

1. **Parties.** This is a contract for personal services between the State of Vermont, Office of Vermont Health Access (OVHA) (hereafter called "State"), and **TierMed Systems Division of D2Hawkeye, Inc.**, a wholly-owned subsidiary of Verisk Health, Inc., with a principal place of business at 130 Turner Street, 7th Floor, Waltham, MA 02453 (hereafter called "Contractor"). Contractor's form of business organization is a corporation. 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.** This Contract is for services and license for Healthcare Effectiveness Data and Information Set (HEDIS) measures. The services and software license provisions are set forth 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 **\$140,000.00.**
4. **Contract Term.** The period of Contractor's performance shall begin on the date contract is signed and executed by both parties and will end 1 year after the contract is signed and executed by both parties. The contract may be extended for two additional one year extensions beyond this base period.
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 CIO/Commissioner of DII **is not** required.

Approval by the Secretary of Administration **is** 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 representatives of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least **30** days in advance. Parties agree there will be no proportional refund of annual fees in the event of early termination. Upon termination, the State shall pay all fees accrued through the date of termination.
8. **Attachments.** This contract consists of 31 pages including the following attachments, which are incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions

Attachment C - Customary State Contract provisions

Attachment D - Modifications of Customary Contract Provisions

Attachment E - Business Associate Agreement

Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E
- 7). Attachment F

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

BY THE STATE OF VERMONT:

Date: 5/28/10

Signature: [Handwritten Signature]

Name: Susan Besio

Title: Director

Office of Vermont Health Access

BY THE CONTRACTOR:

Date: 5/12/10

Signature: [Handwritten Signature]

Name: DAVID N. HANSEN

Title: AUP

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

SERVICES AND SOFTWARE LICENSING AGREEMENT

This Services and Software Licensing Agreement (this "Agreement") is made as of the ____ of April, 2010 ("Effective Date"), between the State of Vermont, Office of Vermont Health Access with offices at 312 Hurricane Lane, Suite 201 Williston, Vermont 05495 ("Client") and the TierMed Systems Division of D2 Hawkeye, Inc., a wholly-owned subsidiary of Verisk Health, Inc." having offices at 8330 Commerce Drive, Chanhassen, MN 55317 ("TierMed").

In consideration of the mutual covenants herein, the parties hereto hereby agree as follows:

1 Scope of Services.

- 1.1 **Services.** Subject to Client's performing its obligations hereunder, TierMed shall provide business information processing and related services ("Services") at the prices and containing the features set forth below. References to the term "Agreement" shall be deemed to include all relevant Exhibits to this Agreement, unless the context clearly indicates otherwise.
- 1.2 **Software.** TierMed shall provide Client with access to then-current version of its software within 30 days of the Effective Date of this Agreement. A description of, and the License governing Client's use of, TierMed's software is set forth in Exhibit A ("Licensed Software").

2 Implementation.

- 2.1 **Designation of Project Coordinators.** Each party shall designate in writing one person ("Project Coordinator") who will be the contact person for all implementation issues associated with the performance of this Agreement. Each party may substitute or replace its Project Coordinator at any time upon providing written notice to the other party. Each party shall make its Project Coordinator available for planning sessions, status meetings, telephone consultation, and otherwise as reasonably required to facilitate the implementation of this Agreement.
- 2.2 **Statement of Work.** Implementation services, project scope, project tasks, milestones, responsible parties, acceptance criteria, and deliverables are set forth in Exhibit B.

3 Fees, Invoicing and Taxes.

- 3.1 **Fees.** Client agrees to pay annual fees, as set forth in the schedule below, as full payment for the services described below, and as set forth in the Statement of Work (Exhibit B):

<u>Fee Description</u>	<u>Invoice Date</u>	<u>Annual Fee</u>
TIERMED Engine	Annual Fee upon the start of each annual Term	\$135,000
Compass Navigator Viewer		included
Compass Data Collection		Included
	Total	\$135,000

Fees for the initial one (1) year Term of the Agreement shall not exceed \$135,000 unless additional services are requested by client, as outlined in clause 3.3.

Client shall have the right to renewal Agreement for two (2) successive one (1) year terms. Rates for the renewal periods shall be \$141,750 for the first annual renewal period and \$148,837 for the second annual renewal period.

