VERMONT

Deparment of Vermont Health Access
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Agency of Human Services

MEMORANDUM

TO: Jeb Spaulding, Secretary - Agency of Administration

THROUGH: Douglas Racine, Secretary – Agency of Human Services

FROM: Carolyn Anderson, Medicaid Fiscal Analyst - DVHA

DATE: April 21, 2011

REGARDING: Request to pursue a contract agreement with Onpoint Health Data
Duration of Contract: Upon Execution – 12/31/2012; Contract Amount: $371,350.00

Efforts are currently underway to integrate Medicaid data into the Vermont Healthcare Claims Uniform Reporting and Evaluation (VHCURES) data set. Upon completion, reporting activity will increase for comparative research across payers as well as for Medicaid-specific reporting needs. VHCURES is also being used as a data source for evaluation of expenditures and utilization for the medical home component of the Blueprint for Health. Major insurers in Vermont including DVHA have been flagging members attributed to participating primary care practices, enabling reporting to include a comparative matched cohort study.

The State expects to continue to use the VHCURES data set to measure variation in utilization, expenditures and utilization as was done with Vermont Act 49 of 2009. The State anticipates future inclusion of Medicare data to create a comprehensive All Payer Claims Data Base to support evaluation of state and federal efforts in health care reform address access, cost, utilization, and quality.

As a result of a RFP issued August 2, 2010 and a review of the resulting four bids, Onpoint Health Data was chosen after scoring the highest on a quantitative evaluation/scoring tool completed by the DVHA team evaluating the Research, Analytical, and Reporting Services for The Vermont Healthcare Claims Uniform Reporting and Evaluation System bids.

Payments to Onpoint are tied to performance-based deliverables outlined in the "Plan of Operations" on page 7 of the contract agreement.

Vermont's funding for this contract will be covered by the Global Commitment to Health Appropriations and complies with all mandatory provisions of AOA Bulletin 3.5.

DVHA looks forward to approval of this contract.

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and **Onpoint Health Data** (hereafter called "Contractor") with a principal place of business at **16 Association Drive, P.O. Box 360, Manchester, Maine 04351**. (hereafter called "Contractor"). The Contractor's form of business organization is a non-profit corporation under Section 501 (c) (3). 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 services generally on the subject of data collection, processing, editing, validation testing, consolidation and data management, such services herein collectively referred to as the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES). 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 **$371,350**.

4. **Contract Term.** The period of Contractor's performance shall begin upon signature of the State, and end on **December 31, 2012.** As approved by the State, pre-award costs occurring on January 1, 2011 and thereafter, otherwise reimbursable according to the terms of Attachment A of this agreement may be allowed. This contract may be extended for an additional one year period 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 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 the State by giving written notice at least 30 days in advance. Contractor may cancel this contract for any reason by giving 120 days written notice in advance.

8. **Attachments.** This contract consists of 32 pages including the following attachments, which are incorporated herein:

   Attachment A - Specifications of Work to be Performed
   Attachment B - Payment Provisions
   Attachment C - Customary Provisions for Contracts and Grants

Attachment D - Other Contract Provisions
Attachment E - Business Associate Agreement

Attachment F - AHS Customary Contract Provisions
Attachment G - Additional Contract Provisions

The order of precedence of documents shall be as follows:

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

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

BY THE STATE OF VERMONT:

May 16, 2011
Date

E-SIGNed by Susan Besio
on 2011-05-16 18:17:28 GMT
Signature

Susan Besio, Commissioner
AHS/DVHA

BY THE CONTRACTOR:

May 17, 2011
Date

E-SIGNed by Jim Harrison
on 2011-05-17 11:49:03 GMT
Signature

James H. Harrison, President/CEO
Onpoint Health Data
16 Association Drive
P.O. Box 360,
Manchester, Maine 04351

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

As directed by the State, Contractor shall do the following:

1. Background

1.1 In 2006, Governor James Douglas and the Vermont General Assembly enacted health care reform legislation with multiple components including the development of a multipayer healthcare claims database referred to herein as the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES). As requested, Contractor shall assist the State in the development and production of standardized reports and customized analyses, reports, and studies using VHCURES data as more fully described herein.

