

CONTRACT NO.

PURCHASE OF SERVICE AGREEMENT

THIS AGREEMENT, by and between **AITKIN COUNTY BOARD OF COMMISSIONERS**, 204 First Street NW, Aitkin, Minnesota 56431 (hereinafter referred to as "Board"), and the **NORTHEAST MINNESOTA OFFICE OF JOB TRAINING**, PO Box 1028, 820 North 9th Street, Virginia, Minnesota 55792 (hereinafter referred to as "Provider"), for the period January 1, 2014 to December 31, 2014.

WITNESSETH:

WHEREAS, Funds have been made available to the Board from the Minnesota Department of Human Services for the purpose of providing **MINNESOTA FAMILY INVESTMENT PROGRAM (MFIP) EMPLOYMENT AND TRAINING SERVICES (BRASS 237X)** under Minnesota Statute 256J.50 and PL 104-193 and **DIVERSIONARY WORK PROGRAM SERVICES (DWP) (BRASS 212X)** under Minnesota Statute 256J.95; and

WHEREAS, the Provider is qualified in accordance with State and Federal standards to provide Employment and Training Services; and

WHEREAS, the Board wishes to purchase MFIP Employment and Training and DWP services from the Provider.

NOW THEREFORE, in consideration of the mutual understandings and agreements set forth, the Board and Provider agree as follows:

I. Services to be Provided

A. **MFIP Program:**

- Orientation
- Employability Services Overview
- Initial Assessment
- Job Support Plan
- Secondary Assessment
- Employment Plan
- Job Readiness
- Job Placement
- On The Job Training
- Coordination/Referral
- Grant Diversion Services
- Community Work Experience Program (including procedures for implementing the Injury Protection Program (IPP), as described in Exhibit A (MFIP))
- Functional Work Literacy Training

B. Diversionary Work Program (DWP):

Employment Services (ES) providers must meet with DWP job seekers that are referred to ES within ten days of the DWP participant's referral to ES.

The ES provider and job seekers must complete an initial employment plan within this ten days.

The ES provider must notify the county financial worker (FW) within one day that the employment plan has been completed.

The ES provider administers a work focused DWP-ES program with employment as the primary goal of the program.

The ES provider should complete employment plans that are based on a job seeker's strengths.

The ES provider should have, to the extent possible, a structured job search component that is intensive (i.e. full time) and mirrors work place behavior (expects job seekers to arrive on a timely basis, dress appropriately, complete assignments, etc.)

When appropriate, a job seeker's employment plan should address non-work issues such as securing housing or child care, plus any health or disability issues, which would delay or prevent the job seekers from being fully engaged in work activities.

The ES provider monitors job seeker participation and progress and apply sanctions (which result in disqualification from DWP when appropriate.

C. Provider agrees to place minor caregivers into dual-enrollment, when appropriate, working with a Social Worker in development of the Education Plan.

D. Family Stabilization Services (FSS):

Case management of FSS shall be the responsibility of ES providers and the regional Integrated Services Project (ISP) shall serve as the primary referral source. Job counselors shall conduct assessments on each intake, as is already done with all MFIP clients, and shall maintain monthly contact with FSS clients from then on. Ongoing communication between financial workers, job counselors, and ISP advocates shall be required. The employment plan developed by the job counselor for FSS clients shall include assessment of strengths and barriers, identification of specific family circumstances that impact the plan, employment goals, when appropriate, appropriateness of referral to the ISP project, and identification of services, supports, education, training, and accommodations, as appropriate; the plan shall be reviewed by job counselors every six (6) months to determine the need for additions, deletions, or revisions.

E. Services will be provided by: Northeast Minnesota Office of Job Training
820 N. 9th Street - Suite 240
Virginia, MN 55792

II. Payment and Delivery of Services

- A. The Board and Provider agree to monitor utilization and expenditures on a monthly basis. If expenditures are substantially above or below projection, Board and Provider may consider modifications to the specified rates of payment.
- B. The Board and Provider agree that total expenditures under this agreement combined with expenditures made to other Employment and Training Providers for the same services, may not exceed the total County allocation of \$156,325.00 in State and Federal funds made to the Board for this purpose.

