Nevada or the State Legislative Auditor, the Comptroller General of the United States, the United States General Accounting Office, the Centers for Medicare and Medicaid Services (CMS), or any authorized representative of these entities, or any other person or entity allowed by law, for the purposes of assuring financial solvency, determining amounts payable, assuring availability, accessibility and quality assurance standards, facilitating resolution of disputes arising under the contract and investigation of any suspected Medicaid fraud or abuse by any Contractor, subcontractor or recipient. The DHCFP or its auditor shall provide a preliminary review of any audit findings to Contractor during an exit interview following the conclusion of the audit. All subcontracts shall reflect the requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained for six (6) years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue. Records retention time will be extended when an audit is scheduled or in progress or in the event of any initiated or on-going litigation or appeal. The Contractor agrees to comply with all federal and state accounting procedures and requirements. Health care records may be retained in written form, or by microfilm or any other recognized form of size reduction, including, without limitation, microfiche, computer disc, magnetic tape and optical disc, which does not adversely affect their use for the purposes of NRS 629.061. The Contractor agrees to retain medical records in accordance with all provisions listed in NRS 629.051, NRS 629.061, NRS 52.260, NRS 52.325, NRS 422.570 and 42 CFR 431.17 and any other applicable federal or state law.

10. CONTRACT TERMINATION. This contract may be terminated under the conditions given in 10.a, 10.b and 10.c below:

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause upon two hundred seventy (270) calendar days notice, in writing and delivered by certified mail or in person to the other party's designated representative.

b. State Termination for Nonappropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired. The contract may be amended by mutual written agreement to accommodate a reduction in funds. In the event of contract termination, due to nonappropriation of funds, DHCFP will use best efforts to provide Contractor with as much advanced notice of termination as DHCFP can reasonably provide.

c. Cause Termination for Default or Breach. a default or breach may be declared with or without termination. Sections 10.a. and 10.b. notwithstanding, and subject to the time to correct in this Paragraph 10, DHCFP may terminate this contract, and the Contractor is not entitled to claim damages, effective upon delivery of written notice to the Contractor, or at such later date as may be established by DHCFP, under any of the following conditions:

i. If the DHCFP has determined that the Contractor has failed to carry out the substantive terms of the contract or has failed to meet applicable requirements in section 1932, 1903(m) of the Act; or

ii. If Contractor fails to provide, either directly or through a subcontractor, all services called for by this Contract for any eligible recipient who chooses to enroll or is automatically enrolled with the Contractor and, at DHCFP's discretion, may subject the Contractor to intermediate sanctions under paragraph 12 and other remedies under paragraphs 11 and 12; or

iii. If any federal or State law or regulations, any waiver, or any guidelines expire, are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract, or are no longer eligible for the funding proposed for payments authorized by this contract; or

iv. If any State, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

v. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

vi. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

vii. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. General Termination Provision. Except as otherwise provided in this contract, any termination of this contract under this paragraph shall not affect any obligations or liabilities of either party already accrued prior to such termination.

On any termination, unless otherwise specified by this contract, the Contractor shall continue to ensure services are provided as contracted through the end of the final that month of the effective date of the termination notice.

Except as otherwise provided in this contract and Section 1932 of the Social Security Act (SSA), the rights and remedies of DHCFP shall not be exclusive and are in addition to any other rights and remedies provided by law or equity under this contract, including but not limited to actual damages, and reasonable attorney's fees and costs as a prevailing party. Liquidated damages may be assessed in addition to any other remedies.

e. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice, and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

f. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;

iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;

iv. Contractor shall recognize that the services provided as a result of this contract are vital to DHCFP and that continuity thereof must be maintained at a consistently high level without interruption. To that end, the Contractor shall, upon termination or completion of this contract, immediately proceed to complete any and all necessary care or services ordered or in progress and report results promptly. The Contractor is expected to effectively and cooperatively refer inquiries to the appropriate successor as designated by DHCFP;

v. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty one (21).

11. SANCTIONS & REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars ($125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