1.2 To the extent allowed by federal and state laws, the data shall be made available as a resource for the review of health care utilization, expenditures, and performance in Vermont. The State shall own the data included in VHCURES and, per applicable state and federal law and any data use agreements in place with the Centers for Medicare and Medicaid Services (CMS) pertaining to Medicare or Medicaid data, the State shall administer policies and procedures for the collection, management, analysis, reporting and release of VHCURES data.

2. State Expectations and General Contractor Responsibilities

2.1 In carrying out the duties of this contract, Contractor shall comply with all applicable state and federal laws regarding the claims data and "Protected Health Information" as that term is defined by federal law.

2.2 Contractor shall not sell the research, analyses, and reports generated under the terms of this contract. Contractor shall include a citation for the Department of Vermont Health Access, the Vermont Healthcare Claims Uniform Reporting & Evaluation System and display the State logo on the cover of all reports published under this contract.

2.3 The State regulates and monitors key sectors of Vermont's health care system to ensure that all Vermonters have access to health care that is affordable and meets accepted standards for quality. Per the VHCURES statutory mandate and to the extent allowed by federal and state laws, the data shall be widely available for the review of health care performance in Vermont. Contractor shall provide research, analyses and reports in a cost-effective manner that is timely, accurate, well researched, and apply high standards for methods as used in health care services and health policy research. Contractor shall provide analyses and reports in narrative, tabular, and graphical formats that make the information and findings clearly articulated, accessible, meaningful, and useful to wide variety of users including insurers, employers, providers, purchasers of health care, state agencies, regulators, consumers and policy makers.

2.4 As directed by the State, Contractor shall provide a detailed Plan of Operations that includes specified deliverables, key services and tasks, time line and completion targets, staffing and resources required for completing reports, analysis and studies required under the contract. The Plan of Operations agreed to by the parties is attached hereto as Exhibit 1 to this Attachment A. Contractor shall submit invoices that are keyed to the Plan of Operations and Progress Reports as described in section 2.4 and the payment provisions specified under Attachment B. Contractor shall modify the Plan as approved or directed by the State.

2.5 Contractor shall submit written Progress Reports keyed to the Plan of Operations on a quarterly basis. Contractor shall report on performance measures as addressed in section 2.3, including cost-effectiveness, timeliness, accuracy, depth of research, application of recognized methods, and specific efforts taken to make research, analyses, and reports clearly presented, accessible, meaningful, and useful to users. Contractor shall identify challenges and actions being taken related to delays or inability to complete tasks per the Plan of Operations and/or shortfalls in performance in the areas described above.

2.6 In addition to performance in areas identified in 2.4 and as applicable, Contractor shall include performance measures in the quarterly Progress Reports related to flexibility and extra effort applied towards accommodating unanticipated requests by the State for custom Medicaid, Blueprint and special reports for other Agency of Human Services Departments as addressed in section 4, 5 and 6. State may provide incentives based on Contractor performance.

2.7 Contractor shall assign a Project Manager who is preferably the principal investigator or a research director as the person who oversees the work required under this contract and is the contact for the State. Contractor shall notify the State immediately if this position is reassigned

2.7.1 On a monthly basis, or more frequently if requested by the State, Contractor's Project Manager shall convene teleconferences at Contractor's expense with State staff and other interested parties specified by the State as needed to discuss project progress, concerns, and next steps to solve problems and meet objectives for contract deliverables.

2.7.2 Every six months, beginning in the first month of the contract, the Project Manager shall meet in person in Vermont with the State and other parties identified by the State at a meeting convened by the State to consult, plan, review, and make presentations related to contract deliverables. Contractor shall draft the agendas and meeting materials in electronic format for advance review and approval by the State and provide electronic and/or hardcopy packets of final materials as requested by the State. Contractor shall provide all equipment needed for meetings including computers, projectors and associated hardware and software required for presenting materials.

2.8 Contractor project staff shall be readily accessible by telephone and email to consult with State staff as needed on a timely basis.

2.9 Contractor shall deliver all written reports, analyses and other similar work product, including drafts, upon completion in electronic file formats and applications as reasonably requested by the State. Contractor shall format all reports including spreadsheets to be fitted to page, properly formatted with titles and pagination, and printer ready.