III. Eligibility for Services

- A. Determination of eligibility shall be completed in accordance with procedures outlined in Exhibit A.
- B. Any change in eligibility will initiate a notice by either the Board or the Provider within 30 days to the other party; the participant will remain eligible for the Provider's services for six (6) months after termination from MFIP.
- C. Eligibility categories: MFIP registrants are defined as persons who have applied for MFIP services and payments, and who have been determined eligible by the Board for those services and payments.

IV. Payment Process

- A. The Board's obligation to make payment hereunder is subject to review by the Aitkin County Health and Human Service Department to insure that payment is for a referred individual and has not previously been made. Said review shall be the final determination of Board's payment obligation. Nothing herein shall limit the rights of either party to collect from the other any sums improperly paid or improperly withheld.
- B. Payment for MFIP services provided shall be made according to procedures outlined in Exhibit A.
- C. Board's obligation to make payment for MFIP services hereunder is subject to audit by Board or its duly authorized designee and said audit shall be the final determination of Board's payment obligation.
- D. Provider will promptly reimburse to Board any payments for MFIP received in excess of required payments hereunder.
- E. For MFIP, Board shall not be obligated to honor claims for, nor shall Provider claim for, any services furnished or costs incurred by Provider which are not specifically provided for hereunder or requested by Board in writing during the term of this Agreement.

V. Audit and Record Disclosure

The Provider shall provide the Board with the reports and comply with the audit and record requirements specified in Exhibit A under Audit and Record Disclosures.

VI. Safeguard of Client Information

A. The use or disclosure by any party or of any private information concerning a client in a violation of any rule of confidentiality or for any purpose not directly connected with the administration of the Board's or the Provider's responsibility with respect to the Purchased Services is prohibited without the written consent of the client or responsible parent or guardian.

B. Provider agrees to comply in all respects with the Minnesota Government Data Practices Act, Minn. Stat. Section 13.01-.48, and Provider further agrees to comply with any requests of Board which are necessitated by Board's obligations under said Act.

C. HIPAA COMPLIANCE

The parties agree to comply with all respects with the Health Insurance Portability and Accountability Act, Public Law 104-191 (HIPAA), and all rules, regulations and controls affected or promulgated pursuant thereto. The parties agree that as HIPAA and its rules and interpretations become effective, the parties shall execute amendments hereto, provide written assurances, implement policies and procedures, or take whatever other actions are necessary to comply with HIPAA. Should a party fail or refuse to honor its obligations pursuant to this section, the other party may terminate this Agreement with thirty (30) days written notice.

VII. Fair Hearing Appeal

Any determination, action, or inaction on the part of the Board relating to an individual's participation in the program is subject to the notice and hearing procedures in Minn. Stat. 256.045 and 268.86.

VIII. Equal Employment Opportunity and Civil Rights Clause

Provider agrees to comply with the Civil Rights Act of 1964, Executive Order No. 11246 as amended, the Minnesota Human Rights Act, and all applicable Federal and State laws, rules, regulations and orders prohibiting discrimination in employment, facilities and services. Provider shall not discriminate in employment, facilities and in the rendering of purchased services hereunder on the basis of race, color, religion, age, sex, disability, marital status, public assistance status, creed or national origin.

IX. Rehabilitation Act Clause

The Provider agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794) and all requirements imposed by the applicable HHS regulation (45 CFR Part 84), and all guidelines and interpretations issued pursuant thereto.

X. Bonding, Indemnity and Insurance Clause

- A. BONDING: The Provider will obtain and maintain at all times during the term of this Agreement, a fidelity bond covering the activities of its personnel authorized to receive or distribute monies in the amount of \$50,000.
- B. INDEMNITY: The Provider agrees it shall defend, indemnify and hold harmless the Board, its officers and employees against any and all liability, loss, costs, damages and expenses that the Board, its officers or employees may hereafter sustain, incur, or be required to pay arising out of the Provider's performance or failure to adequately perform its obligations pursuant to this Purchase of Service Agreement.
- C. INSURANCE: The following insurance must be maintained for the duration of this Agreement. A Certificate of Insurance for each policy must be on file with the Aitkin County Health and Human Services Department within ten (10) days of execution of this contract and before commencement of any work under this contract. Each certificate must include a thirty (30) day notice of cancellation, non-renewal, or material change to all named and additional insureds.

All insurance policies will be open to inspection by the Board, and copies of policies will be submitted to the County upon written request. All subcontractors shall provide evidence of similar coverage.