- 3.2 **Invoicing.** Client shall pay the amount set forth in any invoice within thirty (30) days of the invoice date. Fees are nonrefundable unless otherwise indicated in writing. Client's failure to pay TierMed fees on this basis shall be considered a material breach of this Agreement. Client shall pay TierMed interest on all charges not paid within thirty (30) days at the rate of one percent (1%) per month or the maximum interest permitted by law, whichever is less.
- 3.3 **Other Charges.** All other services and related charges not specifically detailed in this Agreement or any exhibit hereto that Client shall, from time to time, request from TierMed, including, but not limited to additional training, reporting, or Services, shall be documented by a statement of work signed by both parties. Client shall pay TierMed for such services and charges consistent with the payment terms of the statement of work. Unless otherwise agreed to, invoices shall be paid within thirty (30) days of Client's receipt of TierMed's invoice and any appropriate documentation for such other charges. The fees set forth above do not include reimbursable expenses including, but not limited to, travel, or special shipping or delivery charges. Client shall reimburse TierMed for all such out-of-pocket expenses incurred by TierMed in connection with any Services, provided that such expenses are reasonable under the circumstances and are approved by Client in writing in advance.
- 3.4 **Taxes.** Prices set forth in Section 3.1 do not include any applicable taxes. Client shall be responsible for payment to TierMed of any and all federal, state and local sales, excise, use or similar taxes that are levied by a state on the Services and fees under this Agreement.

4 Proprietary Rights.

- 4.1 **Proprietary Rights.** Except as expressly provided in this Agreement, TierMed retains all right, title, and interest, including without limitation all copyrights, trade secrets, patents, trademarks, service marks, and all other proprietary rights in and to all TierMed Confidential Information as defined in Section 7 below including without limitation the Licensed Program (as defined in Exhibit A). Except as expressly provided in this Agreement, Client retains all right, title, and interest, including without limitation all copyrights, trade secrets, patents, trademarks, service marks, and all other proprietary rights in and to all Client Confidential Information as defined in Section 7.

5 Warranty and Disclaimer.

- 5.1 **General.** TierMed represents and warrants that the services provided hereunder shall be provided in a professional manner in accordance with industry standards and that the software will operate in substantial compliance with the software documentation and the descriptions for the software set forth in Exhibit A.
- 5.2 **NCQA Certification.** TierMed represents and warrants that it has obtained, and will maintain during the term of this Agreement, National Committee for Quality Assurance ("NCQA") certification.

- 5.3 **Disclaimer.** EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT AND THE ATTACHED EXHIBITS AND SCHEDULES, THE TERMED SERVICES AND THE LICENSED PROGRAMS (AS DEFINED IN EXHIBIT A) AND ANY RESULTS OBTAINED THEREFROM ARE PROVIDED ON AN “AS IS” BASIS, WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
- 6 **Confidential Information.**
- 6.1 **Definition.** The term “Confidential Information” shall mean any information either disclosed in writing or given orally by one Party (the “Disclosing Party”) to the other (the “Receiving Party”) in connection with this Agreement.
- 6.2 **Exclusions.** Notwithstanding Section 7.1, Confidential Information shall exclude information that: (a) was independently developed by the Receiving Party without any use of the Disclosing Party’s Confidential Information or by the Receiving Party’s employees or other agents (or independent contractors hired by the Receiving Party) who have not been exposed to the Disclosing Party’s Confidential Information; (b) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this Agreement and that had a right to disclose it; (c) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving Party; or (d) was rightfully known to the Receiving Party, without restriction, at the time of disclosure.
- 6.3 **Confidentiality of Agreement.** Each party hereto agrees that it shall use reasonable efforts to insure that the other party’s Trade Secrets, and privileged and Confidential Information as described in Exhibit C to this Agreement are protected and kept confidential ; provided, however, that each party may disclose the terms of this Agreement: (1) as required by any court or other governmental body; (2) as otherwise required by law, including the Freedom of Information Act (“FOIA”); (3) to legal counsel of the parties; (4) in connection with the requirements of an initial public offering or securities filing; (5) in confidence, to accountants, banks, and financing sources and their advisors; (6) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; or (7) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like. Notwithstanding the above, Verisk Health’s trade secrets as described in Exhibit C are protected from disclosure under the Uniform Trade Secrets Act. Verisk Health’s trade secrets are also exempt from the government’s disclosure obligations under FOIA, and shall not be disclosed with the requesting public (unless specifically authorized by law). Client shall notify Verisk Health in writing before any information that Client perceives as Verisk Health Confidential Information is disclosed to a requesting party, so that Verisk Health has a reasonable opportunity to respond and object before such information is disclosed.
- 6.4 **Compelled Disclosure.** If a Receiving Party is, or believes that it will be, compelled by a court or other authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt notice so that the Disclosing Party may take steps to oppose such disclosure.
- 6.5 **Obligations.** The Receiving Party shall treat as confidential all of the Disclosing Party’s Confidential Information and shall not use such Confidential Information except as expressly permitted under this Agreement

6.6 **Privacy.** In the course of performing its obligations under this agreement TierMed will abide by all applicable laws and regulations relating to privacy and the **Business Associate Agreement** that is attached to this Contract as Attachment E. TierMed will defend, indemnify, and hold harmless Client, and its respective directors, officer and employees from and against any claims, costs, losses, damages, judgments and expenses (including reasonable attorneys' fees) arising out of or in connection with any third party claim alleging any breach of TierMed's covenant set forth in this section 6.6.

