

# Contracting

## Contracting Overview

To initiate participation, several types of contracts are needed involving your company and your participating health plans (reference attached Contractual Framework diagram). These agreements involve your participation in the BTE initiative, and the transfer of physician and patient information from your health plan(s) to Medstat, the general contractor and data warehouse for the BTE initiative.

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- *BTE Participation Agreement*: All employers participating in the BTE initiative must sign a participation agreement with BTE, Inc. representing the Employer's agreement to participate in the project.
- *Data Release Agreements*: Because BTE involves the transfer of protected health information (PHI) from the health plans to Medstat, the HIPAA Privacy Rule requires a Business Associate Agreement (BAA) exist between the covered entity and Medstat. Participating purchasers and health plans have interpreted the required data release agreements in a variety of ways. It is the responsibility of each individual employer and health plan participant in BTE to discuss with their own legal counsel what type of agreements are necessary in order to release data as part of the BTE project. A common approach to the data release agreement that has been implemented by some BTE participants is:
  - Business Associate Agreement (BAA) between the participating purchaser and Medstat. This document identifies Medstat as a business associate of the participating purchaser.
  - Data Use Authorization (DUA) between the participating purchaser and health plan. This document represents the employer's authorization for the health plan to release PHI to Medstat. Participating purchasers and plans have used several different types of data use authorization forms:
    - a letter from the employer to the health plan authorizing that the required data be released
    - a signed document by the employer stating that Medstat is a Business Associate of the purchaser and the plan is authorized to release data
    - a 3-way Data Use & Confidentiality Agreement involving the employer, health plan, and Medstat covering the use and confidentiality of the data to be released

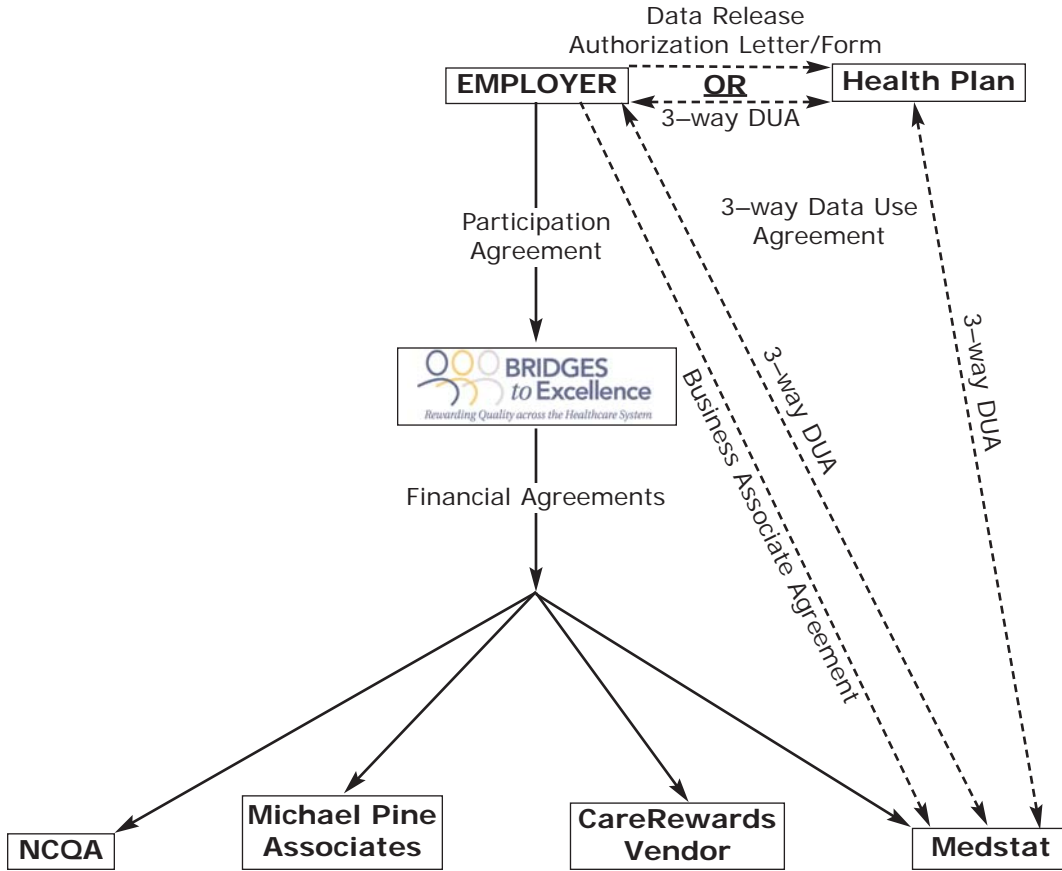
*Estimated time frame: 1 to 2 Months*

## Engagement of Health Plan

Medstat has developed technical data specifications for participating health plans to identify those patients with diabetes who are covered lives of participating employers, and to identify the physicians who care for these patients. Medstat will work with your health plans(s) in compiling these data. Medstat will then integrate the data from all employers and health plans in the market area and identify those physicians treating one or more patients of program participants.

