

1. **Parties.** This is a contract for personal services between the State of Vermont, Office of Vermont Health Access (OVHA) (hereafter called "State"), and MedMetrics Health Partners, Inc., with a principal place of business in 100 Century Drive, Worcester, MA 01606 (hereafter called "Contractor"). Contractor's form of business organization is a corporation. If the contractor does not have a Business Account Number, it is the contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of Medicaid Supplemental Drug Rebate Activities. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$75,000.
4. **Contract Term.** The period of Contractor's performance shall begin on November 1, 2007 and end on July 31, 2009. This contract may be extended up to two additional years subject to the agreement of both parties.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office **is** required.

Approval by the Secretary of Administration **is not** required.

Approval by the CIO/Commissioner DII **is not** required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 60 days in advance.
8. **Attachments.** This contract consists of **31** pages including the following attachments and appendices which are incorporated herein:

Attachment A – Specifications of Work to be Performed

Appendix I: Performance Standards & Operational Metrics: SSDC Additional Services

Attachment B – Payment Provisions

Attachment C – "Customary State Contract provisions"

Attachment D – Certificate of Insurance

Attachment E – Business Associate Agreement

Attachment F – "AHS Customary Contract Provisions"

Attachment G – Contract CD that includes the following:

<u>Folder</u>	<u>Name of File</u>
1. RFP	1. RFP for Serviced to Procure Medicaid Supplement Rebate 2. RFP Q & A 5/18/07 3a. Mandatory Requirements Compliance Opportunity 6/8/07 3b. MHP SSDC RFP Evaluation Summary Bidder 6/8/08 4. Additional Medicaid Supplemental Drug Rebate Activity Com.
2. MHP Proposal	1a. MHP – Cover Letter, Attachment B, Affirmation of Understanding 1b. MHP – SSDC Technical Proposal 5/24/07 1c. MHP – Attachment A 2004 Financials 1d. MHP – Attachment A 2005 Financials 1e. MHP – Attachment A 2006 Financials 1f. MHP – Attachment A inPharmative Financials 1g. MHP – Attachment C – Sample Reports 1h. MHP – VT Attachment AHS Rule 96-23 1i. MHP – Transition Plan 2a. MHP – Response to Mandatory Requirements Com. 2b. MHP SSDC RFP Evaluation Summary Bidders 6/12/07 2c. MHP – inPharmative 2005 Financial Statements 2d. MHP – SSDC Follow-Up Response 6/12/07

The order of precedence of documents shall be as follows:

1. This document
2. Attachment C
3. Attachment A
4. Attachment B
5. Attachment E
6. Attachment F
7. Attachment G – CD Files

<u>Folder</u>	<u>Name of File</u>
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- 1d. MHP – Attachment A 2005 Financials
- 1e. MHP – Attachment A 2006 Financials
- 1f. MHP – Attachment A inPharmative Financials
- 1g. MHP – Attachment C – Sample Reports
- 1h. MHP – VT Attachment AHS Rule 96-23
- 1i. MHP – Transition Plan
- 2a. MHP – Response to Mandatory Requirements Com.
- 2b. MHP- SSDC RFP Evaluation Summary Bidders 6/12/07
- 2c. MHP – inPharmative 2005 Financial Statements
- 2d. MHP – SSDC Follow-Up Response 6/12/07

8. Attachment D – Certificate of Insurance

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

BY THE STATE OF VERMONT:

Date: 10/31/2009

Signature: 

Name: Joshua Slen
Title: Director
Office of Vermont Health Access

BY THE CONTRACTOR:

Date: 10/26/2007

Signature: 

Name: Robert D. Wakefield, Jr.
Title: Chairman, MedMetrics Health Partners, Inc.
Federal ID #20-1031924

**ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED**

I. OVERVIEW

The national Medicaid Drug Rebate Program was created by the Omnibus Budget Reconciliation Act of 1990 (OBRA'90). It requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services (HHS) for states to receive Federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by the Center for Medicaid and State Operations (CMSO) of the Centers for Medicare & Medicaid Services (CMS).

Section 1927 of the Social Security Act (42 U.S.C. 1396r-8) provides the regulatory authority for the national Medicaid Drug Rebate Program. Rebates are paid to states and the federal government based on units utilized in each state. The terms and conditions of the setting of OBRA rebates and their payments are found in this section of law.

A number of states have obtained approval from the Centers for Medicare and Medicaid Services (CMS) to enter into Medicaid rebate agreements supplemental to the OBRA rebates. Supplemental drug rebates are in addition to the baseline "standard CMS rebates" required under the provisions of OBRA'90.

In the fall of 2005, the states of Iowa, Maine, and Vermont formed a multi-state pooling arrangement, the Sovereign States Drug Consortium (SSDC). The SSDC believes that the multi-state Medicaid supplemental drug rebate process and individual Member State's Preferred Drug Lists (PDL) are key component in its members' efforts to contain costs.