    Prior to the imposition of a sanction for non-compliance, DHCFP will provide written notice to the Contractor regarding the details of the non-compliance with directives in the form of a Plan of Correction (POC) for ameliorating the deficiencies. The POC will specify the period of time during which the Contractor must bring its performance back into compliance with contract requirements, and the criteria and standards that must be satisfied to demonstrate such compliance. DHCFP's determination to issue a POC to the Contractor shall not constitute a waiver of any and all other remedies as set forth in this contract, except as expressly set forth in this paragraph. The Contractor agrees to implement the POC in compliance as specified in Attachments A. DHCFP may provide quality assurance monitoring to the Contractor, including but not limited to, site reviews, documentation reviews, and data analysis. The quality assurance monitoring may come from DHCFP, or from an outside quality review agent hired by DHCFP at the expense of the Contractor. If, at the end of the specified time period, the Contractor has complied with the POC, DHCFP may pursue no further sanctions. If, however, the Contractor has not complied with the POC, DHCFP shall proceed with the imposition of sanctions and other remedies, as it deems appropriate.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified herein or in the incorporated attachments. Liquidated damages may be applied if actual damages cannot be calculated and liquidated damages are otherwise specified herein or in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law, the Contractor and its subcontractors shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State and their agents, officers and employees against all injuries, death, losses, damages, liability, claims, action, suits, liabilities, judgments, costs and expenses, including, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, which may in any manner accrue against the State or their agents, officers or employees, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents , subcontractors, or their agents, officers, employees or contractors. In addition, the Contractor and any of its subcontractors agree to indemnify and hold harmless the State and its agencies, all State officers and employees and its agents, and all Contractor members and Medicaid and Nevada Check Up recipients in the event of non-payment by the Contractor to its subcontractors. The Contractor is solely responsible for payments to its subcontractors as required in this Contract, and shall indemnify the State for any costs to the State associated with the Contractor's failure to timely pay its subcontractors.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of

this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		Contractor's Initials	
		YES	NO
1	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	MED
2	Will the Contracting Agency be providing training to the independent contractor?	_____	MED
3	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	MED
4	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	MED
5	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	MED	_____
6	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	MED
7	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	MED

16. INSURANCE SCHEDULE. Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum limits as specified in Attachment CC, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:
1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract;
Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

General Requirements:

a. Additional Insured: By endorsement to general liability insurance policy evidenced by Contractor, the ***State of Nevada, its officers, employees and immune contractors*** as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
b. Waiver of Subrogation: Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as to all additional insureds defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars ($50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract:
f. Approved Insurer: Each insurance policy shall be:
    1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
    2) Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.

2) Additional Insured Endorsement: An original Additional Insured Endorsement (CG20 10 11 85 or CG 20 26 11 85), signed by an authorized insurance company representative, **must** be submitted to the State to evidence the endorsement of the State as an additional insureds per General Requirements, subsection a above.
3) Policy Cancellation Endorsement: Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to specify that without sixty (60) days prior written notice to the State of Nevada, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address specified above. A copy of this signed endorsement must be attached to the Certificate of Insurance.
4) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, provide a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.
5) Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. The Contractor shall neither assign, sell, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions , photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by the Contractor or its subcontractors in the performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by the Contractor or its subcontractors upon completion, termination or cancellation of this Contract. Contractor shall bear the total expense for compliance. The Contractor and its subcontractors shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this contract without the prior written consent of DHCFP. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

    In addition, the books, records (written, electronic, computer-related or otherwise), actuarial reports, financial statements, medical records, quality assurance data using the data and information set that the Secretary has specified for use under Part C of Title XVIII, or such alternative data as the Secretary approves in consultation with the State, facilities and accounting procedures and practices of the Contractor, or any subcontractor relevant to this contract, shall be subject to inspection, examination, copying and audit at various but necessary times with or without notice by DHCFP or its contracted examiner(s), the State of Nevada Division of Insurance or its contracted examiner(s), the State Board of Health and the State Health Division or its contracted examiner(s), the Attorney General of Nevada or the State Legislative Auditor, the Comptroller General of the United States, the United States General Accounting Office, the Centers for Medicare and Medicaid Services (CMS), or any authorized representative of these entities for the purposes of assuring financial solvency, determining amounts payable, assuring availability, accessibility and quality assurance standards, facilitating resolution of disputes arising under the contract and investigation of any suspected Medicaid fraud or abuse by any Contractor, subcontractor or recipient. All subcontracts shall reflect the requirements of this paragraph. State agrees to treat all Contractor Proprietary Information in a confidential manner.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records. If a public records request for a labeled document is received by the State, the State will notify Contractor of the request and delay access to the material until seven working days after notification to Contractor. Within that time delay, it will be the duty of Contractor to act in protection of its labeled record. Failure to so act shall constitute a complete waiver.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract. In addition, neither the Contractor or any of their employees, or agents shall make any disclosure to any person or entity outside of the Contractor or DHCFP of any

information identifying a particular recipient beyond those disclosures to qualified personnel, (defined as persons or agency representatives who are subject to standards of confidentiality that are comparable to those of the State agency), exclusively permitted by federal or State law, regulations (including 42 CFR, Part 431 F), program manuals, written guidelines, or contracts with the Department of Health and Human Services applicable to the Contractor or DHCFP. The Contractor and DHCFP may disclose information about a hospital, physician or other medical provider, unless prohibited by federal or State law or regulation. The Contractor is required to be HIPAA compliant with regard to confidentiality, privacy, electronic transactions and security.