(1) General Liability Insurance

- (a) **\$500,000** for claims for wrongful death and each Person for other claims
\$1,500,000 Each Occurrence
Claims outside the scope of M.S. 466 \$2,000,000 per claim.
- (b) Policy shall include at least premise, operations, completed operations, independent contractors and subcontractors, and contractual liability.
- (c) Aitkin County must be named additional insured.

(2) Business Automobile Liability Insurance

- (a) **\$500,000** Each Person
\$1,500,000 Each Occurrence
Claims outside the scope of M.S. 466, \$2,000,000 per claim.
- (b) Must cover owned, non-owned and hired vehicles

(3) Workers' Compensation Per Statutory Requirements

- D. NONCOMPLIANCE: The Board reserves the right to rescind any contract not in compliance with these requirements and retains all right thereafter to pursue any legal remedies against Provider.

XI. Maintenance of Effort and Expansion of Services

Provider hereby certifies that the Federal funds to be used under this Agreement do not replace or supplant in any way State or local funds. Provider certifies that the amount to be expended in this Agreement results in increased expenditures by the Provider for services of the type being purchased to individuals of the type included under the Agreement.

XII. Conditions of the Parties' Obligations

- A. It is understood and agreed that in the event the reimbursement by the Board from State and Federal sources is not obtained and continued at an aggregate level sufficient to allow for the continued grant, the obligations of each party hereunder shall thereupon be terminated.
- B. Board may at any time evaluate the performance of Provider in regard to the terms of this Agreement to determine whether such performance merits continuation of this Agreement.
- C. Any alterations, variations, modifications or waivers of provisions of this agreement shall be valid only when they have been reduced to writing, duly signed, and attached to the original of this Agreement.
- D. In the event of a revision in Federal regulations which might make this Agreement ineligible for Federal financial participation, all parties will review this Agreement and renegotiate those items necessary to bring the Agreement into compliance with the new Federal regulations.
- E. Provider agrees to cooperate fully with Board and its designated representatives in the development and implementation of Provider's services. Evaluative data collected will be used by Board in its funding decisions and shall be shared with Provider and community.
- F. Provider agrees that in any reports, news releases, public service announcements or publications regarding Provider's program, Board will be identified as a funding source.

XIII. Subcontracting and Assignment

Provider may enter into subcontracts for the performance of any of the responsibilities contemplated under this Agreement, subject to the approval of the Board. All subcontracts shall be subject to the legal, fiscal and programmatic requirements of this contract. Provider shall continue to be responsible for the performance of the obligations of this Agreement, despite any subcontract.

XIV. Independent Contractor

Provider is an independent contractor and not an employee or agent of Board. No statement contained in this Agreement shall be construed so as to find Provider to be an employee or agent of Board. Provider, its officers, employees and agents shall be entitled to none of the rights, privileges or benefits of Board employees. Nothing contained herein is intended nor shall be construed as constituting Provider, its officers, employees or agents as the agent, representative or employee of Board for any purpose or in any manner, whatsoever.

XV. Cancellation, Default and Remedy

- A. This Agreement shall continue in effect until terminated by either party without cause, with 30 days advance, written notice delivered to the other party, served on the Director of Aitkin County Health and Human Services, 204 First Street NW, Aitkin, Minnesota 56431 on behalf of the Board; and on the Director of Northeast Minnesota Office of Job Training, 820 North 9th Street, PO Box 1028, Virginia, Minnesota 55792 on behalf of Provider.
- B. In the event of default by either party, the non-defaulting party may cancel this Agreement immediately by sending written notice of cancellation to the defaulting party at its principal business address, notwithstanding the provisions of Paragraph 15a above. The failure of the defaulting party, including the failure of any employee of the defaulting party, to abide by any of the terms, conditions or requirements expressed in this Agreement shall constitute a default if not corrected within ten (10) days of receipt of written notice of deficiency from Board.
- C. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by an authorized representative of Board upon resolution of Board.

XVI. Single Instrument, Legality

- A. It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof, as well as any previous agreements presently in effect between the Provider and Board relating to the subject matter hereof.
- B. The provisions of this Agreement are severable. If a court of law holds any paragraph, section, subdivision, sentence, clause or phrase of this Agreement to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such ruling shall not affect the remaining portions of this Agreement. However, upon the occurrence of such event, the parties shall immediately meet to negotiate a revised Agreement which does not violate the above-referenced ruling.

