VERMONT

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Agency of Human Services

To: Jeb Spaulding, Secretary of Administration

Thru: Doug Racine, Secretary of Human Services

From: Vicki Loner, Director of the Division of Health Services and Managed Care, DVHA

Date: Monday, April 4, 2011

Re: Request to Contract with Goold Health Systems Inc. to Procure Medicaid Supplemental Rebate Bids Term: May 1, 2011 to March 31, 2013, Value of Contract $315,545.50 Vermont Share $40,535.07

The Department of Vermont Health Access is requesting the approval to enter into a contract with Goold Health Systems Inc. d/b/a GHS Data Management, of Augusta, ME. This contract was procured on behalf of the Sovereign States Drug Consortium (SSDC) currently consisting of the Medicaid programs of the states Iowa, Maine, Utah, Wyoming, West Virginia, Oregon and Vermont. This contract is set to accommodate additional states who may join the SSDC in the future. By agreement DVHA will manage the contract on behalf of all member states.

The primary scope of work of this contract is for SSDC collective services that apply to all member states. These will include:

1. Member States' utilization data compilation: Compilation of Member States' produced drug utilization data for presentation to manufacturers as part of the annual bid procurement.
2. Rebate bid solicitation: Communication with manufacturers to obtain bids and the provision of the vehicle(s) for manufacturers to submit bids.
3. Bid presentation: Compilation of offered bids for state review.
4. Rebate bid negotiation: Negotiation that may occur at the request of a state or states after bid review.
5. Bid selection notification: Notification to manufacturer.
6. General collective administrative functions: Including but not limited to general communications with participating states, manufacturers, and others; notification to manufacturers of changes in Member State participation during agreement year(s); data development, analysis and reporting; data compilation and distribution; manufacturer participation tracking; drug representation tracking; and meeting management

Additional services for supplemental rebate activity components may be provided to new member states subject to contract amendment that would include:

1. Bid review: Review of offered bids by states collectively and individually to determine what best meets the needs of the select and/or individual states.
2. Bid selection: State specific selection(s) within drug classes.
3. Contract finalization: Execution of contracts using each state's contract format
4. Preferred drug list (PDL) development: Development of state specific PDLs.
5. Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.

6. Contract management: Management of the terms and conditions of each state's executed contracts.
7. PDL management: Oversight of each state's POL
8. Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.
9. Rebate billing: State specific billing.
10. Rebate dispute resolution: State specific rebate dispute management.
11. Rebate collections and reporting: State specific collections and reporting.

A competitive bid process was used for this process. The funding for this contract will be from the Member States of the SSDC by Agreement Member States will pay Vermont for their costs which may include collective and/or additional services. Vermont's share is supported by the Global Commitment to Health Appropriation. The contract complies with all mandatory provisions of AOA Bulletin 3.5.

Approved – Secretary of Administration

05/02/11
Date

Deputy

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Goold Health Systems, inc., with a principal place of business in 45 Commerce Drive, Suite 5, PO Box 1090, Augusta, Maine 04332-1090 (hereafter called "Contractor"). The 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.** The subject matter of this contract is personal services generally on the subject of service to procure Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates. 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 $315,545.50.

4. **Contract Term.** The period of Contractor's performance shall begin on May 1, 2011 and end on March 31, 2013. This contract replaces contract #11883 between the State of Vermont and Goold Health Systems, INC. Contract 11883 ends April 30, 2011 with the execution of this contract on May 1, 2011.

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 either party by giving written notice at least sixty (60) days in advance.