A state's PDL is a list of preferred prescriptions within selected drug classes developed with the state's Pharmacy & Therapeutics (P&T) Committee. The PDL presents options for prescribers' consideration for use in meeting the drug therapy needs of their patients. Medications are preferred if they meet clinical and therapeutic criteria established by the Committee and are cost-effective, including those medications where the manufacturers offered supplemental drug rebates. Medications that are not preferred can be prescribed and reimbursed based on a clinical review of appropriateness for a particular patient situation. These reviews constitute prior authorization review protocols that are developed with the guidance of the state's P&T Committee. The SSDC believes that these preferred drug management systems implemented by its Member States have been effective tools in helping manage pharmacy costs and maintaining access to pharmacy benefits for vulnerable, low-income populations.

With the SSDC pooling program, the purchasing power of multiple states and their covered lives is combined for the purposes of negotiating supplemental drug rebates with pharmaceutical manufacturers in connection with the Member States' Preferred Drug List management systems. At the same time, under the SSDC pooling approach, flexibility and choice remains with the individual state and its P&T Committee to determine which classes to include on its PDL and which drugs to select as preferred.

Under the SSDC model, 100% of all rebate revenues are returned to the Member States. They are not shared with any contractor engaged in activities to support supplemental drug rebate activities.

The SSDC is state administered. The SSDC is not dependent on a single pharmacy benefit administrator but rather each member uses its internal and contractual resources to support its participation. Any state can potentially participate. Other states have expressed an interest in joining the SSDC and it is anticipated that

membership will grow in time.

In support of the SSDC, the State of Vermont, Office of Vermont Health Access (OVHA) is contracting for supplemental drug rebate activity services on behalf of the states that are members of the SSDC.

II. PERTINENT DEFINITIONS

Member States:	Member States are the states participating in the SSDC by agreement with the members.
Contracted Member State:	A Contracted Member State is a Member State that has elected to purchase supplemental rebate services through this contract.
SSDC:	Sovereign States Drug Consortium
Year, agreement:	The agreement year is the period to which an agreement with a manufacturer for drug rebates applies.
Year, bid:	The bid year is the calendar year for which rebate bids are procured.
Year, calendar:	A calendar year begins with January and ends with December of any given year.
Year, contract:	The contract year is the period that ends in July of each year. The first contract year of this contract begins with November 2007 and ends with July 2008. Each subsequent year begins with August and ends in July of the following year during the term of the contract.
Year, fiscal:	The fiscal year in this contract is the fiscal year for the State of Vermont, July 1 of a year through June 30 of the following year.
Year, mid:	Refers to a rebate bid procurement activity that occurs during an existing bid year.

III. GENERAL DELIVERABLES

The SSDC Member States believe that components of their supplemental drug rebate program are broadly defined as:

- Member States' utilization data compilation: Compilation of Member States' produced drug utilization data for presentation to manufacturers as part of the annual bid procurement.
- Rebate bid solicitation: Communication with manufacturers to obtain bids and the provision of the vehicle(s) for manufacturers to submit bids.
- Bid presentation: Compilation of offered bids for state review.
- Bid review: Review of offered bids by states collectively and individually to determine what best meets the needs of the select and/or individual states.
- Rebate bid negotiation: Negotiation that may occur at the request of a state or states after bid review.
- Bid selection: State specific selection(s) within drug classes.
- Bid selection notification: Notification to manufacturer.
- General collective administrative functions: Including but not limited to general communications with participating states, manufacturers, and others; notification to manufacturers of Member State participation during agreement year(s) including announcements of changes and management of the Addendums to Member State manufacturer agreements that officially document participation in the SSDC; data development, analysis and reporting; data compilation and distribution; manufacturer participation tracking; drug representation tracking; and meeting management.
- Contract finalization: Execution of contracts using each state's contract format.
- Preferred drug list (PDL) development: Development of state specific PDLs.

- Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.
- Contract management: Management of the terms and conditions of each state's executed contracts.
- PDL management: Oversight of each state's PDL.
- Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.
- Rebate billing: State specific billing.
- Rebate dispute resolution: State specific rebate dispute management.
- Rebate collections and reporting: State specific collections and reporting.

The SSDC believes that the **sole collective services** shared by Member States are supplemental drug rebate bid procurement and the services necessary to support them. These are:

1. Member States' utilization data compilation.
2. Rebate bid solicitation for annual review and as needed.
3. Bid presentation at an annual meeting and as needed.
4. Rebate bid negotiation annually and as needed.
5. Bid selection notification.
6. General collective administrative functions.