IN WITNESS WHEREOF, Board and Provider agree that this contract is effective from January 1, 2014 to December 31, 2014.

PROVIDER
NORTHEAST MN OFFICE OF JOB TRAINING

AITKIN COUNTY BOARD
OF COMMISSIONERS

Chairman - Board of Directors

Mark Wedel, Chairperson

Printed Name of Signer

Date: _____

Date: _____

AITKIN COUNTY HEALTH & HUMAN
SERVICES DEPARTMENT

Executive Director

Thomas Burke, Director

Printed Name of Signer

Date: _____

Date: _____

Approved as to form and execution:

James Ratz
County Attorney

Date: _____

IMPLEMENTATION PROCEDURES

I. Methods of Determining Eligibility

- A. The participant has the responsibility of requesting and obtaining eligibility determination from the Aitkin County Health and Human Services Department before utilizing the services.
- B. The Aitkin County Health and Human Services Department shall determine MFIP eligibility in accordance with applicable Federal and State law.
- C. The Aitkin County Health and Human Services Department shall decide the eligibility of a participant within thirty (30) days of application for eligibility determination. The participant shall be notified of his/her eligibility status and will be referred to the Provider within the said thirty (30) day time period.
- D. Provider has the responsibility to confirm that a participant is eligible to receive service prior to providing service. Board will not be responsible for services provided to clients prior to eligibility determination.

II. Method of Payment Authorization

- A. The Provider agrees that all MFIP Services monies, including Community Work Experience Program (CWEP), Grant Diversion and On-The-Job Training, received under this contract shall be expended to provide services as specified in Exhibit B.

The Provider shall submit on or before the 10th working day of the month for the previous month an invoice listing;

- B. MFIP Program outcomes achieved, as specified in paragraph 2 of the contract;
 - 1. Number of persons achieving each outcome;
 - 2. Rate per outcome; and

Provider shall include a listing of MFIP participants served and employment status.

The Board agrees to pay within thirty (30) days of receipt of these reports.

- C. Allowable program components are:

- 1. Orientation - stating the need for immediate employment; rights, responsibilities, and obligations

2. Employment Overview - work focus of MFIP; job search resources; financial program review
3. Initial Assessment - assess the job seeker's ability to obtain and retain employment
4. Job Support Plan - specify job search activities
5. Secondary Assessment - completed for participants who have barriers to employment
6. Employment Plan - participant's overall employment goal and steps needed to achieve the goal
7. Job Readiness Activities - help participants be familiar with general work place expectations
8. Job placement - job development and job placement activities by Provider
9. On-the-Job Training - agreement with Provider and employer for client training needed for employment
10. Grant Diversion - provides subsidies to employers as an incentive to hire participants
11. Community Work Experience (CWEP) - enhance participants employability through meaningful work experience
12. Educational Activity - specific to the needs of the participant. This includes:
 - a. High school, GED classes
 - b. Basic and remedial education that will provide a person with a basic literacy level in order to fulfill an employment goal (basic education is instruction to provide these educational skills for the first time; remedial education involves repetition of such instruction previously given to the participant); and
 - c. Education in English proficiency for a person who is not sufficiently competent to speak, read, or write the English language to allow employment commensurate with his/her employability goal.
 - d. Post-secondary education – only on a very limited basis and with specific supporting documentation. Any education plan more than 12 months needs approval by the County agency.

- C. The following types of expenditures are explicitly recognized as administrative costs for MFIP Services, Community Work Experience Program, AFDC Grant Diversion and On-the-Job Training (administrative costs shall not exceed 7.5% of the total cost):

All other administrative costs, including overhead expenditures, subsystem costs, personnel costs (salaries and benefits) for staff not directly providing component services to participants (such as second-line supervisors and above), personnel administration costs, costs for processing and managing the Injury Protection Program (IPP) including investigations, medical reports or evaluations and all other indirect costs;

- D. Provider shall submit a monthly invoice to Board by the 10th day of each month listing the number of MFIP participants in each service category as specified in 2 A, B, C, and D of the contract. Provider also will submit a listing of the names of each MFIP participant by service category.
- E. Provider shall submit a quarterly report to Board listing client related expenditures broken down as follows:
 - 1. Client education
 - 2. Transportation
 - 3. Employment related
 - 4. Other
- F. Provider agrees to provide additional statistical reports to Board, or its representatives, as needed and/or requested.