*Estimated time frame: 8 weeks*

Contractual Framework



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————— financial agreements  
 - - - - - data release agreements

*Note:* The contractual arrangements shown between the employer, health plan, and Medstat are provided for illustration only based upon a common approach to data release agreements that has been implemented by some BTE participants. It is the responsibility of each individual employer and health plan participant in BTE to discuss with their own legal counsel what type of agreements are necessary in order to release data as part of the BTE project.

## Data Use, Confidentiality, and Indemnification Agreement

THIS AGREEMENT, (the "Agreement") dated (insert date), is between and among \_\_\_\_\_, ("Employer") The Medstat Group, Inc. ("Medstat") and \_\_\_\_\_ ("Health Plan") on behalf of its affiliates and subsidiaries ("collectively \_\_\_\_\_"). Insert the name of the health plan

WHEREAS, \_\_\_\_\_ (name of health plan) and Employer have entered into an Administrative Services Agreement, pursuant to which \_\_\_\_\_ (plan) provides claim administration services to a self-insured employee welfare benefit program sponsored by the Employer (the "Plan"); and

WHEREAS, the Plan is an employee welfare benefit plan, as defined in the Employee Retirement Income Security Act of 1974, as amended, and the Employer is making this request in its capacity as Plan Administrator; and

WHEREAS, Employer (through a contract between Bridges to Excellence, Inc. and The Medstat Group, Inc.) and Medstat have entered into an agreement (the "Medstat Agreement") pursuant to which Medstates certain services (collectively, "Services") to Employer which will be used by Employer to assist its employees who are diagnosed as having targeted medical conditions to better manage their diseases and conditions and to offer incentives to those health care providers that utilize evidence-based practice protocols as these relate to the treatment of patients diagnosed with these diseases and/or conditions; and

WHEREAS, the Employer has instructed \_\_\_\_\_ (health plan) to make certain specified claim, capitation, encounter and/or other information available to Medstat to enable Medstat to perform its Services, which claim information will include, without limitation, employee names, social security numbers, dates of service, provider, and other information (collectively "the Data"); and

WHEREAS, Employer and Medstat recognize \_\_\_\_\_ (health plan)'s legitimate interests in maintaining the confidentiality of the Data, protecting the proprietary nature of its systems and processes, avoiding unnecessary disruption of its claim administration, and protecting itself from certain legal liability; and

WHEREAS, \_\_\_\_\_ (health plan) is willing to make the Data available to Medstat in accordance with the request of the Employer, upon the condition that Medstat and Employer provide certain assurances, including assurances of protection against claims or liability arising out of Medstat's performance of services or \_\_\_\_\_ (health plan)'s release of the Data to Medstat; and

WHEREAS, Medstat and Employer are willing to make such assurances;

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual covenants set forth in this Agreement, the parties agree as follows:

1. \_\_\_\_\_ (health plan) agrees to release the Data to Medstat as requested by Employer. This data shall at a minimum and initially include patients being treated for the targeted diseases and/or conditions who are employed by Employer and who are the patients of providers associated with the health plan provider network in the geographical areas specified by the Bridges to Excellence Project. (Health Plan) shall submit in a timely manner the patient data in the format and medium specified by the parties.
2. Employer shall indemnify and hold \_\_\_\_\_ (health plan) harmless from and

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against any and all claims, suits, expenses (including reasonable attorneys' fees and court costs), liabilities or damages (whether resulting from settlement, judgment, arbitration or otherwise) to the extent arising out of \_\_\_\_\_(health plan)'s release of the Data to Medstat and any subsequent misuse of the Data by Medstat or any third party to which Medstat releases the data either as part of this program or outside the parameters of this program, other than such claims, suits, expenses, liabilities or damages directly caused by \_\_\_\_\_(health plan)'s gross negligence or willful misconduct. Employer shall indemnify and hold Medstat harmless from and against any and all claims, suits, expenses (including reasonable attorneys' fees and court costs), liabilities or damages (whether resulting from settlement, judgment, arbitration or otherwise) to the extent arising out of \_\_\_\_\_(health plan)'s release of the Data to Medstat and/or the misuse of the Data by any third party to which Medstat releases the Data as an approved part of the Bridges to Excellence Project, other than such claims, suits, expenses, liabilities or damages directly caused by Medstat's gross negligence or willful misconduct.