2.10 Contractor shall provide the State with drafts for all reports in electronic formats and applications as requested by the State at least 30 days prior to the due date for each report.

2.11 At the conclusion of this contract, as directed by the State, Contractor shall give to the State all data provided by the State under data use agreements related to this contract and provide electronic versions of all final analyses, studies, reports and technical documentation in formats and applications as requested by the State. The State shall own the data included in VHCURES and, per applicable state and federal law and any data use agreements in place with the Centers for Medicare and Medicaid Services, the State shall administer policies and procedures for the collection, management, release and final disposition of VHCURES data. For the avoidance of doubt, upon termination of the contract, (A) Contractor's obligations with respect to the return of data applies to data (i) then being held by Contractor and its subcontractors, as the State is not expecting Contractor to store or archive all data that it ever receives from the State from the beginning of time under this contract; and (ii) not otherwise deleted by Contractor from its systems in accordance with its security procedures or pursuant to the State's instructions; and (B) Contractor's obligation to provide "electronic versions of all final analyses, studies, reports and technical documentation" will be satisfied by providing such electronic versions in an industry standard format or one of the usual and customary formats utilized by Contractor for the delivery of electronic files during the course of the engagement.

2.12 Before conclusion of this contract and in the event that the contract is terminated and/or the contract is awarded to another vendor, Contractor shall develop a transition plan for continued operations that shall assist the State in maintaining timely analyses and reporting of the data upon expiration of the contract. Contractor shall cooperate with complete and timely transfer of the data and technical documentation referenced in Section 2.11 in the event that the subsequent contract is awarded to a new vendor and/or the analysis and reporting is developed within the State. Upon expiration of the contract, to the extent reasonably practicable, Contractor shall expunge all data and files from the Contractor's system as directed by the State and provide written certification that all data has been destroyed and expunged as directed by the State.
Regardless of the successful destruction of the data, under no circumstances shall Contractor use the State's data in a manner inconsistent with federal and State laws, regulations and policies pertaining to the usage of such data.

3. Responsibilities of the State

3.1 The Director of Data Analysis at DVHA is responsible for providing the data to OnPoint through

the OnPoint desktop tool as outlined below. However, this task may routinely be performed by the Director or either of the two Medicaid Fiscal Analysts within the State's Data team.

Onpoint Health Data is also the current vendor with the State of Vermont for the collection and management of the commercial and Medicaid eligibility and claims data in the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES). This contract is managed by BISHCA and includes a deliverable for the integration of the Medicaid data.

Onpoint has developed a stand alone one way data element encryption software that is run on the reporter's desktop before data is submitted to the Onpoint data warehouse. The encryption algorithm is a one way hashing algorithm using industry standard SHA-512 protocol. SHA-512 is a computer security standard approved by the U.S. Department of Commerce, National Institute of Standards and Technology (NISR), Information Technology Laboratory (ITL).

Providing encryption software that is run by every reporter ensures that all patient identifiers are encrypted consistently across reporters and eliminates the possibility that direct patient identifiers are submitted. Since the encryption is done at the reporter's site, the reporter can easily verify that the personal health identifiers passed through the encryption software have been removed and replaced with unrecognizable, encrypted 128 character fields.

4. Custom Medicaid Studies

4.1 The contractor will be responsible for providing reports as requested by the State and other departments within the Agency of Human Services as agreed upon between the parties. Examples of possible reports would include, but are not limited to:

(1) Providing information about varying cost of procedures in different medical facilities or across provider types.
(2) Exploring the value equation (cost and quality) for services provided
(3) Inform the design and evaluation plan of payment reform models including the medical home model and accountable care organizations
(4) Evaluating the effect of health reforms on cost, quality and access to care in a state
(5) Comparing the prevalence of disease across a population
(6) Comparing utilization patterns to identify successfully cost containment strategies
(7) Estimate the cost of potential legislative changes affecting Medicaid and later calculating the actual cost and impact of the legislation

5. Custom Blueprint Studies

5.1 The contractor will be responsible for providing reports as requested by the State and other departments within the Agency of Human Services as agreed upon between the parties. Examples of possible reports would include, but are not limited to:

(1) Evaluating the impact of the Blueprint Multi-user Advanced Model of primary Care Practice (MAPCP) on utilization and healthcare expenditures

for patients treated in medical homes compared to routine care
(2) Evaluating MAPCP model on utilization and expenditures in Hospital Service Areas (HSAs) as the model expands statewide
(3) Evaluating the impact of additional payment reforms on utilization and expenditures as they are added to the MAPCP model
(4) Evaluating regional; and institutional variability of healthcare quality, utilization and expenditures as healthcare reforms expand statewide

6. Special Reports & Studies for other Agency of Human Services Departments

6.1 The contractor will be responsible for providing reports as requested by the State and other departments within the Agency of Human Services as agreed upon between the parties. Examples of possible reports would include Special reports and studies for other Agency of Human Services departments. These departments include Health, Disabilities, Aging and Independent Living, Children and Families, Mental Health and Corrections.

EXHIBIT 1 TO ATTACHMENT A

ONPOINT Health Data

VT DVHA Contract Plan of Operations

		Year 1 (Jan 2011 - Dec 2011)												Year 2 (Jan 2012 - Dec 2012)												Hours	Dolla
		J11	F	M	A	M	J	J	A	S	O	N	D11	J12	F	M	A	M	J	J	A	S	O	N	D12		
2	Project Management																										
2.5	Progress Reports Quarterly			√			√			√			√			√			√			√			√		
2.7.1	Conference Calls (monthly)	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√		
2.7.2	On Site Meetings	√				√					√							√						√			
4	Custom Medicaid Studies					√													√							742	$12
4.1	Consult w/ State to customize study																										
	Each special study to have a clear scope agreed upon by both parties																										
	As the complete scope of work for the Custom Medicaid Studies could not be clearly defined prior beginning the work, this work is limited to a pool of 742 hours for this two year contract.																										
5	Custom Blueprint Study										√												√			742	$11
5.1	Consult w/ State to customize study																										
	Each special study to have a clear scope agreed upon by both parties																										
	As the complete scope of work for the Custom Blueprint Study could not be clearly defined prior beginning the work, this work is limited to a pool of 742 hours for this two year contract.																										
6	Special Reports & Studies for other Agency of Human Svcs Dpt												√												√	742	$11
6.1	Consult w/ State to customize study																										
	Each special study to have a clear scope agreed upon by both parties																										
	As the complete scope of work for the Special Reports & Studies for other Agency of Human Services Department could not be clearly defined prior beginning the work, this work is limited to a pool of 742 hours for this two year contract.																										
	Subtotal																									2,226	$35
	Travel																										$ 1
	Total																										$37

ATTACHMENT B
PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for services specified in Attachment A, for services actually performed, up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice, payments against this contract will comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

1. The maximum amount payable under this contract for service and expenses shall not exceed $371,350 including maximum payable travel expenses specified below under section 3. The maximum allowable payable under this contract excluding the maximum payable travel expenses shall be subdivided as follows:

A. Custom Medicaid Studies	$122,450.00
B. Custom Blueprint Studies	$119,950.00
C. Special Reports and Studies for Other Departments	$114,950.00

The hourly rate for staff is as follows:

A. Custom Medicaid Studies
Principal: $250/hour
Senior Manager: $225/hour
Analyst: $125/hour
Data: $125/hour

B. Custom Blueprint Studies
Principal: $250/hour
Senior Manager: $225/hour
Analyst: $125/hour
Data: $125/hour

C. Special Reports and Studies for Other Departments
Principal: $250/hour
Senior Manager: $225/hour
Analyst: $125/hour

The total cost for each employee category as specified above includes any indirect rate that covers the administrative expenses, occupancy fees, utilities, repair and maintenance of equipment, office maintenance, audit and legal fees, insurance, telephone, postage, supplies, etc. The State does not guarantee the assignment of any minimum number of hours or other work under this contract.