All other components, other than these listed collective services, are the responsibility of the individual Member States. For the performance of the work related to these components the states may use their individual internal and contractual resources working independently; coordinate with other Member States and their resources; and/or seek additional services through the SSDC by mutual agreement. This contract is in support of this latter arrangement. The services to be provided under the terms and conditions of this contract are those components **other than the sole collective services** shared by Member States. The Contractor shall be responsible for the provision of specified services as determined by individual Member States beginning November 1, 2007.

A. Additional components of Member States' supplemental drug rebate programs

Additional components of Member States' supplemental drug rebate programs are provided under this Contract are subject to future mutual agreement by all parties. These additional components include some or all of the following:

1. Bid review: Review of offered bids by states collectively and individually to determine what best meets the needs of the select and/or individual states.
2. Bid selection: State specific selection(s) within drug classes.
3. Contract finalization: Execution of contracts using each state's contract format.
4. Preferred drug list (PDL) development: Development of state specific PDLs.
5. Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.
6. Contract management: Management of the terms and conditions of each state's executed contracts.
7. PDL management: Oversight of each state's PDL.
8. Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.
9. Rebate billing: State specific billing.
10. Rebate dispute resolution: State specific rebate dispute management.
11. Rebate collections and reporting: State specific collections and reporting.

B. General additional component related administrative functions

The contractor shall be responsible for general administrative functions related to services provided under this contract to specific Contracted Member States. These functions include the following:

1. Contractor organization and staffing

The Contractor is responsible for providing all resources necessary to deliver the services as specified in this contract.

2. SSDC Member State internal and contracted resources

Extensive interaction and collaboration with each state that is a party to this contract is necessary. The staff of the State and all Contracted Member States of the SSDC consists of both state employees and contract employees. A Contracted Member State shall designate its agents in support of its supplemental rebate activities who will work with the Contractor.

3. Electronic and data requirements

The Contractor shall provide or have available data as specified in the Contracted Member State's contract amendment and in compliance with any performance standards specified in the Contracted Member State's contract amendment. The Contractor shall be responsible for the development of data in the course of providing services for the additional components of the Contracted Member State's supplemental drug rebate program. This data shall be used for analysis and reporting. The compilation of this data and any related analysis and/or reports shall be available to the specific Contracted Member State and its staff.

At a minimum, the Contractor must meet the following requirements:

- The Contractor shall have the capacity to accept non-beneficiary specific claims' utilization data and/or drug rebate collection data in a mutually acceptable electronic format. Data sources shall include the Contracted Member State and its specified contractors.
- The Contractor shall consult with the Contracted Member State on the appropriate data collection instrument(s) required.
- Standard reports and ad-hoc reports that support decision making shall be required.
- The Contractor shall capture and maintain data.
- The Contractor shall provide data in a timely manner to the Contracted Member State upon request and/or at regular, agreed-upon intervals.
- Comprehensive report formats, data dictionaries, file specifications and code books shall be provided to the Contracted Member State as soon as they are available and in advance of any related data transfer.

4. Meetings

The Contractor shall organize and manage meetings necessary for the performance of services provided under this contract as specified in the Contracted Member State's contract amendment and in compliance with any performance standards specified in the Contracted Member State's contract amendment. This includes scheduling and providing support materials.

5. Printed and internet posted materials

The Contractor shall request and receive approval from the Contracted Member State in advance of distribution or internet posting of any materials in support of any activities specified in the Contracted Member State's contract amendment and in compliance with any performance standards specified in the Contracted Member State's contract amendment.

6. Communications

The Contractor shall assure capacity to provide ready communication as specified in the Contracted Member State's contract amendment and in compliance with any performance standards specified in the Contracted Member State's contract amendment. These communications may involve telephones, fax machines, e-mail, and mail involving the U.S. Postal Service and other vendors; e.g., FedEx, UPS, etc.

General inquiries from interested parties about the SSDC and concerning the SSDC collective services shared by Member Services for supplemental drug rebate bid procurement shall be addressed exclusively by the contractor providing those collective services. These collective services include:

- a. Member States' utilization data compilation.
- b. Rebate bid solicitation for annual review and as needed.
- c. Bid presentation at an annual meeting and as needed.
- d. Rebate bid negotiation annually and as needed.
- e. Bid selection notification.
- f. General collective administrative functions related to the above.

The Contractor shall direct general inquiries about the SSDC and the SSDC collective services for supplemental drug rebate bid procurement to the specified contractor.

The Contractor shall manage general inquiries and communications as specified in the Contracted Member State's contract amendment and in compliance with any performance standards specified in the Contracted Member State's contract amendment.

All communication shall be both timely and accurate.

7. Confidentiality of manufacturer agreement information

The Contractor shall assure that the terms and conditions of manufacturer agreements known to the Contractor under this contract are not disclosed inappropriately. The Contractor shall fully comply with the conditions of Section 1927 of the Social Security Act [42 U.S.C. 1396r-8] which apply to Medicaid supplemental rebates as well as federal OBRA'90 rebates.