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3. Medstat agrees to hold harmless, release and indemnify \_\_\_\_\_, (health plan) its directors, officers, employees and agents against any and all claims, suits, expenses (including reasonable attorneys fees and court costs), liabilities or damages (whether resulting from settlement, judgment, arbitration or otherwise) resulting from the breach of its confidentiality obligations or use of the Data in a manner not explicitly authorized hereunder or use of any third party to which Medstat releases the data as part of this program or outside the parameters of the program in a manner not explicitly authorized hereunder.

4. The obligation to provide indemnification under this Agreement shall be contingent upon the party seeking indemnification: (a) to provide the indemnifying party with prompt notice of any claim for which indemnification is sought, (b) to allow the indemnifying party to control the defense and settlement of any such claim, and (c) to cooperate fully with the indemnifying party in connection with such defense and settlement.

5. Medstat agrees that the Data made available by \_\_\_\_\_ (health plan) to Medstat will be used only for the purpose of performing the Services set out in the program in order to assist the Employer in its efforts to improve the health and productivity of its employees and for any other purposes expressly authorized herein. Medstat shall not use or further disclose Data other than as permitted by this Agreement or required by law.

6. Employer and Medstat agree to keep all Data made available to Medstat by \_\_\_\_\_ (health plan) confidential in accordance with all applicable state and federal laws and regulations and this Agreement shall be amended to be in conformance as necessary.

7. Medstat shall not be considered \_\_\_\_\_ (health plan)'s agent or subcontractor in providing the services or making the analyses which it has undertaken to perform under the Medstat Agreement.

8. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan.

9. This Agreement shall continue in force from year-to-year, but shall terminate automatically upon the earliest of the following: (a) termination of the Administrative Services Agreement between \_\_\_\_\_ (health plan) and Employer; (b) the date agreed to by mutual agreement among the parties; (c) upon 60 days written notice to \_\_\_\_\_ (health plan) from Employer; and (d) in the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement shall not terminate if the breaching party cures the breach prior to the expiration of such thirty (30) day period. A termination of this Agreement shall obligate Medstat to return or destroy all of the Data that was provided up to the date of termination, except for a single copy to be utilized for program evaluation purposes only, unless such retention of Data would result in a violation of law or regulation or where there is a reasonable belief that such retention of the data would result in a violation of law or regulation, including but not limited to, a breach of patient privacy.

10. The confidentiality and indemnification obligations shall survive any termination, cancellation or expiration of this Agreement.
11. As between Employer and Medstat, in the event of conflict or inconsistency between this Agreement and the Medstat Agreement, the Medstat Agreement shall control.
12. As between Employer and (health plan), in the event of conflict or inconsistency between this Agreement and the Business Associate Agreement between (health plan) and Employer, the Business Associate Agreement shall control.
13. This Agreement may not be assigned by Medstat without \_\_\_\_\_ (health plan)'s prior written approval, which shall not be unreasonably withheld.
14. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same document, binding on all parties notwithstanding that each of the parties may have signed different counterparts.

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\* Please note that the data use and business associate agreements listed above represent Bridges to Excellence, Inc.'s interpretation of the types of data use contracts that have been identified as necessary by other program participants. It is the responsibility of each individual employer and health plan participant in BTE to discuss with their own legal counsel what type of agreements are necessary in order to release data as part of the BTE project.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in triplicate by their duly authorized officers.

EMPLOYER

HEALTH PLAN

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

THE Medstat GROUP, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## The MEDSTAT Group, Inc. HIPAA Business Associate Agreement Addendum

This Addendum, dated as of \_\_\_\_\_, 2003 ("Addendum"), is entered into by and between The Medstat Group, Inc. ("Medstat") and \_\_\_\_\_ ("Covered Entity"). This Addendum is incorporated into and made part of the \_\_\_\_\_ Agreement ("Agreement"), dated \_\_\_\_\_, \_\_\_\_\_, between Medstat and Covered Entity.

Medstat may be considered a "business associate" of Covered Entity under the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. §§ 160-164 ("HIPAA's Privacy Regulations"). Pursuant to the Agreement, on behalf of Covered Entity, Medstat performs or assists in the performance of functions and activities involving the use and disclosure of Individually Identifiable Health Information (as defined in 45 C.F.R. § 164.501). Medstat's provision of these services may involve the disclosure of Individually Identifiable Health Information by Covered Entity (or another business associate of Covered Entity) to Medstat. This Addendum is intended to meet the requirements of the "business associate" provisions of HIPAA's Privacy Regulations (at 40 C.F.R. § 164.504(e)), and will govern the terms and conditions under which Covered Entity may disclose or have disclosed to Medstat, and Medstat may create, use or receive Protected Health Information (as defined in 45 C.F.R. § 164.501) ("PHI") on behalf of Covered Entity.