2. Payments for subcontractors will only be made upon approval (See Attachment C, #15).

3. The State shall reimburse Contractor for reasonable and necessary expenses incurred in performance of this contract. Total travel expenses under the contract shall not exceed $14,000.00. Travel estimate covers the costs associated with two on-site visits per year. Travel expenses will be limited to reimbursement for mileage, hotels and meals for on-site meetings in Vermont as are required and requested by this contract.

4. Contractor will submit an invoice on a monthly basis to the State for services provided and expenses incurred under this contract #18943 during the previous month. Payments to the contractor relating to this contract as outlined in the scope by work will be rendered only after review and acceptance of the Director of Data Analysis at DVHA. Contractor shall subdivide invoicing for separate reports provided under A. Custom Medicaid Studies, B. Custom Blueprint Studies, and C. Special Reports and Studies for Other Departments. Each invoice must include a unique invoice number, contract number, dates of service, itemized hours by assigned staff multiplied by hourly rates, a list of allowable expenses incurred, and itemized billing must be documented to reflect linkage with the Plan of Operations. A billing for mileage shall include the points of origin and destination and the number of miles traveled. Only actual charges will be paid.

Invoices shall be submitted to:

Kate Jones
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
kate.jones@ahs.state.vt.us

Contractor's remit address:

Onpoint Health Data
16 Association Drive
PO Box 360
Manchester, ME 04351-0360

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.

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 ***$N/A*** per occurrence, and ***N/A*** 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 21V.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, as amended, 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 anything 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.

State of Vermont – Attachment C
Revised AHS – 1-11-11

ATTACHMENT D
MODIFICATION OF SECTION 10 OF ATTACHMENT F

1. Requirements of Section 10 in Attachment F are hereby modified:

Ownership of System; Use of the System

Notwithstanding paragraph 10 of Attachment F, the System is and shall remain the sole and exclusive property of Contractor. Subject to the terms, conditions and limitations of this Contract, and provided State is not in Material Default of the Contract terms, to the extent the State requires access and use of the System hereunder, Contractor hereby grants to State the non-exclusive, non-transferable right and license during the term of the Contract to: (a) allow authorized users to access and use the System for the purposes contemplated herein; and (b) use, reproduce and distribute copies of the Documentation solely in support of the State's use of the System.

Use Restrictions

The State shall not (i) use the System in any manner which is not authorized by this Contract or which violates any applicable law; (ii) copy or reproduce the System, in whole or in part; (iii) modify, translate or create derivative works of the System; (iv) reverse engineer, decompile, disassemble or otherwise reduce the System to source code forms; (v) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes or otherwise transfer the System or State's right to access and use the System; or (vi) remove or modify any copyright, trademark or other proprietary notice of the System or its licensors. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO CONTRACTOR AND ITS LICENSORS.

Definitions

"Authorized Users" means the employees and reporters authorized by the State to access and use the System.

"Documentation" means the user manual and training materials concerning the Onpoint CDM, in printed or electronic format, which Contractor has provided to State, as updated from time to time.

"Improvements" means all updates, upgrades, modifications, customizations, enhancements, error corrections, and other changes to and derivative works based on the Onpoint CDM and Documentation, regardless of by whom made. Improvements do not include data provided by the State under this contract.

"Material Default" by the State means that an approved payment to Contractor is at least thirty (30) days past due, that Contractor has provided the State with written notice of the past due payment and that the State has failed to make the payment within forty five (45) days of the written notice.

"Onpoint CDM" means Contractor's proprietary claims data management system, including, without limitation, all internal processing systems and hardware, external interfaces, and tracking, communication and administration features thereof, as well as all software, code and/or algorithms incorporated therein, each as updated from time to time.

"System" means the Onpoint CDM, Documentation and Improvements, including all patent, copyright, trademark, trade secret and other proprietary rights related thereto.

2. Reasons for Modifications:

The System (including any improvements made thereto and any intellectual property rights associated therewith) utilized by Contractor to perform the services under this contract are owned exclusively by the Contractor. No software, computer programs, processes or other systems are being developed by Contractor specifically for the State under this contract.