24. REPRESENTATIONS AND CLAIMS. The Contractor shall be responsible for any representations and claims submitted or payment received on the Contractor's behalf, which claims shall be made under penalties of perjury. Any culpability for false claims, statements or documents, omissions or concealment of material facts or obtaining money by false pretenses may be prosecuted under applicable federal or State laws. For the purposes of Medicaid fraud, the Contractor and its subcontractors shall be deemed to be providers as defined in NRS 422.490, and all requests for payment or capitation payments made are deemed claims as defined in NRS 422.470 and all subcontracts shall reflect these deeming clauses. The Contractor shall require each subcontractor providing services to recipients to have a unique identifier in accordance with the system established under Section 1173(b) (SSA 1932(d)(4)). It shall be the responsibility of the Contractor to immediately report all cases of suspected fraud and abuse, inappropriate practices, or inconsistency by subcontractors, recipient members, or employees pursuant to 42 CFR 455.1(a)(1). In instances of suspected provider fraud and/or abuse, the Contractor shall provide written notification of such incidents to the DHCFP Managed Care Unit. In instances of suspected recipient fraud and abuse, the Contractor shall provide written notification to the DHCFP Managed Care Unit.

25. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this contract, the Contractor certifies, by signing this Contract, that neither it or neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to 42 CFR Part 1002.3, 42 USC 1320a-7(b)(8) and the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211). This paragraph shall be included in all subcontracts. The Contractor must disclose ownership and control information, and information on the Contractor's owners and other persons convicted of criminal offenses against Medicare, Medicaid, or the Title XX services program as stated in 42 CFR 455.100 through 455.106.

    The Contractor shall furnish DHCFP, the U.S. Secretary of Health and Human Services, or other appropriate agencies as designated by DHCFP, with such information, by copy, prior to the effective date of this contract, or as may be requested, including, but not limited to, information of ownership and control and information on persons convicted of crimes required by Title 42 of the Code of Federal Regulations, Part 455; or debarred, suspended, or otherwise excluded from any federal program. Within thirty-five (35) days of the date of request, the Contractor must provide full and complete information about the ownership of any subcontractor with whom the Contractor has had business transactions totaling more than twenty-five thousand dollars ($25,000.00) during the twelve-month (12-month) period ending on the date of request as required by 42 CFR 455.105. Failure to timely comply with the request will result in withholding of payment. Payment for services will cease on the day following the date the information was due and begin again on the day after the date on which the information was received.

    The Contractor, by executing this contract, certifies that it does not currently have, pursuant to 42 USC § 1396a(p) and 42 CFR § 434.80 regarding any Contractor, any person or entity with direct or indirect ownership interest or control of five percent (5%) or more in the Contractor, any officer, director, agent, contractor or managing employee of the Contractor, who has been convicted of any offense or received certain sanctions described in 42 USC § 1320a-7(a) and (b) 8 and 42 CFR 455.100 through 455.106, that is excluded or could be excluded, or that has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any federal program and any individual or entity excluded from Medicare or Medicaid participation, or debarred, suspended, or excluded from any federal program that the Contractor employs or contracts with directly or indirectly. Each

Contractor shall investigate and promptly, fully disclose to DHCFP the existence of any and all above referenced convictions and sanctions by the relevant persons and entities listed above, regardless of any opinion whether or not the entity or person could be excluded in accordance with 42 CFR 455.104. Such offense or sanction includes but is not limited to any debarment or suspension as a federal contractor under 28 CFR Part 67 or other exclusions contained in 42 USC § 1320a-7, inclusive. program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

If the Contractor or one of the relevant persons is already debarred, suspended or excluded from a federal program or has failed to fully disclose all crimes, sanctions or offenses as called for herein, the Contractor will be summarily disqualified from contracting solely based upon a fact or facts that could be the basis of exclusion. However, a Contractor who is found by the DHCFP or CMS to be subject to exclusion from Medicaid risk contracting will be denied a contract, or an existing contract will be made voidable by the State. This provision applies to subcontractors, and shall be included in all subcontracts.

In consideration of the State's processing of the Contractor's contract, the Contractor shall hereby waive any and all claims for damages of any kind, at law or equity, for the exercise of any discretion or application of the law or regulations regarding exclusions or sanctions.