7 **File Retention.**

7.1 **File Retention.** TierMed will retain all client data for 3 years; however Client will only have access to one year of data in the Licensed Software at any given time. In no event shall the records retention policy of TierMed ever be less than that required by applicable law. TierMed may, after providing Client with ninety (90) days' prior written notice and in conformity with its then-prevailing records retention policy, dispose of all Client data in any manner deemed appropriate by TierMed unless Client, prior to such disposal, furnishes to TierMed written instructions for the disposition of such Files. Any such disposition shall be at Client's expense. At Client's request, TierMed will provide Client, in standard TierMed format and at TierMed's then-standard rates for such format, the Client data then in TierMed's possession which has been requested by Client.

7.2 Licensee acknowledges that Licensor collects from its customers de-identified medical and pharmaceutical claims data and enrollment data to update and refine its products, develop normative databases and for general product development. Licensee agrees to provide its claims and enrollment data to Licensor pursuant to and in accordance with HIPAA requirements.

8 **Term and Termination.**

8.1 **Term.** This Agreement shall commence on the Effective Date and shall continue for a period (the "Term") of One (1) year, and may be renewed for two (2) successive one(1) year terms at the rates outlined in 3.1 herein.

8.2 **Termination for Breach.** Either party hereto may terminate this Agreement immediately upon written notice to the other party if such other party breaches any material term or condition of this Agreement and such breach is not fully cured within thirty (30) days (or five (5) business days if such breach relates to non-payment of fees due hereunder) of notification thereof. Client also may terminate this Agreement in accordance with Exhibit C (the Business Associate Agreement). The nonbreaching party's rights hereunder shall continue in full force and effect.

8.3 **Termination for Bankruptcy or Insolvency.** Either party may terminate this Agreement immediately upon written notice if the other party voluntarily files for bankruptcy or upon the insolvency of the other party.

8.4 **Termination without Cause.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Parties agree there will be no proportional refund of annual fees in the event of early termination.. Upon termination, Client shall pay to TierMed all fees accrued through the date of termination.

8.5 **Effect of Termination.** Upon any termination of this Agreement, all of Client's rights and licenses granted hereunder to use TierMed software and/or user manuals, training materials, and other written materials that relate to the Services and that TierMed normally makes available to its clients

("Documentation") shall immediately terminate. TierMed shall use reasonable efforts to cooperate with Client in the transfer to a successor service provider. Client shall compensate TierMed at its normal hourly rates and for all necessary out-of-pocket expenses incurred in providing such assistance. Notwithstanding the foregoing, under no circumstances will TierMed be required to disclose or make available to Client or any third party any confidential or proprietary information of TierMed.

8.6 **Survival of Provisions.** The provisions of Sections 3 (but only to the extent that payment is for services rendered prior to termination), 4, 5, 6, 7, 8, 9, 10, 11.2, 11.3, 11.9, and 11.10 and Exhibits A (Sections 2.2, 2.3, 3 and 4), and C shall survive any expiration of termination of this Agreement. All other rights and obligations of the parties shall cease upon termination of this Agreement.

9 **Limitation of Liability.**

9.1 **Failure of Essential Purpose.** The limitations in this Section 10 shall apply even if TierMed or Client has been advised of the possibility of such damage, and notwithstanding the failure of essential purpose of any limited remedy set forth herein.

10 **General Provisions.**

10.1 **Nonassignability and Binding Effect.** Neither party to this Agreement shall transfer or assign its rights and obligations under this Agreement without the prior written consent of the other party, except that either party may assign this agreement to an entity that acquires all or substantially all of the business to which this Agreement relates, whether by stock purchase, asset purchase, merger or otherwise provided that the other party to such merger, consolidation or sale is not a competitor of the other party to this Agreement. Any purported transfer or assignment in violation of the foregoing shall be void and of no force or effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

10.2 **Governing Law; Forum Selection.** THE LAWS OF THE STATE OF VERMONT SHALL GOVERN THIS AGREEMENT, WITHOUT REFERENCE TO ITS CONFLICTS OF LAWS PRINCIPLES, AS APPLIED TO CONTRACTS MADE AND TO BE PERFORMED IN VERMONT.

10.3 **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be personally delivered, or by messenger or a recognized overnight delivery service having a delivery tracking and verification system (such as Federal Express, UPS, or DHL) charges prepaid. or sent by first class United States mail or by overnight courier, addressed to the other party hereto at the addresses set forth below. Notices sent via mail or overnight courier shall be deemed to have been given one (1) business day after mailing or deposit with the courier; provided, however, in the case of notice sent by mail that a copy of the notice also shall be sent on the date of mailing by facsimile transmission to the fax number designated by the other party.