8. Contractor office

The Contractor shall operate from the location as specified in the Contracted Member State's contract amendment.

9. Disaster Recovery

In the event of a natural disaster and unnatural disasters, including but not limited to hacking and acts of terrorism, the Contractor shall have a procedure for assuring that all pieces of work related to this contract are stored in multiple manners so that it may be accessed in the event of such a disaster. For example, backup files should be created on such things as letter files, spreadsheets, web page source files, etc. The Contractor shall provide an implementation disaster recovery and business continuity plan by the effective date of this contract. The Contractor shall provide a full disaster recovery and business continuity plan that must be approved by the specific Contracted Member State no later than 30 days prior to the start of the Contracted Member State's amendment.

10. Post implementation

The Contractor shall be responsible for routine procedure and system maintenance in support of all aspects of operations described in the contracted State's Scope of Work. Changes in operations that impact on the General Deliverables of this contract are subject to the review and approval of the Contracted Member State.

11. Termination of contract

The Contractor shall be required to perform any transition activities at the time this contract and/or any if its amendments terminate.

IV. PERFORMANCE STANDARDS – Please refer to Attachment A – Appendix I.

V. CONTRACT MONITORING REQUIREMENTS

The Contractor recognizes that the State and Contracted Member States will monitor the implementation, operations, and results and outcomes of this contract and its amendments.

All records or information captured and compiled in this contract must be maintained as described in Attachment C, #8:

VI. AFFILIATIONS

The Contractor shall report to the State all affiliations that may affect the performance of its duties under the Contract. This report shall occur as the Contractor enters into any such affiliation during the term of this contract.

In addition, at the execution of this contract and annually on the anniversary of this contract, the Contractor shall submit a declaration regarding V.S.A Title 33, Chapter 19, Subchapter V, § 2001. This states that OVHA shall not enter into a contract with a contractor where the contractor has entered into an agreement or engaged in a practice described in this disclosure unless the Director of OVHA determines and certifies in a required fiscal report to the Vermont General Assembly, that such agreement or practice furthers the financial interests of Vermont, and does not adversely affect the medical interests of Vermont beneficiaries. This requirement applies

to any contractor that provides pharmacy benefit manager related services.

The required declaration addresses each of the items listed below. The Contractor shall identify any agreement entered into related to each item and disclose the financial impact of such agreements on Vermont and on Vermont beneficiaries. This shall be in the form of a letter addressed to the Contract Administrator and signed by an individual in the company authorized to provide this information. This should be provided in a manner that preserves the confidentiality of any proprietary information as determined by the Director of OVHA.

- A. Any agreement with a pharmaceutical manufacturer to favor the manufacturer's products over a competitor's products, or to place the manufacturer's drug on the State's preferred list or formulary, or to switch the drug prescribed by the patient's health care provider with a drug agreed to by the Contractor and the manufacturer;
- B. Any agreement with a pharmaceutical manufacturer to share manufacturer rebates and discounts with the Contractor, or to pay "soft money" or other economic benefits to the Contractor;
- C. Any agreement or practice to bill Vermont health benefit plans for prescription drugs at a cost higher than the Contractor pays the pharmacy;
- D. Any agreement to share revenue with a mail order or internet pharmacy company;
- E. Any agreement to sell prescription drug data concerning Vermont beneficiaries, or data concerning the prescribing practices of the health care providers of Vermont beneficiaries; or
- F. Any other agreement of the Contractor with a pharmaceutical manufacturer, or with wholesale and retail pharmacies affecting the cost of pharmacy benefits provided to Vermont beneficiaries.

VII. STATE RESPONSIBILITIES

While the Contractor shall perform the duties of this contract for specific Contracted Member States, the State shall assume the following responsibilities with regard to this contract:

- A. Designate a Project Manager to represent the State in all matters pertaining to the contract, including:
 - monitoring Contractor compliance with contract and amendment terms;
 - monitoring Contractor's progress;
 - resolving issues related to amendment implementation and operation; and
 - resolving issues between the Contractor and the Contracted Member State(s) and/or their contracted resources and/or the SSDC rebate bid procurement shared collective services contractor.
- B. Notify the Contractor in a timely manner of all pertinent changes in the policy, procedures or operational systems of the OVHA, the SSDC, and/or the Contracted Member State(s) that affect or depend upon Contractor's operations or activities.
- C. Provide the Contractor, in a timely manner, any information regarding any Contracted Member State or federal regulations, policies or statutes, or changes thereof, which are relevant to the Contractor's performance.
- D. Provide the Contractor with information and otherwise assist the Contractor in responding to complex inquiries regarding Contracted Member State policies.
- E. Provide technical assistance in resolving problems associated with data exchanges between the Contractor and the Contracted Member States or its contracted resources.

