

CONTRACT
BETWEEN
THE KANSAS HEALTH POLICY AUTHORITY
AND
HEALTH DATA INSIGHTS, INC.
For Recovery Audit Contractor Services

This Contract is made and entered into this 6th day of December, 2010 by and between Health Data Insights, Inc. whose address is 7501 Trinity Peak St. Suite 210, Las Vegas, NV 89128, hereinafter referred to as "HDI" or "Contractor" and the Kansas Health Policy Authority, whose address is 900 S.W. Jackson Street, Room 900-N, Landon State Office Building, Topeka, Kansas 66612, hereinafter referred to as "KHPA" or "Authority."

The Authority, authorized by K.S.A. 2007 Supp. 75-7401 et seq., to enter into a Contract, desires to obtain services to develop and administer Recovery Audit Contractor (RAC) services; and

the Contractor is a recognized provider of these services and desires to provide them to KHPA; and

a Bid Event No. EVT0000146, Document No. RFX0000040, was issued on September 22, 2010 pursuant to K.S.A. 75-37,102 for acquisition of these services; and

a Procurement Negotiating Committee (PNC) conducted negotiations and determined the best interests of KHPA will be served by awarding a Contract to Contractor to provide such services.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, KHPA and Contractor do hereby mutually covenant and agree as follows:

I. SCOPE OF WORK

The purpose of this contract will be to support KHPA in achieving the requirements set forth in both the federal Patient Protection and Affordable Care Act, H.R. 3590 (PPACA), including regulations on the same issued by Health and Human Services (HHS) or the Centers for Medicare and Medicaid Services (CMS), and the State of Kansas Fiscal Year 2011 budget bill. The identification of underpayments and overpayments for the Medicaid RAC portion of this RFP (Document RFX0000040, section 4.5.2) shall occur for all claims paid under the Medicaid and CHIP programs, for all medical services for which payment is made by any agency of the State of Kansas for waiver services operated under title XIX and XXI of the Social Security Act, and for any payment for services provided under Chapter 39, Article 7 of the Kansas Statutes Annotated which are provided using exclusively State of Kansas general fund and are commonly referred to as MediKan.

The contract shall also support KHPA in achieving the goals established for it by the State of Kansas's 2010 legislative session, specifically the House Substitute for Senate Bill 572, signed by the Governor on May 27, 2010. These goals are specifically addressed in Document RFX0000040, section 4.5.3.

This RFP is being issued prior to CMS regulations defining the requirements for a Medicaid RAC contract being published. It is the expectation of KHPA that the regulations when issued will be similar if not the same in most areas discussed in this RFP. However, any CMS regulations issued for the Medicaid RAC contractor that differ from the requirements or are not included in this RFP will be adopted, accepted and implemented by the contractor selected.

II. CONTRACT DOCUMENTS

The Contract documents shall consist of the following documents. In the event of conflict in terms of language among the documents, the following order of precedence shall govern and later documents will take precedence over earlier documents:

1. Form DA-146a
2. Written modifications to the executed Contract.
3. Written Contract signed by the parties.
4. Event No. EVT0000146 and Document RFX No. 0000040 including Amendment Nos. 1, 2, 3 and 4;
5. Contractor's written proposal submitted in response to the Request for Proposal as finalized, including:
 - a. Contractor's final revised Cost Proposal dated November 23, 2010, received by Jill Martin on November 24, 2010.
 - b. Contractor's response to questions and clarifications made before and during negotiations on November 19, 2010 with attachments received by Jill Martin, November 24, 2010.
 - c. Original Technical, Proprietary and Cost Proposals submitted by Contractor, dated October 25, 2010.

III. CONTRACT PERIOD

The term of this contract is for an initial three (3) year period from the Date of Award (DOA) with the option of three (3) additional one (1) year renewals by mutual agreement of both parties. The first Contract year period shall be from the date of final signing through June 30, 2013.

For each optional renewal year, KHPA will notify the Contractor no later than six (6) months prior to the Contract's expiration regarding KHPA's intent. Within thirty (30) days of receipt of KHPA's notice of its intent to extend the Contract for an optional period, the Contractor must respond in writing with agreement or non-agreement to the extension period.

IV. REPORTS

In addition to the reports required by Document No. RFX0000040, Paragraph 4.4.15, Contractor shall provide to KHPA within 30 days of initial data exchange, and at such other times as mutually agreed upon, budget reports consisting of revised, non-binding, estimates of recoveries for KHPA budgetary purposes.

V. COMPENSATION

Contractor shall be paid seventeen percent (17%) of all overpayments recovered on behalf of KHPA under this contract. In addition, Contractor shall be paid eighteen percent (18%) of all underpayments made to contracted providers of Kansas Medicaid services by KHPA, provided that overpayments recovered equal or exceed the underpayments.

Payment for actual overpayment recoveries and underpayments paid to contracted providers of Kansas Medicaid services shall be made within 30 days of Contractor's invoice following each month end.

VI. SUBCONTRACTORS

Except for affiliates, the Contractor shall not assign, transfer, sublet or delegate this Contract or its power to execute this Contract to any other person, company or corporation, in whole or in part, without the prior written consent and approval from KHPA.

VII. CAPTIONS

The descriptive headings of this Contract are for convenience only and shall not be deemed to affect the meaning of any provision.

VIII. MODIFICATIONS

This Contract shall only be modified by the mutual, written agreement of the parties.

IX. DEBARMENT

Contractor warrants that it and its subcontractor(s) are currently not debarred from participation in any federal or state funded programs and that it shall immediately provide notice to KHPA in the event it or its subcontractor(s) becomes debarred during the term of this Contract.

X. FORM DA-146a

The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this Contract and made a part thereof.

XI. ENTIRE CONTRACT

This Contract constitutes the entire Contract of the parties and supersedes all other prior written or oral contract between the parties with respect to the subject matter hereof.

State of Kansas
 Department of Administration
 DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration. Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment.

Appropriations Committee

Date February 21-22, 2011

Attachment 4-5