8. **Attachments.** This contract consists of eighty-two (82) pages including the following attachments, which are incorporated herein:
   Attachment A - Specifications of Work to be Performed
   Appendix I: Performance Standards & Operational Metrics: SSDC Collective Services
   Attachment B - Payment Provisions
   Attachment C - Customary State Contract Provisions
   Attachment E - Business Associate Agreement
   Attachment F - Customary Contract Provisions of the Agency of Human Services
   Attachment G – State of Iowa Specific Contract Provisions: General Terms
   Attachment H – State of Maine Specific Contract Provisions: Rider B-IT Contract Terms
   Attachment I – State of Maine Specific Contract Provisions: Business Associate Agreement
   Attachment J – State of Wyoming Specific Contract Provisions: General Provisions
   Attachment K - Contract CD that includes the following:

   The order of precedence of documents shall be as follows:
   1. This document

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2. Attachment C
3. Attachment A
4. Attachment B
5. Attachment E
6. Attachment F
7. Attachment G
8. Attachment H
9. Attachment I
10. Attachment J
11. Attachment K - Contract CD

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

BY THE STATE OF VERMONT:

5/10/11
Date

Signature
Susan Besio
Commissioner
AHS/DVHA

BY THE CONTRACTOR:

05-06-11
Date

Signature
James A. Clair
Chief Executive Officer
Goold Health Systems, Inc.

Address:
45 Commerce Drive, Suite 5
PO Box 1090
Augusta, ME. 04332-1090

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

I. SOVEREIGN STATES DRUG CONSORTIUM (SSDC) BACKGROUND

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

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

A number of states have obtained approval from CMS to enter into Medicaid rebate agreements supplemental to the OBRA rebates under conditions found in Section 1927 of the Social Security Act (*42 U.S.C. 1396r-8).*

In 2004, CMS approved the first multi-state Medicaid supplemental rebate pooling arrangement.

In the fall of 2005, the states of Iowa, Maine, and Vermont formed a state administered multi-state pooling arrangement, the Sovereign States Drug Consortium (SSDC) and were the membership for the first rebate calendar year of 2006. Utah joined as of rebate calendar year of 2007, Wyoming as of rebate calendar year 2008, West Virginia as of rebate calendar year 2009, and Oregon as of rebate calendar year 2009 beginning as of July 2009.

The SSDC obtained the approval of CMS through individual Medicaid State Plan Amendments. Iowa, Maine, and Vermont received the first approval letters in July 2006. Utah, Wyoming, West Virginia, and Oregon have all received approval letters since joining the pool.

At this time, all Member States participate in the SSDC by memorandum of understanding. It should be assumed that additional states will participate in this arrangement in the future.

II. SSDC OPERATIONS

The SSDC believes that the multi-state Medicaid supplemental drug rebate process has become a key component in its members' efforts to contain costs.

The SSDC believes that the preferred drug management systems implemented by its Member States have been effective tools in helping manage pharmacy costs and maintaining access to pharmacy benefits for vulnerable, low-income populations. Central in each state's system is a Preferred Drug List (PDL).

A state's PDL is a list of preferred prescriptions developed with its Pharmacy & Therapeutics (P&T) Committee. The PDL presents options for prescribers' consideration for use in meeting the drug therapy needs of their patients. Medications are preferred if they meet clinical and therapeutic criteria established by the Committee and are cost-effective. Products that are not preferred can be prescribed and reimbursed based on a clinical review of necessity for a particular patient situation. These reviews constitute prior authorization (PA) review protocols that are developed with the guidance of the state's P&T Committee.

Under the SSDC pooling program, the Member States leverage the purchasing power of their combined covered lives in negotiations for Medicaid supplemental drug rebates with pharmaceutical manufacturers. In obtaining supplemental rebates, states are able to offer greater choices in the classes of their PDLs.

While SSDC Member States work together to obtain rebates, ultimately they maintain their independence in managing their programs. Decisions on choice and flexibility remain with each individual state and its P&T Committee in determining which classes to include on its PDL and which drugs to select as preferred. As a result, Member States may vary considerably in their formularies, their clinical criteria, and in their approach to supplemental rebates.

The SSDC pool is a state administered pool. It is "owned" by the Member States it serves and not by the vendors/contractors who work with and for the SSDC or the Member States. Contracting with a particular vendor is never a condition of membership in the SSDC. And the SSDC's contracted bid procurement vendor may not characterize the pool as a service it offers states because the vendor does not "own" the pool.