- F. Provide the Contractor any other information that the State deems relevant in order to fulfill the duties required by this contract.

- G. Reimburse the Contractor on a monthly basis in accordance with procedures as specified in the Contracted Member State's contract amendment and in compliance with any performance standards specified in the Contracted Member State's contract amendment, upon receipt of a properly completed invoice.

**ATTACHMENT A
SCOPE OF WORK**

**APPENDIX I
PERFORMANCE STANDARDS & OPERATIONAL METRICS
SSDC ADDITIONAL SERVICES**

The Contractor's Scope of Work is as specified by Contracted Member State specific contract amendment. The contract amendment shall include performance standards and operational metrics that are specified in this Appendix.

**ATTACHMENT B
PAYMENT PROVISIONS**

I. OVERVIEW

The components of the Sovereign States Drug Consortium (SSDC) Medicaid supplemental drug rebate program are broadly defined as:

- Member States' utilization data compilation: Compilation of Member States' produced drug utilization data for presentation to manufacturers as part of the annual bid procurement.
- Rebate bid solicitation: Communication with manufacturers to obtain bids and the provision of the vehicle(s) for manufacturers to submit bids.
- Bid presentation: Compilation of offered bids for state review.
- Bid review: Review of offered bids by states collectively and individually to determine what best meets the needs of the select and/or individual states.
- Rebate bid negotiation: Negotiation that may occur at the request of a state or states after bid review.
- Bid selection: State specific selection(s) within drug classes.
- Bid selection notification: Notification to manufacturer.
- General collective administrative functions: Including but not limited to general communications with participating states, manufacturers, and others; notification to manufacturers of Member State participation during agreement year(s) including announcements of changes and management of the Addendums to Member State manufacturer agreements that officially document participation in the SSDC; data development, analysis and reporting; data compilation and distribution; manufacturer participation tracking; drug representation tracking; and meeting management.
- Contract finalization: Execution of contracts using each state's contract format.
- Preferred drug list (PDL) development: Development of state specific PDLs.
- Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.
- Contract management: Management of the terms and conditions of each state's executed contracts.
- PDL management: Oversight of each state's PDL.
- Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.
- Rebate billing: State specific billing.
- Rebate dispute resolution: State specific rebate dispute management.
- Rebate collections and reporting: State specific collections and reporting.

The **sole collective services** shared by SSDC Member States are supplemental drug rebate bid procurement and the services necessary to support them. These are:

1. Member States' utilization data compilation.
2. Rebate bid solicitation for annual review and as needed.
3. Bid presentation at an annual meeting and as needed.
4. Rebate bid negotiation annually and as needed.
5. Bid selection notification.
6. General collective administrative functions.

These six **sole collective services** and services necessary to incorporate a new state into SSDC operations are

not services to be provided under the terms and conditions of this contract. The services to be provided under the terms and conditions of this contract are those components **other than the sole collective services** shared by Member States. The Contractor shall be responsible for the provision of the specified services as determined by individual Member States beginning November 1, 2007 subject to each Contracted Member State's contract amendment.

II. SSDC ADDITIONAL COMPONENTS SERVICES

Payments for services will be subject to the Contracted Member State's contract amendment for additional components to its supplemental drug rebate program and administrative functions related to the components. The additional components include some or all of the following:

1. Bid review: Review of offered bids by states collectively and individually to determine what best meets the needs of the select and/or individual states.
2. Bid selection: State specific selection(s) within drug classes.
3. Contract finalization: Execution of contracts using each state's contract format.
4. Preferred drug list (PDL) development: Development of state specific PDLs.
5. Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.
6. Contract management: Management of the terms and conditions of each state's executed contracts.
7. PDL management: Oversight of each state's PDL.
8. Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.
9. Rebate billing: State specific billing.
10. Rebate dispute resolution: State specific rebate dispute management.
11. Rebate collections and reporting: State specific collections and reporting.

Amounts shall be determined upon the mutual agreement of the Contractor and Contracted Member State and specified in the contract amendment. The cost of the required administrative functions shall be included in the service fee. Payments shall be conditioned upon the terms and conditions of the Contracted Member State's contract amendment.

Payments for services will be made monthly. Monthly services may be billed on or after the first of the month following the month of service. The Contract Administrator has fifteen days to review bills and authorize payments. Payments will be made within thirty (30) days of authorization.

The Contractor agrees to a retainage of ten percent (10%) of the total amount of each contract amendment subject to the terms and conditions specified in the Contracted Member State's contract amendment. Retainage is intended to assure complete and timely delivery of services under this contract. Payments may be further reduced by penalties for performance standards' failures as described in this Attachment.