For TierMed, LLC:

TierMed Systems
8330 Commerce Drive
Chanhassen, MN 55317
Attn: Mark Carlson
Phone: 952-368-9970

For Client:

Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
Attn: Mary Andes
Phone: 802-879-2835

- 10.4 **Excusable Nonperformance.** Notwithstanding any other provision of this Agreement, neither party hereto shall be responsible for damages for any delay, interruption in Services, or failure to perform to the extent arising out of causes beyond such party's reasonable control which prevents their performance, provided prompt notice thereof is given to the other party. Such events may include but are not limited to acts of God or a public enemy, acts of the Government in its sovereign or contractual capacity, earthquake, fire, floods, or degradation of telephone or other communication service.
- 10.5 **Independent Contractors.** The parties hereto are independent contractors. Nothing contained herein or done pursuant to this Agreement shall constitute either party as the agent of the other party for any purpose or in any sense whatsoever, or constitute the parties as partners or joint venturers nor shall any TierMed employee be considered an employee of Client for any purposes whatsoever.
- 10.6 **No Waiver.** The failure of either party hereto to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either party to enforce each and every such provision thereafter. The express waiver by either party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.
- 10.7 **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- 10.8 **Severability.** In the event any section, paragraph, subparagraph, or provision of this Agreement shall be determined to be contrary to governing law or otherwise unenforceable, all remaining portions of this Agreement shall be enforced to the maximum extent permitted by law. That section, paragraph, subparagraph or provision found unenforceable shall first be construed or interpreted, if possible, to render it enforceable and, if that proves impossible, shall be severed and disregarded, with the remainder of this Agreement enforced to the maximum extent permitted by law.
- 10.9 **Disputes Resolution.** The parties shall attempt, in good faith, to resolve any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. The parties agree to meet to discuss the dispute, controversy or claim within 30 days of receipt of written request by a party for such a meeting.
- 10.10 **TierMed's Corporate Authority and Due Execution.** TierMed represents that (a) it has the corporate power and authority to execute, deliver, and perform this Agreement and that the execution, delivery, and performance of this Agreement by TierMed have been duly authorized by all necessary corporate

action; and (b) that this Agreement has been duly executed and delivered by TierMed and constitutes the legal, valid, and binding obligation of TierMed enforceable against TierMed in accordance with its terms.

- 10.11 **Client's Corporate Authority and Due Execution.** Client represents that (a) it has the corporate power and authority to execute, deliver, and perform this Agreement and that the execution, delivery, and performance of this Agreement by Client have been duly authorized by all necessary corporate action; and (b) that this Agreement has been duly executed and delivered by Client and constitutes the legal, valid, and binding obligation of Client enforceable against Client in accordance with its terms.
- 10.12 **Counterparts.** This Agreement may be executed in counterparts, duplicate originals or facsimiles, each of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement.
- 10.13 **Entire Agreement.** This Agreement, including the attached Exhibits constitutes the full and complete understanding and agreement of the parties hereto relating to the subject matter hereof and supersedes all prior understandings and agreements relating to such subject matter. Any waiver, modification, or amendment of any provision of this Agreement shall be effective only if in writing and signed by both parties. The provisions of this Agreement shall prevail over any additional or different provisions in a purchase order, acceptance notice, or other similar document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by duly authorized officers or representatives as of the Effective Date.

TierMed Systems division of
D2Hawkeye, Inc., a wholly owned
subsidiary of Verisk Health, Inc."

Client: Office of Vermont Health Access

By: David N. Hansen

By: Susan W. Besio

Name: David N. Hansen

Name: Susan W. Besio

Title: AVP

Title: Director

Date: 5/12/10

Date: 5/28/10

EXHIBIT A - COMPASS NAVIGATOR SOFTWARE LICENSE

This Compass Navigator Software License ("License") is an exhibit to the Services And Software Licensing Agreement ("Master Agreement") dated the ____ of April, 2010, by and between the State of Vermont, Office of Vermont Health Access ("Client") and TierMed Systems division of D2Hawkeye, Inc., a wholly-owned subsidiary of Verisk Health, Inc." ("TierMed").

1 Scope of License.

1.1 **Scope of License.** This Compass Navigator License ("License") serves as an Exhibit to the Services and Software License Agreement ("Master Agreement") and is made a part thereof. In the event any terms of this License conflict with the terms of the Master Agreement, the terms of this License shall prevail. Under this License, TierMed agrees to provide to Client its Compass Navigator software ("Licensed Programs") as more fully set forth below.

1.1 Compass Navigator Software Description.

Compass Navigator is a suite of software modules, which provide for the calculation and analysis of Healthcare Effectiveness Data and Information Set (HEDIS[®]) measures. HEDIS is developed and maintained by the National Committee for Quality Assurance (NCQA), a not-for-profit organization committed to assessing, reporting on and improving the quality of care provided by organized delivery systems.