In addition, pursuant to 42 CFR § 455.106, the State, at its discretion, may refuse to enter into or may terminate a contract with a Contractor, if it is determined that the Contractor did not fully and accurately disclose the identity of any person who has ownership or controlling interest in the Contractor, or is an agent or managing employee of the Contractor, that has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the Title XXI Services Program since the inception of those programs.

a. The Contractor must disclose ownership and control information, and information on the Contractor's owners and other persons convicted of criminal offenses against Medicare, Medicaid, or the Title XXI services program as stated in 42 CFR 455.100 through 455.106.
b. The Contractor shall advise DHCFP, in writing, within fourteen (14) calendar days of any change of ownership, address, or any other information pertinent to the receipt of Title XIX Medicaid and Title XXI Nevada Check Up funds.
c. The Contractor must comply with all applicable federal and State laws and regulations including Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972 (regarding education programs and activities); the Age Discrimination Act of 1975; the Rehabilitation Act of 1973; Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted there under contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations. the Equal Employment Opportunity Act (Executive Orders 11246 and 11375); the Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 (40 U.S.C 276a to a-7); Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); Rights to Inventions Made Under a Contract or Agreement; Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.; Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); and Debarment and Suspension (Executive Orders 12549 and 12689); Energy Policy and Conservation Act. This paragraph shall be included in all subcontracts.

d. This provision shall include, but not be limited to, the following: employment; subcontracts; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and, selection for training, including apprenticeship.
e. In connection with the performance of work under this contract, the Contractor and its subcontractors shall agree not to discriminate against any employee or offer for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.) These paragraphs shall be included in all subcontracts.

26. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
    a. Any federal, state, county or local agency, legislature, commission, counsel or board;
    b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
    c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

These paragraphs shall be included in all subcontracts.

27. WARRANTIES.
    a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
    b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.
    c. Contract Solicitation. The Contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, resulting from the award of this contract. For breach or violation of this warranty, DHCFP shall have the right to treat this contract as voidable without Contractor liability or at its discretion to continue the contract and deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee, or declare a breach and sanctions up to and including termination Pursuant to NRS 41.0321, the State is immune from liability due to any failure of any incorrect date being produced, calculated or generated by a computer or other information system.

28. SOLICITATION OF EMPLOYEES. Except as otherwise provided by law or upon written consent, the Contractor shall not knowingly solicit to engage, or engage on a full-time, part-time or other basis during the period of the contract, any professional or technical personnel who are or have been, in the past two (2) years, employed by the State of Nevada Department of Health and Human Services, the Department of Information Technology, the State of Nevada Department of Business and Industry's Insurance Division, or any other State employee who has had an interest or involvement in DHCFP's medical assistance programs or in the establishment or implementation of the Medicaid managed care program.

29. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

30. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

31. BALANCED BUDGET ACT OF 1997 AND OTHER APPLICABLE STATUTORY COMPLIANCE. In the provision of services under this contract, is believed to contain all of the requirements mandated by the federal Balanced Budget Act of 1997. The Contractor, however, shall be held liable for all

mandated requirements. Subsequent requirements will be incorporated by Contract amendment the contractor and its subcontractors shall comply with all applicable federal and state statutes and regulations, and all amendments thereto, that are in effect when the contract is signed, or that come into effect during the term of the contract. This includes, but is not limited to Title XIX and Title XXI of the Social Security Act and Title 42 of the Code of Federal Regulations.

32. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) along with Contractor's response to the RFP, constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations , discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract.

    This agreement may be modified unilaterally by DHCFP, without consent of the Contractor if such modification is necessary to comply with federal and/or state laws, the Title XIX and/or the Title XXI State Plan, manuals, and Medicaid Policy News and regulations. Any provision of this contract which is in conflict with applicable federal and state statutes and regulations is hereby amended to conform to the provisions of those laws and regulations. DHCFP will provide written notice to the Contractor of the modification

    All other modifications or amendments to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto as a contract amendment and approved by the Office of the Attorney General and the State Board of Examiners.

    No significant alteration or variation of the services to be performed hereunder shall be made by the Contractor without prior written approval of DHCFP and until the contract is amended in writing accordingly.

Counterparts: This contract may be executed in one or more counterparts each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Mary Ellen Dalton 5/5/2009 Chief Executive Officer

Independent Contractor's Signature | Date | Independent's Contractor's Title

Charles Duarte 5/6/09 Administrator

Charles Duarte Signature | Date | Title

for Michael J. Willden Signature | Date 5/8/09 | Director

Title

Stephanie Day for APPROVED BY BOARD OF EXAMINERS

Signature - Board of Examiners

On 6-17-09 (Date)

Approved as to form by:

Deputy Attorney General for Attorney General

On 5/6/09 (Date)

APPROVED BY THE INTERIM FINANCE COMMITTEE AT THEIR

JUN 25 2009

MEETING