III. PENALTIES FOR PERFORMANCE STANDARD FAILURES

Penalties for Performance Standards' Failures

The Contractor agrees to abide by Performance Standards and Penalties as established by the Contractor and the Contracted Member State and specified in contract amendment(s).

IV. OTHER

1. The Contractor will submit a monthly bill/invoice for each Contracted Member State for services rendered under this contract to:

Ann Rugg, Deputy Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495-1201

2. The State will remit all payments electronically as specified by the Contractor. The Contractor's point of contact shall be:

Thomas E. Sullivan, Legal Counsel
MedMetrics Health Partners, Inc.
100 Century Drive
Worcester, MA 01606

ATTACHMENT C
CUSTOMARY STATE CONTRACT PROVISIONS

1. **Entire Agreement.** This contract represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law.** This contract will be governed by the laws of the State of Vermont.
3. **Appropriations.** If this contract extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this contract, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriations authority.
4. **No Employee Benefits for Contractors.** The contractor understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers' compensation or other benefits or services available to State employees, nor will the State withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the contract. The contractor understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the contractor, and information as to contract income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
5. **Independence, Liability.** The contractor will act in an independent capacity and not as officers or employees of the State. The Contractor shall indemnify, defend, and hold harmless the State and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of the contractor's acts and/or omissions in the performance of this contract. The contractor shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this contract.
6. **Insurance.** Before commencing work on this contract the contractor must provide certificates of insurance to show that the following minimum coverage is in effect. The contractor must notify the State no more than 10 days after receiving cancellation notice of any required insurance policy. It is the responsibility of the contractor to maintain current certificates of insurance on file with the State through the term of the contract. Failure to maintain the required insurance shall constitute a material breach of this contract.

Workers' Compensation: With respect to all operations performed, the contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the

contract, the contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$ 1,000,000 Per Occurrence
\$ 1,000,000 General Aggregate
\$ 1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/Legal Liability

Automotive Liability: The contractor shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the contract. Limits of coverage shall not be less than: \$ 1,000,000 combined single limit.

Professional Liability: Before commencing work on this contract and throughout the term of this contract, the contractor shall procure and maintain professional liability insurance for any and all services performed under this contract, with minimum coverage of \$ N/A per occurrence.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that have been established to protect the interests of the State.

7. **Reliance by the State on Representations.** All payments by the State under this contract will be made in reliance upon the accuracy of all prior representations by the contractor, including but not limited to bills, invoices, progress reports and other proofs of work.
8. **Records Available for Audit.** The contractor will maintain all books, documents, payroll, papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the contract and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this contract.
9. **Fair Employment Practices and Americans with Disabilities Act.** Contractor agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair

employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the contractor under this contract. Contractor further agrees to include this provision in all subcontracts.

10. **Set Off.** The State may set off any sums which the contractor owes the State against any sums due the contractor under this contract; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

11. **Taxes Due to the State.**

a. Contractor understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

b. Contractor certifies under the pains and penalties of perjury that, as of the date the contract is signed, the contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

c. Contractor understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the contractor is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

d. Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the contractor has no further legal recourse to contest the amounts due.

12. **Child Support.** (Applicable if the contractor is a natural person, not a corporation or partnership.) Contractor states that, as of the date the contract is signed, he/she:

a. is not under any obligation to pay child support; or

b. is under such an obligation and is in good standing with respect to that obligation; or

c. has agreed to a payment plan with the Vermont Office of Child Support and is in full compliance with that plan.

Contractor makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Contractor is a resident of Vermont, contractor makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

13. **Subcontractors.** Contractor shall not assign or subcontract the performance of this agreement

or any portion thereof to any other contractor without the prior written approval of the State. Contractor also agrees to include in all subcontract agreements a tax certification in accordance with paragraph 11 above.

Notwithstanding the foregoing, the State agrees that the contractor may assign this contract, including all of the contractor's rights and obligations hereunder, to any successor in interest to the contractor arising out of the sale of or reorganization of the contractor.

14. **No Gifts or Gratuities.** Contractor shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this contract.
15. **Copies.** All written reports prepared under this contract will be printed using both sides of the paper.
16. **Certification Regarding Debarment.** Contractor certifies under pains and penalties of perjury that, as of the date that this contract is signed, neither contractor nor contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