Compass Navigator consists of: (i) TIERMED Engine ("TIERMED Engine"), which calculates HEDIS administrative rates and is 100% certified by the NCQA HEDIS Software CertificationSM program, a systematic sampling module that is also 100% certified under the NCQA Software Certification program, a medical record chase module, which identifies health care providers which are likely to possess the medical records needed for the HEDIS hybrid methodology chart review process, a patient level detail (PLD) file generator used for submission of Medicare data to NCQA, and other utilities for extraction of demonstration data, NCQA IDSS submission file creation, and administrative updates to sample data; (ii) Compass Navigator Viewer ("Compass Navigator Viewer"), which provides HEDIS reports, detailed data drills for analysis, audit, comparative studies, intervention support, and other data analysis features; and (iii) Compass Data Collection ("Compass Data Collection") program, which allows clinicians and other users to gather hybrid data from medical records in remote clinical locations and subsequently synchronize the gathered data into a central database.

HEDIS[®] is a registered trademark of the National Committee for Quality Assurance (NCQA).

HEDIS Software CertificationSM is a service mark of the National Committee for Quality Assurance (NCQA).

2 Software License Grant.

2.1 **Grant Terms.** Subject to and conditioned upon Client's continued compliance with all the terms and conditions of this License, TierMed hereby grants to Client a personal, nonexclusive, nontransferable license to use the Licensed Program during the Term of the Master Agreement at Client's offices noted in the Master Agreement solely in conjunction with the Services and solely for Client's internal business purposes. Client shall have the right to make one (1) copy of the Licensed Program for archival purposes.

2.2 Limitations. Client shall not reverse engineer, reverse assemble, decompile, create derivative works, modify, or otherwise attempt to derive the source code of the Licensed Program or; except as expressly set forth in this Agreement, copy, modify, or create derivative works of the Licensed Program..

2.3 Ownership. The Licensed Program is licensed, not sold hereunder. TierMed retains all right, title and interest in and to the Licensed Program.

3 Limited Warranty and Remedy.

3.1 Limited Programs Warranty. TierMed warrants to Client that TierMed has sufficient rights, title and interest in the Licensed Program to grant this license to Client. TierMed also warrants to Client that during the term of this Agreement the Licensed Programs, if unmodified by and properly used by Client in accordance with the terms of this Agreement, will support the features detailed in TierMed's most current software documentation and will perform in substantial compliance with the descriptions set forth above. TIERMED DOES NOT WARRANT (I) THAT THE LICENSED PROGRAMS WILL MEET CLIENT'S REQUIREMENTS; (II) THAT THE LICENSED PROGRAMS WILL OPERATE IN COMBINATION WITH OTHER SOFTWARE OR HARDWARE WHICH MAY BE SELECTED FOR USE BY CLIENT; OR (III) THAT THE OPERATION OF THE LICENSED PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE.

3.2 Limited Programs Remedy. In the event of any breach by TierMed of the warranty set forth in Section 3.1, TierMed's sole and exclusive obligation and Client's sole and exclusive remedy shall be to, at TierMed's sole option: (i) modify or replace the Licensed Programs such that they support the features detailed in TierMed's most current software documentation or (ii) terminate the Services and refund to Client all fees paid. The above remedy shall be available to Client only if (i) Client promptly notifies TierMed in writing of any breach of the warranty; and (ii) TierMed examination of the Licensed Program discloses that such breach exists.

3.3 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 3 AND SECTION 4 OF THIS EXHIBIT A AND OTHERWISE IN THE MASTER AGREEMENT, THE LICENSED PROGRAMS AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND TIERMED HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, AND STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

4 Intellectual Property.

4.1 Indemnity by TierMed. TierMed warrants that, the Licensed Programs do not infringe any third party's U.S. patent, trade secret, trademark, or copyright. TierMed shall defend, or at its option settle, any claim, suit, or proceeding brought against Client by any third party arising out of any such infringement or alleged infringement, provided that (i) Client gives TierMed prompt written notice of any such claim; (ii) TierMed shall have sole control of any such action or settlement negotiations; and (iii) Client provides all reasonable cooperation in connection therewith.

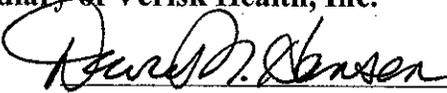
4.2 Remedy. Notwithstanding the foregoing, if it is adjudicatively determined that any Licensed Program or part thereof infringes, or in TierMed's sole opinion, may be found to infringe, a third-party's patent, trade secret, trademark, or copyright, or if the sale or use of the Licensed Program is, as a result, enjoined, then TierMed may, at its sole option and expense to promptly either: (i) procure for Client the right under such patent, trade secret, trademark, or copyright to use the Licensed Program; (ii) replace the Licensed Program with other non-infringing, functionally equivalent Licensed Programs; (iii) modify the Licensed Program (while maintaining its functional equivalency) to make the Licensed

Program non-infringing; or (iv) terminate the license granted to Client under Section 2.1 and TierMed shall refund a prorate portion of the prepaid license fee amounts paid under the Master Agreement.