Approval:

Assistant Attorney General: _____

Date: _____

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 DEPARTMENT OF VERMONT HEALTH ACCESS ("COVERED ENTITY") AND ONPOINT HEALTH DATA ("BUSINESS ASSOCIATE") AS OF JANUARY 1, 2011 OR UPON SIGNATURE OF THE STATE, WHICH EVER IS LATER ("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 provided in this Agreement, or if a meaning is not provided in this Agreement, the meaning such term has under 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 (PHI) 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 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 as permitted or required 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 ten (10) business days (who in turn will notify Covered Entity within ten (10) 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). Upon request from Covered Entity, Business Associate shall provide Covered Entity an overview of its information security program which shall include available documentation regarding its security policies and procedures.

5. Documenting and Reporting Breaches.

5.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI without unreasonable delay after it becomes aware of any such Breach, and in no case later than ten (10) 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 meet its obligations under HIPAA. Business Associate shall continue to

provide to Covered Entity the required 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. Upon request by Covered Entity, Business Associate shall make any risk assessments available to Covered Entity to allow Covered Entity to meet its obligations under HIPAA.

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 carry out a reasonable plan of corrective action to address any incident of impermissible use or disclosure of PHI. Upon request by Covered Entity, Business Associate shall provide a description of its mitigation and corrective action steps to allow Covered Entity to meet its obligations under HIPAA.

7. Providing Notice of Breaches.

7.1 If Business Associate 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. The cost of notice shall be borne by Business Associate. Covered Entity acknowledges and agrees that Business Associate may not have sufficient contact information regarding the affected individuals to allow Business Associate to meet its obligations under this Section 7. Business Associate's obligations under this Section 7 shall be subject to Covered Entity providing Business Associate with the necessary contact information regarding the affected individuals.

7.2 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than sixty (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 with such agent 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 Covered Entity's request. Business Associate, in its sole discretion, may redact from such written agreement any confidential or proprietary information. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the above, with respect to any agent engaged by Business Associate prior to the Effective Date, Business Associate's contract with the agent is not required to 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. However, if Business Associate renews or enters into a new contract with such agent, after the Effective Date, it must identify Covered Entity as a third party beneficiary as required above, and must provide a copy of the written agreement upon Covered Entity's request. With respect to any agent engaged by Business Associate prior to the Effective Date, as identified by Business Associate prior to the Effective Date, Covered Entity hereby consents to the disclosure of PHI to such agents.

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. When Business Associate furnishes such material to the Secretary, it will notify Covered Entity and, upon Covered Entity's request, will furnish such materials to Covered Entity in the same manner as the materials were provided to the Secretary.

13. Termination.

    13.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or pursuant to Section 13.2 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 either party breaches any material term of this Agreement, the non-breaching party may either: (a) provide an opportunity for the breaching party to cure the breach and the non-breaching party may terminate this Agreement without liability or penalty if the breaching party does not cure the breach within the time specified by the non-breaching party; or (b) immediately terminate this Agreement without liability or penalty if the non-breaching party believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, the non-breaching party shall report the breach to the Secretary. The non-breaching party has the right to seek to cure any breach by the breaching party and this right, regardless of whether the non-breaching party cures such breach, does not lessen any right or remedy available to the non-breaching party at law, in equity, or under this Agreement, nor does it lessen the breaching party'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, at the discretion of the Covered Entity, 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. Subject to Section 14.2. 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 If return or destruction of PHI is infeasible, 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 consider participation 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. Upon request from Covered Entity, Business Associate shall provide Covered Entity an overview of its information security program which shall include available documentation regarding its security policies and procedures.

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 with such agent 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 Covered Entity's request. Business Associate, in its sole discretion, may redact from such written agreement any confidential or proprietary information. Business Associate may not make any disclosure of Electronic PHI to any agent without the prior written consent of Covered Entity, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the above, with respect to any agent engaged by Business Associate prior to the Effective Date, Business Associate's contract with the agent is not required to 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. However, if Business Associate renews or enters into a new contract with the agent after the Effective Date, it must identify Covered Entity as a third party beneficiary as required above, and must provide a copy of the written agreement upon Covered Entity's request. With respect to any agent engaged by Business Associate prior to the Effective Date, as identified by Business Associate prior to the Effective Date, Covered Entity hereby consents to the disclosure of Electronic PHI to such agents.