ATTACHMENT D - CERTIFICATE OF INSURANCE

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
 10/15/07

PRODUCER Sullivan Insurance Group, Inc. One Chestnut Place 10 Chestnut Street Worcester, MA 01608-2804	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Public Sector Partners, Inc. P.O. Box 15153 Worcester, MA 01615-0153	INSURER A: The Hartford	
	INSURER B: Greenwich Insurance Co.	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR _____ _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	08SBANB5817	01/22/07	01/22/08	EACH OCCURRENCE	\$2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
						MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$2,000,000
						GENERAL AGGREGATE	\$4,000,000
						PRODUCTS - COMP/OP AGG	\$4,000,000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS _____				COMBINED SINGLE LIMIT (Ea accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN EA ACC AGG	\$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE _____ _____ DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	08SBANB5817	01/22/07	01/22/08	EACH OCCURRENCE	\$2,000,000
						AGGREGATE	\$2,000,000
							\$
							\$
							\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS	OTH-ER
						E.L. EACH ACCIDENT	\$
						E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$
B		OTHER Directors &	ELU9778307	05/01/07	05/01/08	5,000,000	\$25,000 retention

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

State of Vermont
 Office of Vermont Health Access

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

John T. Ardreoli

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between **the State of Vermont Agency of Human Services operating by and through its Office of Vermont Health Access** (“Covered Entity”) and MedMetrics Health Partners, Inc., (“Business Associate”) as of November 1, 2007 (“Effective Date”). This Agreement supplements and is made a part of the Contract to which it is an attachment.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) including the Standards for the Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 (“Privacy Rule”) and the Security Standards at 45 CFR Parts 160 and 164 (“Security Rule”).

The parties agree as follows:

1. **Definitions.** All capitalized terms in this Agreement have the meanings identified in this Agreement, 45 CFR Part 160, or 45 CFR Part 164.

The term “Services” includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR 160.103 under the definition of Business Associate.

The term “Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g). All references to “PHI” mean Protected Health Information. All references to “Electronic PHI” mean Electronic Protected Health Information.

2. **Permitted and Required Uses/Disclosures of PHI.**

- 2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services provided that any use or disclosure would not violate the minimum necessary policies and procedures of Covered Entity. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

- 2.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions.

Business Associate may only disclose PHI for the purposes authorized by this Agreement:

- (a) to its agents (including subcontractors) in accordance with Sections 6 and 14 or (b) as otherwise permitted by Section 3.

3. **Business Activities.** Business Associate may use PHI received in its capacity as a “Business Associate” to Covered Entity if necessary for Business Associate’s proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as “Business Associate” to Covered Entity for Business Associate’s proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if (a) Business Associate obtains reasonable written assurances via a written contract from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b) the person promptly notifies Business Associate (who in turn will promptly notify Covered Entity) in writing of any instances of which it is aware in which the confidentiality of the PHI has been breached. Uses and disclosures of PHI for the purposes identified in this Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.
4. **Safeguards.** Business Associate shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.
5. **Reporting.** Business Associate shall report in writing to Covered Entity any use or disclosure of PHI in violation of this Agreement by Business Associate or its agents including its subcontractors. Business Associate shall provide this written report promptly after it becomes aware of such use or disclosure. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate the impermissible use or disclosure. Consistent with 45 CFR 164.502(j)(1) Business Associate may use PHI to report violations of law to federal and state authorities.
6. **Agreements by Third Parties.** Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written contract to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 12. Business Associate must enter into the written contract before any use or disclosure of PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the contract concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written contract to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.
7. **Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Business Associate shall promptly forward to

Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

8. **Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Business Associate shall promptly forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.
9. **Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Business Associate shall promptly forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.
10. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity (without regard to the attorney-client or other applicable legal privileges) upon Covered Entity's request in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.
11. **Termination.**
 - 11.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 15.11.
 - 11.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate this Contract without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to

cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

12. Return/Destruction of PHI.

12.1 Business Associate in connection with the expiration or termination of this Contract shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this Contract that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

12.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI.

13. Notice/Training. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in information security awareness training regarding the use, confidentiality, and security of PHI.

14. Security Rule Obligations. The following provisions of this Section 14 apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

14.1 Business Associate shall implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

14.2 Business Associate shall ensure that any agent (including a subcontractor) to whom it provides Electronic PHI agrees in a written contract to implement and use administrative, physical, and technical safeguards that reasonably and appropriately

protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written contract before any use or disclosure of Electronic PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the contract concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written contract to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any agent without the prior written consent of Covered Entity.

- 14.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide this written report promptly after it becomes aware of any such Security Incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.
- 14.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

15. Miscellaneous.

- 15.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Contract continue in effect.
- 15.2 Any reference to “promptly” in this Agreement shall mean no more than seven (7) business days after the circumstance or event at issue has transpired. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended or renumbered.
- 15.3 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of a use or disclosure of PHI in violation of any provision of this Agreement.
- 15.4 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.
- 15.5 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.
- 15.6 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule) in construing the meaning and effect of this Agreement.