- 4.3 **Limitation.** Notwithstanding the provisions of Section 4.1 and 4.2 above, TierMed shall have no liability for: (i) combination of the Licensed Program with other software not provided or approved by TierMed, if the infringement would not arise from such Licensed Program standing alone; or (ii) modification of the Licensed Program, unless such modification was made or approved by TierMed, where such infringement would not have occurred but for such modification.
- 4.4 **Disclaimer.** THE FOREGOING PROVISIONS OF THIS SECTION 4 STATE THE ENTIRE LIABILITY AND OBLIGATION OF TIERMED, AND THE EXCLUSIVE REMEDY OF CLIENT, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS, TRADEMARKS, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

**TierMed Systems Division
of D2Hawkeye, Inc., a wholly-owned
subsidiary of Verisk Health, Inc."**

Client: Office of Vermont Health Access

By: 

By: 

Name: David N. Hansen

Name: Susan W. Besio

Title: AVP

Title: Director

Date: 5/12/10

Date: 5/28/10

EXHIBIT B - STATEMENT OF WORK

This Statement of Work ("SOW") made this ____ day of April, 2010 ("Effective Date") is governed by the terms and conditions of the Services And Software Licensing Agreement ("Master Agreement") between the State of Vermont, Office of Vermont Health Access ("Client") and TierMed Systems division of D2Hawkeye, Inc. a wholly owned subsidiary of Verisk Health, Inc. ("TierMed"). If any term or condition of this Statement of Work conflicts with any term or condition of the Master Agreement, the Master Agreement shall control.

The parties shall deliver any notice by U.S. first class mail, express overnight courier, addressed to:

Client:

Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495-2806
Attn: Mary Andes
Phone: 802-879-2835

TierMed:

Mark J. Carlson
TierMed Systems
8330 Commerce Drive
Chanhassen, MN 55317
Phone: 952-368-9970

1 Description of Services: Scope

Client has contracted with TierMed for the provision of support services to enable HEDIS[®] reporting.

Scope

This Statement of Work covers the activities for the provision of services to enable NCQA HEDIS[®] 2008 reporting. TierMed has agreed to provide Client with the business information processing and related services ("Services") set forth below.

TierMed will provide Client secure internet access to the following software modules:

- TIERMED Engine
- Compass Navigator Viewer
- Compass Data Collection

TierMed's Standard support hours are 8:00am – 5:00pm Central Time, Monday through Friday. For support outside Standard support hours, specific arrangements for after-hours support must be made by Client with TierMed a minimum of forty-eight (48) hours in advance of the support being conducted. TierMed will inform Client in advance when a specific request for service requires support outside of the standard support hours.

Services available via:
Email – support@tiermed.com
Phone – 952.368.9970

Consulting Services

Consulting Services are defined as follows:

- Installation and testing of TierMed software on Client's systems.

User Support Services

- TierMed User Support personnel responding to user interface questions related to TierMed's proprietary software.

Input Data Format

The TierMed data input specifications ("Input Specifications") are published on TierMed's client portal ("TierMed Project Site"). TierMed will provide an initial 90-minute phone meeting to review the Input Specifications and answer questions. Further, a TierMed Data Analyst will be designated to answer questions and provide feedback to Client technical personnel on an on-going basis as needed in order to understand and interpret the Input Specifications at no charge.

Audit of Input Data

TierMed will provide data audit processes and reports (the "TierMed Data Audit Tool"), which is a part of the TIERMED Engine product, and which identifies problems and inconsistencies with input data. During the one-day installation at Client's site, TierMed will train the technical personnel designated by Client on the use of the TierMed Data Audit Tool (as well as the rest of the TIERMED Engine).

Further, once Client begins submitting data to TIERMED Engine, TierMed will designate a TierMed Data Analyst to answer questions and provide feedback to Client technical personnel as needed in order to resolve discrepancies in HEDIS output results. If it is determined that the TierMed Data Audit Tool failed to identify erroneous input data for the TIERMED Engine, then the TierMed consulting services necessary to correct the problem will be provided at no charge. If it is determined that the TierMed Data Audit Tool clearly identified erroneous input data for the TIERMED Engine, which was ignored and subsequently used as input to the TIERMED Engine, TierMed will charge its standard rate for such services to correct the problem (\$180/hour).

Internet and Remote Access

Client agrees to provide remote access to its systems, as needed, in order for TierMed to fulfill obligations as defined herein.

Client agrees to provide Internet access for the TIERMED Engine software for the purposes of product support and license verification.