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### **1 General.**

1.1 Except as otherwise specified herein, Medstat may make any and all uses and disclosures of PHI necessary for Medstat to perform its obligations for or on behalf of Covered Entity pursuant to the Agreement and as permitted or required by this Addendum or HIPAA's Privacy Regulations. Covered Entity may disclose PHI to Medstat to create information that is not Individually Identifiable Health Information, whether or not the de-identified information is to be used by Covered Entity. Information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) (2) is not subject to the provisions of this Addendum.

1.2 Covered Entity agrees that each time it discloses PHI to Medstat, Covered Entity will retain a copy of such PHI, and Medstat will not have the only copy of such PHI. Pursuant to HIPAA and any other applicable laws and regulations, the parties agree that Covered Entity will have the responsibility to handle, track and maintain records of all requests by individuals to access or amend their PHI under those laws and regulations, and that Medstat, as a business associate of Covered Entity, will not have any responsibility to handle, track and maintain records of any such requests. Medstat will respond to all such requests for data Medstat receives by referring the requestor to Covered Entity. Medstat will amend PHI only when required and notified in writing by Covered Entity and when the PHI in Medstat's possession constitutes a Designated Record Set as defined in 45 CFR Section 164.501 ("DRS").

### **2. Permitted Uses and Disclosures.**

2.1 In addition to the uses described in Paragraph 1.1, Medstat may use PHI it received in its capacity as a business associate of Covered Entity, if necessary

- (a) for the proper management and administration of Medstat, or
- (b) to carry out the legal responsibilities of Medstat.

2.2 In addition to the disclosures described in Paragraph 1.1, Medstat may disclose PHI it received in its capacity as a business associate of Covered Entity for the purposes described in Paragraph 2.1 if

- (a) the disclosure is required by law, or
- (b) Medstat obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will be held confidentially and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to

such person, and (ii) the person will notify Medstat of any instance of which the person is aware in which the confidentiality of the information has been breached.

2.3 Medstat may use and further disclose PHI to provide Data Aggregation or other permitted services relating to the health care operations of Covered Entity.

### **3. Limitations on Uses and Disclosures.**

With respect to PHI that (i) Covered Entity discloses to Medstat or (ii) Medstat creates or receives on Covered Entity's behalf, Medstat will not use or further disclose the PHI other than as permitted or required by this Addendum or as required by law.

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### **4. Additional Obligations of Medstat.**

Except as otherwise specified herein, the provisions of this Paragraph 4 apply only to PHI that (i) Covered Entity discloses to Medstat or (ii) Medstat creates or receives on Covered Entity's behalf.

4.1 Safeguards. Medstat will use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Addendum.

4.2 Reporting. Medstat will report to Covered Entity any use or disclosure of the PHI by Medstat or any Medstat employee, agent or contractor not provided for by this Addendum of which Medstat becomes aware.

4.3 Agents and Subcontractors. Medstat will assure that any agent or subcontractor to whom Medstat provides PHI that is created, received from, or received by Medstat on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Medstat with respect to such PHI.

4.4 Access. Pursuant to Paragraph 1.2 of this Addendum and following Medstat's receipt of a written request from Covered Entity, Medstat will make available to Covered Entity any PHI that is maintained by Medstat in a DRS that Covered Entity needs to respond to an individual's request for access to PHI about them in accordance with 45 C.F.R. § 164.524.

4.5 Amendment of PHI. Pursuant to Paragraph 1.2 of this Addendum and following Medstat's receipt of a written request from Covered Entity, in accordance with 45 C.F.R. § 164.526, Medstat will incorporate any amendment received from the Covered Entity in the original data format to the relevant PHI so long as the PHI is maintained in a DRS.

Medstat may charge Covered Entity a reasonable fee to incorporate the amendment.

4.6 Accounting. Pursuant to Paragraph 1.2 of this Addendum, following Medstat's receipt of a written request from Covered Entity, Medstat will make available to Covered Entity any information Covered Entity may reasonably need for Covered Entity to provide an accounting of disclosures made by Medstat of an individual's PHI in accordance with 45 C.F.R. § 164.528.

4.7 Access to Medstat's Internal Practices. Medstat will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Medstat on behalf of Covered Entity, available to the Secretary of the Department of Health and Human Services for purposes of determining Covered Entity's compliance with 45 C.F.R. § 164, Subpart E.