III. Audit and Record Disclosure

- A. Provider agrees that all monies received under this contract shall be expended for the services specified in the contract.
- B. Provider agrees to submit to Board the information required to fulfill the terms of this Agreement and the information required by State law or policy.
- C. Provider agrees to allow personnel of the Board and Aitkin County Health and Human Services Department, the State Auditor and, if appropriate, the Minnesota Department of Economic Security, access to Provider's records at reasonable hours in order to exercise their right to audit Provider's records and to monitor services.
- D. Provider agrees to maintain records at Provider's offices for six (6) years for audit purposes. Provider agrees to keep complete books and records according to generally accepted accounting principles which shall fully document receipt and expenditure of the payments received

hereunder. Provider shall also keep such books and records as are required by Board to fulfill Board's reporting responsibility to the County, State and Federal governments.

- E. Provider shall have an independent audit completed that complies with the requirements of OMB Circular A-133. The audit report shall be forwarded to Board within 30 days following its completion.

IV. Compliance with Injury Protection Program (IPP) Requirements

The contracted agency agrees to comply with Minnesota Statutes 2003, 256J.68 injury protection for work experience participants. The contracted agency shall perform all tasks necessary to implement IPP activities that relate to work site injury and subsequent referral of an injured participant to a medical provider for treatment of a possible work related injury or condition. The contracted agency shall also conduct activities necessary to properly process and submit an IPP claim. All IPP claims, medical provider bills, required forms and supporting documentation shall be forwarded to the county agency. Prior to assigning a participant to an unpaid work experience work site, the contracted agency will ensure that: the program participant will receive appropriate safety training and information required for this position and; and the work site is in compliance with Occupational Safety and Health Administration (OSHA) and the Minnesota Department of Labor and Industry Safety Standards.

The Provider shall be responsible for the following preparatory and front-end tasks required as part of the IPP process for the CWEP program:

- A. Provider will complete the following forms and route to all appropriate agencies, as specified by DHS and the County:
 - * Participation Information and Medical Release Authorization
 - * First Report of Injury
 - * Participant Medical Referral and Medical Care Provider Information Letter
 - * Participant Injury Status Report
 - * Participant Claim Form
- B. Provider shall be responsible for providing participant safety training and information to all CWEP participants.
- C. Provider shall be responsible for work site safety standard compliance check based on OSHA requirements for all CWEP work sites.

METHOD OF SERVICE DELIVERY

MFIP EMPLOYMENT SERVICES

The overall objective of MFIP Employment Services is to move MFIP families toward long term economic self-sufficiency by utilizing the most direct path to unsubsidized employment.

The Provider of MFIP Services must be certified by the Minnesota Department of Jobs and Training as an Employment and Training Service Provider (ETSP) for the duration of this contract.

The general sequence of events in MFIP Employment Services are the following:

- * County Health and Human Services determines eligibility for MFIP
- * The Department provides the job seeker with an orientation which includes MFIP program requirements
- * The client is referred to an employment overview and selects a provider
- * The job seeker has initial assessment and initial employability determination completed
- * The provider/client complete job support plan with 8-week job search
- * A secondary assessment is completed if the above plan is not successful
- * An employment plan with steps to achieve the goal is negotiated

ORIENTATION: this shall state the need for immediate employment; work incentives; mandate to participate; consequences for failure to comply; rights, responsibilities, obligations; services available.

EMPLOYMENT OVERVIEW: urgency and opportunity of obtaining employment; work focus on MFIP; limited use of training; CTC; Child Care; transitional year child care and Medical.

INITIAL ASSESSMENT: review participants ability to obtain and retain employment; education level; prior employment; ability to communicate in the English language; refresher courses needed.

JOB SUPPORT PLAN: specify job search activities; requirement to accept suitable offers of employment; supervision by the provider.

SECONDARY ASSESSMENT: completed for those job seekers who have barriers to employment that shall not be overcome by job search and related support activities.

EMPLOYMENT PLAN: includes the employment goal; activities and time frame necessary to achieve the goal; outline activity for continued job search, ESL, GED, work experience, OJT short term training. All post secondary education plans need to be approved by the County.

JOB READINESS: activities that help prepare job seekers for work by assuring that they are familiar with general workplace expectations and exhibit work behavior/attitudes to compete in the labor market.