Correction of Client Input Data

In the event that Client is unable or unwilling to create input data to utilize TIERMED Engine to process data and produce correct results, Client will send its then-current input data ("Client-Formatted Input Data") to TierMed systems for analysis and processing. Once analyzed, TierMed will do one of the following:

- A. If the Client-Formatted Input Data is determined to be incorrectly formatted for input to the TIERMED Engine, TierMed will create a client translation process ("Client Data Translation") and translate Client-Formatted Input Data (at TierMed's standard rate of \$180/hour) in order for Client-Formatted Input Data to correctly be presented as input to the TIERMED Engine. If data that is required for TIERMED Engine was omitted from Client-Formatted Input Data, Client agrees to modify Client-Formatted Input Data as requested by TierMed, and send such data to TierMed as

needed. Once the Client Data Translation is developed, TierMed will provide a "plug-in" to its TIERMED Engine, which will incorporate the Client Data Translation into the TIERMED Engine for Client to use for future HEDIS runs. Client agrees to utilize the Client-Formatted Input Data format for future runs of the TIERMED Engine at Client's site.

B. If the Client-Formatted Input Data is determined to be correctly formatted, TierMed will correct the problem and provide a corrected version of TIERMED Engine to Client at no charge.

2 Assumptions

1. TierMed represents and warrants that it has and will maintain NCQA certification.
2. There is no limitation on the number of HEDIS runs.

3 Deliverables and Schedule

Item	Deliverable description	Assigned to	Completion Date
1	HEDIS 2010 test data delivery.	Client	April 25, 2010
2	HEDIS 2010 test run.	TierMed	Item 1 plus one calendar week
3	Train Client personnel.	TierMed	To be determined
4	Review test run results	TierMed Client	May 5, 2010
5	HEDIS 2010 production data delivery. This will be the same data as required in item 1.	Client	May 15, 2010
6	HEDIS 2010 production run.	TierMed	Item 5 plus one calendar week
7	Delivery of HEDIS results to State of Vermont	TierMed Client	May 20, 2010
8	Begin routine monthly data delivery	Client	June, 2010
9	Begin routine monthly runs	TierMed	June, 2010

4 Roles and Responsibilities

The following defines Client's and TierMed's roles and responsibilities for activities within this Statement of Work:

A. Project Planning

Each party shall designate in writing one person ("Project Manager") who will be the contact person for all implementation issues associated with the performance of this Statement of Work. Each party may substitute or replace its Project Manager at any time upon providing written notice to the other party. Each party shall make its Project Manager available for planning sessions, status meetings, telephone consultation, and otherwise as reasonably required to facilitate the implementation of this Statement of Work.

B. HEDIS® Reporting

TierMed shall be responsible for activities as follows:

1. Maintain certification for its HEDIS® software for all certifiable measures.
2. Provide requested professional services as required by Client during normal business hours.

C. Change Management

Deliverable completion dates cannot be changed except via this change control process. If a deliverable date is to change, a change control request shall be submitted to Client's Project Manager for review and consideration. The request should indicate why the change is necessary and what it will cost, as well as the impact on the planned activity dates. Should the Client Project Manager believe the change should be approved; it must be reviewed and approved by _____ of Client. Once approved, the Project Manager must submit the change via appropriate standard Client request documentation to the Client approval process for additional funding; if additional funding is approved, the project plan will be changed and the purchase order altered to reflect the increased cost.

Both parties agree to the above Statement of work by their respective signatures below:

TierMed Systems Division

Of D2Hawkeye, Inc a wholly owned
Subsidiary of Verisk Health, Inc.

By: 
(signature)

Name: David N. Hansen

Title: AVP

Date: 5/12/10

Client: Office of Vermont Health Access

By: 
(signature)

Name: Susan W. Besio

Title: Director

Date: 5/28/10

EXHIBIT C - VERISK HEALTH TRADE SECRETS

Verisk Health's trade secrets listed below, are protected from disclosure under the Uniform Trade Secrets Act:

- TierMed User Guides
- All TierMed User Documentation

ATTACHMENT B
PAYMENT PROVISIONS

The maximum dollar amount payable under this Contract is not intended as any form of a guaranteed amount. The total maximum payable under this contract will not exceed \$140,000.00. The cost associated with the software license is \$135,000.00. The costs associated with out-of-pocket expenses (other charges – travel, shipping) shall not exceed \$5,000.00. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this Attachment.

The State shall not be responsible for separate expenses of the Contractor.

Contractor will submit invoices to:

Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495

ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, 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 Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.
5. **No Employee Benefits For Party:** The Party 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 Agreement. The Party 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 Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party 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 Agreement.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party 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 Agreement, the Party 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

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Not applicable - **Professional Liability:** Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of \$ NA per occurrence, and \$ NA aggregate.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

10. **Records Available for Audit:** The Party 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 Agreement 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 Agreement.
11. **Fair Employment Practices and Americans with Disabilities Act:** Party 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. Party 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 Party under this Agreement. Party further agrees to include this provision in all subcontracts.
12. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; 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.
13. **Taxes Due to the State:**
 - a. Party 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. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party 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. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party 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.