4.8 Disposition of PHI. Upon termination of the Agreement or otherwise upon Covered Entity's prior written request, Medstat will return to Covered Entity or relevant Data Source all remaining (or such other amount as are requested in cases other than termination) magnetic tapes or source data containing PHI received from, or received by Medstat on behalf of Covered Entity in the same format in which Covered Entity or the Data Source submitted such tapes or data to Medstat. The parties agree that the return or destruction of PHI created, received from, or received by Medstat on behalf of, Covered Entity in any format other than that in which Medstat originally received, including pooled data, is not feasible and that such PHI must be retained by Medstat to defend its work product and for future audits. Medstat will extend the protections provided by this Addendum to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI unfeasible.



**5. Requested Restrictions.**

Covered Entity will not provide to Medstat any PHI that is subject to any arrangement permitted or required of Covered Entity that may impact in any manner the use or disclosure of PHI by Medstat under this Addendum including, but not limited to, any restriction on the use or disclosure of PHI as provided in 45 C.F.R. § 164.522 and agreed to by Covered Entity.

**6. Termination.**

In the event that Covered Entity determines that Medstat materially breached or violated its obligation under this Addendum, Covered Entity will notify Medstat of such breach in writing. Covered Entity may terminate the agreement or may provide Medstat with an opportunity to take reasonable steps to cure the breach or end the violation, as applicable, within a mutually agreed upon period of time. If Medstat's attempts to cure the breach or end the violation are unsuccessful within that period without limiting the rights of the parties under the Agreement, Covered Entity may terminate the Agreement.

**7. Miscellaneous.**

- 7.1 Effective Date. The provisions of this Addendum will become effective on the compliance date applicable to Covered Entity under HIPAA's Privacy Regulations.
- 7.2 Conflict. Except as specifically set forth herein, all terms of the Agreement will continue in full force and effect. In the case of any conflict among the provisions of this Addendum and the Agreement, the terms of this Addendum will prevail.
- 7.3 Terms. This Addendum will be governed by and construed in accordance with the same rules and procedures that govern the Agreement.
- 7.4 Survival. This Addendum will survive the expiration or termination of the Agreement and remain in full force and effect for so long as Medstat or any of its agents or contractors remain in possession, pursuant to Paragraph 4.8 hereof, of any PHI that (i) Covered Entity discloses to Medstat or (ii) Medstat creates or receives on Covered Entity's behalf, and will terminate immediately thereafter.

*\* Please note that the data use and business associate agreements listed above represent Bridges to Excellence, Inc.'s interpretation of the types of data use contracts that have been identified as necessary by other program participants. It is the responsibility of each individual employer and health plan participant in BTE to discuss with their own legal counsel what type of agreements are necessary in order to release data as part of the BTE project.*

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date set forth above.

The Medstat Group, Inc.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

[Covered Entity's Name]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BRIDGES TO EXCELLENCE, INC.**  
PARTICIPATION AGREEMENT

This Agreement is made as of \_\_\_\_\_, 2003 by and between BRIDGES TO EXCELLENCE, INC. ("BTE"), a Connecticut nonprofit corporation, and [Name of Participant] ("Participant"). BTE is committed to creating significant advances in the quality of health care by (i) providing tools, information and support to consumers of health care services, (ii) conducting research with respect to existing health care provider reimbursement models, and (iii) developing reimbursement models that encourage the recognition of health care providers who demonstrate that they have implemented comprehensive solutions in the management of patients and deliver safe, timely, effective, efficient, equitable and patient-centered care which is based on adherence to quality guidelines and outcomes achievement. In order to fulfill this commitment, BTE will contract with fully-insured employers, self-insured employers and health plans (collectively referred to herein as "Participants") to participate in BTE's quality care incentive programs (the "Quality Programs"). On behalf of all Participants, and specifically the Participant executing this Participation Agreement, BTE will initiate and coordinate the development, facilitation and administration of the Quality Programs with participating health care providers. The Participants will pay to the participating health care providers, either directly or through the use of an intermediary, any incentive compensation which is part of the Quality Programs.

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In order to further the purposes of the Quality Programs, BTE and Participant agree as follows:

**1. PARTICIPANT OBLIGATIONS**

1.1. Participant Qualifications. Participant represents and warrants that Participant complies with, and throughout the term of this Agreement will comply with, the Quality Programs participation requirements outlined on *Exhibit A* attached hereto.