16.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PIII (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide this written report without unreasonable delay and in no case later than ten (10) business days after it becomes aware of the incident. Upon request by Covered Entity, Business Associate shall provide Covered Entity the information necessary for Covered Entity to investigate the Security Incident to meet its obligations under HIPAA.

16.4 Business Associate shall comply with reasonable policies and procedures Covered Entity implements regarding the services performed by Business Associate on behalf of Covered Entity to allow Covered Entity to meet its obligations under HIPAA, provided that Covered Entity provides Business Associate with timely notice of such policies and procedures.

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 The parties shall cooperate to amend this Agreement from time to time as is necessary for the parties 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 the parties 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 is 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.

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 United Way/Vermont 211. 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 Department 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 Department 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.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP* (Automated Data Processing) *System Security Requirements and Review Process*.

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 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 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 Protection 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.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

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 F - Revised AHS -12/10/10

ATTACHMENT G
ADDITIONAL CONTRACT PROVISIONS

1. Conflicts of Interest

If the State determines that a conflict of interest, as defined by the State, exists between a regulated entity and a member or members of the Contractor's staff, the Contractor shall substitute similarly qualified individuals for the conflicted members. If the State determines that a conflict of interest, as determined by the State, exists between Contractor and regulated entity, the State may immediately remove that assignment from the

Contractor, or may invoke its right to terminate this contract pursuant to paragraph 7 on page 1 of this contract. The State reserves the right to make the ultimate determination as to whether a conflict of interest exists.

2. Project Assumptions

The following assumptions detail those conditions that must be satisfied so that the contract objectives are met, and without which the contract will likely not succeed. In addition, these assumptions are factored in during the costing process of the Contractor's fee proposal and may be affected if they are not met.

- The State and the reporters each will timely perform their respective tasks as described and agreed upon.
- The State's authorized representatives will reasonably be available during the project lifecycle to approve plans, sign off on deliverables, and confirm project closure.
- The State will provide in a reasonably timely manner information, resources and other cooperation reasonably necessary for Contractor's performance and delivery timeframes.

The State acknowledges that Contractor will rely on the accuracy and completeness of any information and materials provided by State, and agrees that all information disclosed to Contractor is (or will be at the time of disclosure) true, accurate and not misleading in any material respect. Contractor shall have no obligation for failure to provide services in accordance with this Contract to the extent such failure is caused by inaccurate or incomplete information provided by the State.

3. Force Majeure

Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable efforts to promptly correct such failure or delay in performance.

4. Confidentiality.

Nothing contained in any provision of this Contract shall be construed to prohibit or limit Contractor from performing services for other clients, or from using any intangible, residual know-how or general knowledge or concepts acquired during the course of providing services under the Contract, so long as Contractor complies with its confidentiality obligations hereunder. The State agrees to keep confidential any information related to Contractor's operations which constitute trade secrets exempt from public disclosure as defined by Vermont law (e.g., its information security program) furnished to the State hereunder and agrees not to use or disclose any such information for any purpose other than as expressly authorized by the Contractor in writing. Contractor shall notify the State when Contractor considers shared information a confidential trade secret.

5. Change Process

The State may, at any time during the term of the contract, request a modification to the specifications, or an addition or reduction, or other change in the scope of the contract or the implementation plan for the contract (collectively, a "Contract Modification"). If the State desires such a modification, the State shall notify Contractor in writing, describing in detail the requested Contract Modification. To the extent the requested Contract Modification requires additional work or investigation to respond to the requested Contract Modification, Contractor will advise the State and, if Contractor decides not to bear its own costs of investigation, Contractor will request a Contract Modification providing for such investigation to be chargeable on a time and materials basis. If Contractor believes that any proposed Contract Modification is impracticable or would impair the integrity of the System, Contractor shall immediately, and in no event more than fifteen (15) days after receipt of a Contract Modification request, advise the State in writing that the request cannot be accepted. Within thirty (30) days after Contractor's receipt of a Contract Modification request, or such later date as may be agreed by the parties where investigation is required, Contractor will provide a final response. If Contractor accepts the Contract Modification request, the parties shall negotiate the necessary adjustments to achieve such Contract Modification and any necessary changes to the terms of this contract.