JOB PLACEMENT: job development and placement activities by Provider to solicit unsubsidized job openings from public or private employers, to discover such job openings, market job seekers, secure job interviews for job seekers.

ON-THE-JOB TRAINING: permits voluntary participation by MFIP recipients. Payments are made to employers for ongoing job training costs that, during the period of training, must not exceed 50% of the wages paid by the employer to the participant. The payments are deemed to be in compensation for the extra-ordinary costs associated with the lower productivity of the participant during training.

The length of the training will be limited based upon the complexity of the job, and the recipients previous work experience and training. The employer agrees to retain the individual through the training period and beyond into unsubsidized employment.

COMMUNITY WORK EXPERIENCE PROGRAM (CWEP): helps participants achieve self-sufficiency by enhancing their employability through meaningful work experience and development of job search skills. CWEP placements will be used in conjunction with skills training, job search, job readiness.

Employment counselors will assist the placement and monitor the job seeker's progress at each location. Work sites developed under this section are limited to projects that serve a useful public service such as: health, social service, environmental protection, education, urban and rural development, and redevelopment, welfare, recreation, public facilities, public safety, community service, service to aged or disabled citizens, and child care. To the extent possible, prior training and experience of a recipient must be used in making appropriate work experience assignments.

GRANT DIVERSION: uses the MFIP Grant to provide wage subsidies to employers as an incentive to hire MFIP recipients. Grant Diversion is one of the optional Employment and Training services. Priority shall be given to employers who offer permanent full-time employment positions in the private, non-profit or public sector and who agree to hire individuals beyond the period of subsidized employment.

COORDINATION: Employment counselors shall coordinate with, and refer job seekers to, other community agencies or groups for training, social and support services, including, but not limited to other partners of the Workforce Centers.

These services shall be provided in a manner that complies with the Employment and Training Program Sections of the current Local Service Unit Plan for Aitkin County and State Policy as specified in relevant DHS/DES Instructional Bulletins.

SCOPE OF SERVICES

The Contractor shall provide all Services in accordance with all applicable federal and state laws, statutes, regulations, and guidelines. These include the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Deficit Reduction Act of 2005, and Minnesota Statutes Chapter 256J. In the event that these laws, statutes, regulations or guidelines are amended at any time during the Term of this Agreement, or any extensions or renewals, the Contractor shall comply with such amended laws, statutes, regulations, or guidelines.

The Contractor is responsible for all technical assistance necessary to maintain all software and hardware used to provide the Purchased Services under this Agreement, including virus protection and firewalls.

The Contractor will designate one staff as an Employment Services security liaison who will coordinate with the County MAXIS security liaison to request approval or termination of inquiry access to the MAXIS system ("MAXIS").

The Contractor will designate up to two staff in each service location as Data Specialists that will have inquiry access to MAXIS.

The Contractor will ensure all staff with inquiry access to MAXIS complete annual HIPAA training, and any other necessary training identified by the County.

Information Privacy and Security.

Information Covered by this Provision. In carrying out its duties, NEMOJT will be handling one or more types of private information, collectively referred to as "protected information," concerning individual DHS clients. "Protected information," for purposes of this Agreement, may include any or all of the following:

- Private data (as defined in Minnesota Statutes § 13.02, subd. 12), confidential data (as defined in Minn. Stat. § 13.02, subd. 3), welfare data (as governed by Minn. Stat. § 13.46), medical data (as governed by Minn. Stat. § 13.384), and other non-public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
- Health records (as governed by the Minnesota Health Records Act [Minn. Stat. §§ 144.291-144.298]);
- Chemical health records (as governed by 42 U.S.C. § 290dd-2 and 42 C.F.R. § 2.1 to § 2.67);
- Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ["HIPAA"], 45 C.F.R. § 160.103);
- Electronic Health Records (as governed by Health Information Technology for Economic and Clinical Health Act (HITECH), 42 USC 201 note, 42 USC 17921(5)); and
- Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

Duties Relating to Protection of Information.

- (a) Duty to ensure proper handling of information. NEMOJT shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of DHS. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph X.X.

- (b) Minimum necessary access to information. NEMOJT shall comply with the "minimum necessary" access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." See, respectively, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.
- (c) Information Requests. Unless provided for otherwise in this Agreement, if NEMOJT receives a request to release the information referred to in this Clause, NEMOJT must immediately notify DHS. DHS will give NEMOJT instructions concerning the release of the data to the requesting party before the data is released.