1.2. Payment Obligations. Participant agrees that during the term of this Agreement, or for such longer period as is otherwise provided in this Agreement, Participant shall pay to The Medstat Group, Inc. (the "General Contractor") or a similar health information company as designated by BTE, the fees set forth in *Exhibit B* attached hereto (the "Payment Obligations"). Such fees shall include, without limitation, Participant's allocable share of: (i) administrative fees payable to the General Contractor and (ii) incentive payments payable to providers pursuant to the Quality Programs. Participant shall also pay to the General Contractor charges payable to third-party contractors of BTE by BTE as set forth in *Exhibit B* attached hereto within thirty (30) days of a receipt of an invoice from BTE or the General Contractor which third party contracts shall have been approved by the board of directors of BTE. Participant agrees that administrative fees as set forth in this agreement commence on the Effective Date specified in *Exhibit B*.

1.3. Special Assessments. Participant agrees that during the term of this Agreement, or for such longer period as otherwise provided in this Agreement, Participant shall pay special assessments rendered by BTE (the "Special Assessments") up to and not to exceed a total of \$50,000 per year; provided, however, that such Special Assessments shall have been approved by the board of directors of BTE. Participant shall pay such Special Assessment within thirty (30) days of receipt of an invoice from BTE.

1.4. Cooperation with BTE. Participant shall in good faith cooperate with BTE in the fulfillment of the objectives of the Quality Programs. Participant shall make available to BTE in a timely manner information requested by BTE to enable BTE to carry out its responsibilities under this Agreement. Participant agrees to participate in and cooperate with BTE in the administration of any quality assurance, health information management, or other similar programs arranged by BTE from time to time and to provide information to BTE as reasonably requested from time to time by BTE. Failure

to provide cooperation to BTE and Quality Programs suppliers, including without limitation the General Contractor, shall result in termination of Participant's participation in the Quality Programs. Such termination shall not relieve the Participant's financial obligations for the term of its participation in the Quality Programs, including without limitation any early termination fees that may be payable to the General Contractor.

1.5. Compliance with Law. Participant shall comply with all material federal, state and municipal laws, statutes, ordinances, orders and regulations applicable to the conduct of its business.

1.6. Contractual Obligations with the General Contractor. Participant, or its applicable "group health plan", as that term is defined by the privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule") shall execute a Business Associate Agreement and/or a Confidentiality and Data Use Agreement (as described in Exhibit A hereof) with the General Contractor or other suppliers as appropriate - and to the extent it is applicable.

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## 2. BTE OBLIGATIONS

2.1. Agreement with the General Contractor. BTE shall contract with the General Contractor or such other parties as it deems necessary to implement quality guidelines and outcomes achievement standards consistent with the objectives of the Quality Programs. The General Contractor or other such suppliers shall be responsible for executing the terms of a written agreement, which agreement may include a Statement of Work, Deliverable Schedule, and Statement of Performance Metrics as developed and approved by BTE.

2.2. Administrative, Development and Public Relations. BTE shall perform any and all acts necessary and appropriate to carry out its duties and obligations under this Agreement. BTE shall provide administrative, development and public relations services and other functions necessary and appropriate for BTE's efficient and economic administration. BTE shall also maintain such records and establish and adhere to such procedures as shall be reasonably required to operate BTE.

2.3. Compliance with Law. BTE shall comply with all material federal, state and municipal laws, statutes, ordinances, orders and regulations applicable to the conduct of its business.

## 3. TERM AND TERMINATION

3.1. Term. The term of this Agreement shall commence on the Effective Date specified in Exhibit B, and shall continue for a period of one (1) year. Thereafter, this Agreement shall automatically renew for successive one (1) year terms unless otherwise terminated in accordance with this Agreement.

3.2. Termination Without Cause. This Agreement may be terminated without cause by either party on any anniversary date of this Agreement upon prior written notice to the other party at least one hundred and eighty (180) days in advance of any anniversary date of this Agreement.

3.3. Termination With Cause. Upon default of any material term of this Agreement by either party and upon failure of the defaulting party to cure such default within thirty (30) days after written notice from the other party of such default, or, if such default is not susceptible to cure within the thirty (30) day period, promptly to make provision for such cure and thereafter to pursue such cure diligently to completion, failing which the non defaulting party may terminate this Agreement upon fifteen (15) days written notice of termination.

3.4. Termination of Relationship with the General Contractor. This Agreement may be terminated without cause by BTE upon the termination of BTE's relationship with the General Contractor upon ten (10) days prior written notice to the Participant.

3.5. Rights of Parties Upon Termination. Upon termination of this Agreement by either party without cause, or upon termination of this Agreement by BTE pursuant to Sections 3.3 or 3.4, Participant shall continue to be responsible for the payment of the

Payment Obligations, the charges payable to third party contractors of BTE and the Special Assessments as provided more fully in Sections 1.2 and 1.3. Such termination shall not relieve the Participant's financial obligations for the term of its participation in the Quality Programs, including without limitation any early termination fees that may be payable to the General Contractor. However, Participant shall not be liable for fees or other Program costs incurred after the termination of this agreement.