- 15.7 This Agreement may be amended or modified, and any right under this Agreement may be waived, only by a writing signed by an authorized representative of each party.
- 15.8 Nothing express or implied in this Agreement is intended to confer upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever. Notwithstanding the foregoing, the Covered Entity in this Agreement is the Agency of Human Services operating by and through its **Office of Vermont Health Access**. Covered Entity and Business Associate agree that the term "Covered Entity" as used in this Agreement also means any other Department, Division or Office of the Agency of Human Services to the extent that such other Department, Division, or Office has a relationship with Business Associate that pursuant to the Privacy or Security Rules would require entry into an agreement of this type.
- 15.9 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.
- 15.10 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity under this Contract even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.
- 15.11 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 12.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 9 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.
- 15.12 This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written agreements between the parties in such respect.

**ATTACHMENT F
CUSTOMARY CONTRACT PROVISIONS**

1. **Agency of Human Services.** Field Services Directors will share oversight with the department (or office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base.** The contractor will ensure that relevant descriptive information regarding its agency, programs and/or contact information is contained in Vermont's 211 database and is accurate and up to date.
3. **Medicaid Program Contractors.**

Inspection of Records. Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to :

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and

Inspect and audit any financial records of such contractor or subcontractor.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the contractor or subcontractor's performance is inadequate. The contractor agrees to make available upon request to the Agency of Human Services; the Office of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the contractor and service providers.

Medicaid Notification of Termination Requirements: Any contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Office of Vermont Health Access, Managed Care Organization enrollee notification requirements.

Encounter Data: Any contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The contractor agrees to comply with the non-discrimination requirements of

Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

5. **Voter Registration.** When designated by the Secretary of State, the contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.
6. **Drug Free Workplace Act.** The contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.
7. **Privacy and Security Standards.**

Protected Health Information: The contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. The contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The contractor agrees to comply with the requirements of AHS Rule No. 96-23 concerning access to information. The contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

Social Security numbers: The contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual who provides care, custody, treatment, services, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The contractor will check the Adult Abuse

Registry in the Department of Disabilities, Aging and Independent Living. Unless the contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the contractor shall also check the Central Child Abuse Registry. (See 33 V.S.A. §4919 & 33 V.S.A. §6911).

9. **Child Abuse Reporting.** Notwithstanding the provision of 33 V.S.A. §4913(a) any agent or employee of the contractor who has reasonable cause to believe that a child has been abused or neglected as defined in Chapter 49 of Title 33 V.S.A. shall report the suspected abuse or neglect to the Commissioner of the Department for Children and Families within one working day. The report shall contain the information required by 33 V.S.A. §4914.
10. **Work Product Ownership.** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract - including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio, pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the State of Vermont and shall be delivered to the State of Vermont upon 30 days notice by the State. With respect to software computer programs and / or source codes developed for the State, the work shall be considered "work for hire," i.e., the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed.
11. **Software Development.** Without exception or alternate options, it is the State's policy that any application software which is purchased to support a business, operational or service delivery, activity of state government must include the licensing or ownership of the source code. The source code must be delivered to, and reside in, the state agency or department that supports and/or maintains the application and must be available for modification and/or maintenance by state personnel at the sole discretion and option of the State. Source code held in escrow by a third party does not meet the requirement of this policy.
12. **Intellectual Property Ownership.** All work products and items delivered or produced under this agreement will be the exclusive property of the State of Vermont. This includes, but is not limited to, software, documentation, and development materials. The contractor shall not sell or copyright a work product or item produced under this contract without explicit permission from the State. The contractor shall not make information entered in the application available for uses by any other party than the State of Vermont without prior authorization by the State.
13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

14. **Non-discrimination.** The contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.
15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

ATTACHMENT G - CD - LISTING BY FOLDER

<u>Folder</u>	<u>Name of File</u>
1. RFP	1. RFP for Serviced to Procure Medicaid Supplement Rebate 2. RFP Q & A 5/18/07 3a. Mandatory Requirements Compliance Opportunity 6/8/07 3b. MHP SSDC RFP Evaluation Summary Bidder 6/8/08 4. Additional Medicaid Supplemental Drug Rebate Activity Com.
2. MHP Proposal	1a. MHP - Cover Letter, Attachment B, Affirmation of Understanding 1b. MHP - SSDC Technical Proposal 5/24/07 1c. MHP - Attachment A 2004 Financials 1d. MHP - Attachment A 2005 Financials 1e. MHP - Attachment A 2006 Financials 1f. MHP - Attachment A inPharmative Financials 1g. MHP - Attachment C - Sample Reports 1h. MHP - VT Attachment AHS Rule 96-23 1i. MHP - Transition Plan 2a. MHP - Response to Mandatory Requirements Com. 2b. MHP SSDC RFP Evaluation Summary Bidders 6/12/07 2c. MHP - inPharmative 2005 Financial Statements 2d. MHP - SSDC Follow-Up Response 6/12/07

STAPLES

Contract # 11935
Med Metrics Health Partners
SSDC

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