Use of Information. NEMOJT shall:

- Not use or further disclose protected information created, collected, received, stored, used, maintained, or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this Agreement or hereafter.
 - Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the protected information by its employees, subcontractors and agents other than as provided for by this Agreement. This includes, but is not limited to, having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic protected health information at rest and in transit that it creates, receives, maintains, or transmits on behalf of DHS.
- (a) Report to DHS any privacy or security incident regarding the information of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410. For purposes of this Agreement, "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to DHS not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the PHI used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as DHS may reasonably request.
- (b) Consistent with this Agreement, and in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any agents (including contractors and subcontractors), analysts, and others that create, receive, maintain, or transmit protected health information on behalf of the business associate, enter into a business associate agreement with any subcontractors to agree in writing to be bound by the same restrictions, conditions, and requirements that apply to it with respect to such information.

- Document such disclosures of PHI and information related to such disclosures as would be required for DHS to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.
- In accordance with HIPAA, upon obtaining knowledge of a breach or violation by a subcontractor, take appropriate steps to cure the breach or end the violation, and if such steps are unsuccessful, terminate the agreement.
- Not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by DHS.

Additional Business Associate Duties. To the extent NEMOJT handles PHI in order to provide health care-related administrative services on behalf of DHS and is a “Business Associate” of DHS as defined by HIPAA, NEMOJT further agrees to:

- (a) Make available PHI in accordance with 45 C.F.R. § 164.524.
- (b) Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.
- (c) Comply with the limited disclosure rules set forth in the HITECH Act, HIPAA, and the MGDPA. To the extent possible, disclosures should be in a limited data set, which is largely information with the patients’ identifying information removed, “to the extent practicable.” Pertinent identifiers include, name and social security number; street address, e-mail address, telephone and fax numbers; certificate/license numbers; vehicle identifiers and serial numbers; URLs and IP addresses; full face photos and any other comparable images; or medical record numbers, health plan beneficiary numbers, and other account numbers. If a limited data set is not feasible, or does not meet the use or disclosure, minimum necessary should be applied. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to “that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.” See, respectively, 45 C.F.R. §§ 164.514, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.
- (d) Make its internal practices, books, records, policies, procedures, and documentation relating to the use, disclosure, and/or security of PHI available to DHS and/or the Secretary of the United States Department of Health and Human Services (HHS) for purposes of determining compliance with the Privacy Rule and Security Standards, subject to attorney-client and other applicable legal privileges.
- (e) Comply with any and all other applicable provisions of the HIPAA Privacy Rule, Administrative, and Security Standards, including future amendments thereto. Develop written policies and procedures for safeguarding and securing PHI and complying with HIPAA and the HITECH Act, and other privacy laws. Designate a privacy official to be responsible for the development and implementation of its policies and procedures as required by 45 C.F.R. Part 164, Subpart E.

- (f) To the extent XXX is to carry out one or more of DHS' obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to DHS in the performance of such obligation(s).

DHS Use of Information. DHS shall:

- (a) Only release information which it is authorized by law or regulation to share with NEMOJT.
- (b) Obtain any required consents, authorizations, or other permissions that may be necessary for it to share information with NEMOJT.
- (c) Notify NEMOJT of limitations, restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitations, restrictions, changes or revocation may affect NEMOJT's use or disclosure of protected information.
- (d) Not request NEMOJT to use or disclose protected information in any manner that would not be permitted under law if done by DHS.

Disposition of Data upon Completion, Expiration, or Agreement Termination. Upon completion, expiration, or termination of this Agreement, NEMOJT will return to DHS or destroy all protected information received or created on behalf of DHS for purposes associated with this Agreement. A written certification of destruction or return to Authorized Representative listed in 5.1 is required. XXX will retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if NEMOJT is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, NEMOJT will extend the protections of this Agreement to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as NEMOJT maintains the information. Additional information for destruction and handling is available in the DHS Information Security Policy, Policy numbers 3.7, and 2.19, found at <http://edocs.dhs.state.mn.us/lfsrver/Legacy/DHS-4683-ENG>.

Sanctions. In addition to acknowledging and accepting the terms set forth in Clause 8, "Liability." Relating to liability, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.