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

- 14. Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement 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 Services and is in full compliance with that plan.

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

- 15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

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

- 16. No Gifts or Gratuities:** Party 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 Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party'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
MODIFICATION OF CUSTOMARY PROVISIONS
OF ATTACHMENT C AND/OR ATTACHMENT F**

1. The insurance requirements contained in Attachment C, Section 7 are hereby modified:

Notwithstanding Section 7 of Attachment C, the following is hereby deleted from this Agreement:

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

Notwithstanding Section 7 of Attachment C, subsections *General Liability and Property Damage* and *Automotive Liability* the following is hereby deleted from this Agreement:

“Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.”

Notwithstanding Section 7 of Attachment C, subsections *General Liability* the following is hereby amended to Agreement:

Party shall name the State of Vermont and its officers and employees as beneficiaries on the General Liability policy for liability arising out of this Agreement.

2. Requirements of Sections in Attachment F are hereby modified:

Notwithstanding Section 10 of Attachment F, the first paragraph is deleted and replaced with the following:

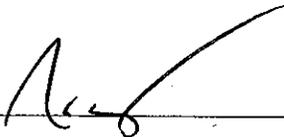
“The Contractor shall grant the State of Vermont with a limited license to use TierMed’s proprietary business information processing and related Services during the term of this Agreement. All data, materials and information provided by the State shall remain the property of the State. Contractor is not performing any “work for hire” services to the State and all TierMed software, engine, tools, trade secrets listed as an Exhibit to this Agreement and any customization, modification, enhancements, and embodiments thereof shall remain the property of the Contractor.”

3. Reasons for Modifications:

The above modifications are approved in view of limited risk to the State in the performance of services under the provisions of this contract.

Approval:

Assistant Attorney General: _____

A handwritten signature in black ink, appearing to be 'A. C. O.', written over a horizontal line.

Date: _____

4/29/10

**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 **TierMed Systems Division of D2Hawkeye, Inc.**, a wholly-owned subsidiary of Verisk Health, Inc. (“Business Associate”) as of _____ (“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”), as amended by subtitle D of the Health Information Technology for Economic and Clinical Health Act.

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).

The term “Breach” means the acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under the HIPAA Privacy Rule, 45 CFR part 164, subpart E, which compromises the security or privacy of the PHI. “Compromises the security or privacy of the PHI” means poses a significant risk of financial, reputational or other harm to the individual.

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, as specified in the underlying contract with 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 8 and 16 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 agreement 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 notifies Business Associate, within three business days (who in turn will notify Covered Entity within three business days after receiving notice of a Breach as specified in Section 5.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in this Section 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. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). 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. **Documenting and Reporting Breaches.**

5.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI as soon as it (or any of its employees or agents) become aware of any such Breach, and in no case later than three (3) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

5.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it.

5.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce does not pose a significant risk of harm to the affected individuals, it shall document its assessment of risk. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low risk of harm. When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity.

6. **Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity.

7. **Providing Notice of Breaches.**

7.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR §164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies

shall be borne by Business Associate.

- 7.2 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.
- 7.3 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).
- 7.4 Business Associate shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR §164.406.
8. **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 agreement 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 14. Business Associate must enter into the written agreement before any use or disclosure of PHI by such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written agreement 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.
9. **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. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.
10. **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. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.
11. **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. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

12. **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.

13. **Termination.**

13.1 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 17.7.

13.2 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.

14. **Return/Destruction of PHI.**

14.1 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.

14.2 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.

15. **Penalties and 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 training regarding the use, confidentiality, and security of PHI.

16. **Security Rule Obligations.** The following provisions of this Section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.
- 16.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to 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.
- 16.2 Business Associate shall ensure that any agent (including a subcontractor) to whom it provides Electronic PHI agrees in a written agreement 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 agreement before any use or disclosure of Electronic PHI by such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement 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.
- 16.3 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 as soon as it becomes aware of any such Security Incident, and in no case later than three (3) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.
- 16.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.
17. **Miscellaneous.**
- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 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.

17.6 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.

17.7 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 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 1/25/10)

ATTACHMENT F
AGENCY OF HUMAN SERVICES CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field 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 providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's 2-1-1. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

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. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 V.S.A. §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 in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, 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(a)(3) & 33 V.S.A. §6911 (c)(3)).
9. Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.
10. Intellectual Property/Work Product Ownership. All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - 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, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless otherwise specified in this agreement. Such items 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 first developed for the State, all 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, documentation and/or source codes developed.

The Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.

11. **Security and Data Transfers.** The State shall work with the Contractor to ensure compliance with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Contractor of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Contractor to implement any required.

The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection with this agreement. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Contractor shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

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.