#### 4. CONFIDENTIALITY

BTE and Participant shall: (a) keep confidential, except as otherwise required by law, (i) proprietary information, data, and other confidential information concerning the medical, personal, or business affairs of each party acquired in the course of performing that party's responsibilities under the Agreement and (ii) financial, operating, proprietary or business information relating to each party which is not otherwise public information; (b) respect the confidentiality of any information, not described above, specified in writing by each party as confidential information; (c) exercise either party's best efforts to prevent any of their employees, independent contractors, or any other person involved in, doing business with or controlled by either party from disclosing or transmitting to any other person, including other Participants, or entity any of the above described information; and (d) comply with all applicable state and federal laws relating to the confidentiality of patient medical records and medical information.

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#### 5. GENERAL

5.1. Independent Contractors. The relationship between BTE and Participant is one of independent contractor and not one of partnership, principal and agent, employer and employee, joint venturers or otherwise.

5.2. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective transferees, successors and assigns.

5.3. Entire Agreement. The Agreement is the entire agreement between the parties and supersedes all prior negotiations, representations, agreements, and understandings between the parties, whether written or oral, respecting the subject matter hereof.

5.4. Amendment. This Agreement may be amended by BTE by providing thirty (30) days advance written notice of such amendment to Participant. The amendment shall become effective and this Agreement shall be deemed to be amended unless BTE receives written notice from Participant prior to the effective date of the amendment. If Participant elects not to be bound by the amendment, Participant may terminate this Agreement in accordance with Section 3.2 of this Agreement. In the event that Participant elects to terminate this Agreement upon amendment of this Agreement by BTE, Participant shall not be bound by the amendment during the period between the effective date of the amendment and the date that Participant is no longer required to pay the Payment Obligations or Special Assessments in accordance with the terms of this Agreement.

5.5. Hold Harmless. Participant acknowledges and agrees that BTE is making no warranties to Participant, either express or implied, regarding the Quality Programs. Furthermore, Participant acknowledges and agrees that because BTE is serving as an intermediary and not as a direct contractor with health care providers participating in the Quality Programs, Participant shall indemnify and hold BTE and its officers, directors, employees or agents harmless from any and all reasonable costs, expenses, liability, loss, claims, fines, penalties or damages BTE incurs resulting from Participant's failure to perform in accordance with this Agreement, including, without limitation, Participant's payment obligations under Sections 1.2 and 1.3, or arising from the negligent or wrongful acts or omissions of Participant, its agents or employees in connection with this Agreement. In addition, BTE agrees to indemnify and hold Participant, its officers, directors, employees or agents harmless from any and all costs,



expenses, liability, loss, claims, fines, penalties or damages arising from BTE's acts of negligence or omissions in connection with this Agreement.

5.6. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by fax, addressed as follows:

- (i) (i) if to BTE, c/o General Electric Company, 3135 Easton Tpk., Fairfield, CT 06828 Attention: Francois de Brantes; and
- (ii) (ii) if to Participant, at his or its address set forth on the signature page hereof, or, in any such case, at such other address or addresses as shall have been furnished in writing to BTE.

5.7. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, except to the extent such laws are preempted by the federal Employee Retirement Income Security Act of 1974, ("ERISA").

5.8. Dispute Resolution. Except where expressly indicated to the contrary in this Agreement, any dispute, claim or controversy arising out of or relating to this Agreement, or breach of the Agreement, shall be resolved in accordance with the dispute resolution procedure set forth below:

- (i) The parties will attempt in good faith to resolve through negotiation any such dispute, claim, controversy arising of or relating to the Agreement or breach of the Agreement. Either party may initiate negotiations by providing written notice in letter form to the other party setting forth the subject of the dispute and the relief requested. Within fifteen (15) days after receipt of said notice (or such longer period as may be agreed to by the parties), the receiving party shall submit to the other party a written response. The notice and response shall include (A) a general statement of the party's position, and (B) recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within fifteen (15) days of the date of receipt of the notice and response in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. All such communications, correspondence, proposals and recommendations are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use as aforesaid.
- (ii) If the dispute is not resolved by these negotiations, then the parties agree that the dispute shall be submitted to the CPR Institute for Dispute Resolution (the "CPR"), or its successor, for mediation in accordance with the Model Procedure for Mediation of Business Disputes in New York City. The parties will cooperate with the CPR and with one another in selecting a mediator from the CPR's panel of neutrals, and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith, and that they will share equally in the costs of utilizing the CPR. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any CPR employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for final and binding arbitration at any time following the initial mediation session or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys fees, to be paid by the party against whom an order of enforcement is obtained.

- (iii) If the matter has not been resolved pursuant to the aforementioned mediation procedure within sixty (60) days of the initiation of such procedure, except where such time has been extended by mutual consent of the parties in writing, then the controversy shall be resolved by arbitration in accordance with the CPR's Rules for Non Administered Arbitration of Business Disputes (the "Rules"), by a sole arbitrator. The arbitrator shall be selected by agreement of the parties in accordance with Rule 6.4 of such Rules. The parties will cooperate in good faith with the CPR and with one another in selecting the sole arbitrator, and in scheduling the arbitration.
- (iv) The parties further agree that they will participate in the arbitration in good faith, and that they will share equally in the costs of utilizing the CPR. The parties agree that the arbitrator shall not be empowered to award damages in excess of compensatory damages, and each party irrevocably waives all rights to recover such non-compensatory damages with respect to any dispute resolved by arbitration hereunder. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be New York City, New York. The provisions of this section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the party against whom an order of enforcement is obtained.
- (v) By executing this Agreement, the parties expressly agree to have all such disputes, claims or, controversies arising out of or relating to this Agreement or the breach of this Agreement decided by neutral arbitration, and they each hereby agree to give up any rights they might possess to have those matters litigated in a court or jury trial. By executing this Agreement, the parties give up their judicial rights to discovery and appeal, except to the extent that they are specifically for under this Agreement or the CPR's Rules. If a party refuses to submit to arbitration after agreeing to this provision, it may be compelled to arbitrate under federal or state law. The parties each agree that their respective determinations to agree to this Section 5.8 is voluntary.

5.9. Severability. If any provision of this Agreement shall be found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

5.10. Waiver. Failure of either party to enforce a right under this Agreement shall not act as a waiver of that right or the ability to assert later that right relative to the particular situation involved or to terminate this Agreement arising out of any subsequent default or breach.

5.11. Non-exclusivity. Participant and BTE shall not be prohibited from participating in other quality care initiatives.



***Signature Page to  
Participation Agreement***

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

BRIDGES TO EXCELLENCE, INC.

**[PARTICIPANT]**

contracting 

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Participating Health Plans Roles & Responsibility Overview

The Bridges to Excellence (BTE) initiative represents a collaborative effort of employers and health plans to improve the quality of care for patients. Participating health plans have several areas of involvement in the BTE project, as outlined below.

### **Employers**

Employers participating in the BTE initiative have several key responsibilities:

- execute participation agreement: agree to participate in the BTE project by signing the BTE Participation Agreement
- engage health plans: engage all health plans which the employer contracts and which will be providing physician and patient data for the BTE project.
- execute data release agreements: work with health plans and Medstat to execute any required data release agreements to permit the health plan to transfer the employer's physician and patient data to Medstat.
- pay rewards and administrative fees: establish banking arrangements with Medstat for the payment of physician rewards, Medstat administrative fees, and other BTE-physician and patient data to Medstat.
- communicate with employees: distribute communications to employees regarding BTE and participation in programs with disease management tools and rewards.
- outreach to region: participate in Regional Implementation Team, working to improve region project performance, including participation by physicians, employees, and new employers.

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### **Health Plans**

Health Plans participating in the BTE initiative have several key responsibilities:

- review employer's participation goals: review with the participating employer the programs (POL, DCL, CCL) and program components (physician, patient) covering the employer's participation in BTE.
- execute data release agreements: work with the employer and Medstat to execute and required data release agreements to permit the health plan to transfer the employer's physician and patient data to Medstat.
- produce data files: generate data files with required physician and patient data for the BTE project, and transfer the data files to Medstat within the requested timeframe and in the requested format.

In addition, each health plan should identify several key staff members that fulfill the health plan's responsibilities on the BTE project:

- Project Coordinator: The project coordinator will facilitate completion of the health plan's project responsibilities for BTE, and will serve as the primary health plan contact regarding BTE with the employer and Medstat.
- Attorney/Contracts Administrator: The attorney or contracts administrator will determine what types of data release agreements are needed in order for the health plan to submit the requested physician and patient data to Medstat for the project.
- IT Programmer: The IT programmer will generate the data files required by the project adhering to the data specifications provided by Medstat.
- Member/Provider Relations Group: The member/provider relations area should be familiar with the purpose of BTE programs, and should be prepared to answer any general questions regarding BTE that the plan's members and providers may ask.