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

In support of the SSDC, the State of Vermont, Department of Vermont Health Access (DVHA) is contracting for services to solicit, negotiate, and procure Medicaid supplemental drug rebate bids and other Medicaid pharmacy benefit rebates on behalf of the states that are members of the SSDC.

II. PERTINENT DEFINITIONS

Claim	A bill rendered by an enrolled Medicaid provider to a state Medicaid program for a product or service dispensed on behalf of a covered beneficiary.
Data element	A specific unit of information.
Member States	The states participating in the SSDC by agreement with the members.
NDC	The National Drug Code used to identify a specific drug on a claim.
Prior Authorization	The pre-claim submission approval that must be obtained from a designated professional for specified products/services for an individual Medicaid beneficiary.
SSDC	Sovereign States Drug Consortium
Year, agreement	The agreement year is the period to which an agreement with a manufacturer for drug rebates applies. In this contract, the agreement year is generally the rebate calendar year.
Year, bid	The year against which rebate bids are solicited. In this contract, used interchangeably and in combination with the term rebate calendar year. In this contract, the bid year is equal to a calendar year, January through December.
Year, calendar	A calendar year begins with January and ends with December of any given year.
Year, contract:	In this contract, the 365 day period (366 day period in a leap year) that begins on the anniversary of the start of the contract. In the SSDC, services are performed in a contract year to procure rebates for a rebate calendar year. That rebate calendar year is the January through December period that is the calendar year that starts after the annual anniversary of the start of this contract.
Year, fiscal	The fiscal year in this contract is the fiscal year for the State of Vermont, July 1 of a year through June 30 of the following year.
Year, mid	An activity that occurs in the middle of a year. In this contract, refers to bids developed between rebate calendar year procurement cycles. These are usually available as soon as administratively possible in the rebate calendar year.
Year, rebate	In this RFP, the January through December calendar year against which rebate bids are

	solicited. In this RFP, used interchangeably and in combination with the term bid year.
Units	The specific quantity of a product on a claim.

III. GENERAL DELIVERABLES

The SSDC procures rebate bids on Medicaid covered drugs as defined in Section 1927 of the Social Security Act (*42 U.S.C. 1396r-8)*.

The SSDC also procures rebate bids on diabetic supplies. Diabetic supplies are treated as merely an additional pharmacy benefit related product line subject to rebate negotiations Throughout this contract, it should be assumed that references to drugs apply to diabetic supplies, that references to supplemental drug rebates apply to diabetic supply rebates, and that references to supplemental drug rebate bid procurement services also apply to diabetic supply rebate bid procurement services.

The SSDC may at some future date consider rebate opportunities on other pharmacy available items. The extent to which the supplemental rebate terms and conditions apply to these will be established by mutual agreement at that time.

The SSDC Member States believe that components of their rebate programs could be broadly defined as:

- Member States' utilization data compilation: Compilation of Member States' produced drug utilization data for Member State information and use and for presentation to manufacturers as part of the annual bid procurement.
- Rebate bid solicitation for annual review and as needed: Creation of a bid solicitation process including the provision of the vehicles(s) for manufacturers to submit bids. Communication with manufacturers throughout the process including but not limited to the web posting of general requests for proposals, manufacturer specific requests for proposals, and responses to manufacturers' questions.
- Bid presentation at the SSDC annual meeting and as needed: Provision for state review of a compilation of offered bids with any pertinent related factors and/or conditions.
- Bid review: Review of offered bids by states collectively and individually to determine what best meets the needs of the select and/or individual states.
- Rebate bid negotiation annually and as needed: Negotiation that may occur at the request of a state or states after bid review.
- Bid selection: State specific selection(s) within drug classes.
- Bid selection notification: Notification to manufacturer.
- General collective administrative functions: Including but not limited to the creation and maintenance of a web page to provide manufacturers and others with pertinent information about the SSDC; general communications with participating states, manufacturers, and others; notification to manufacturers of changes in Member State participation during agreement year(s); data development, analysis and reporting; data compilation and distribution; manufacturer participation tracking; drug representation tracking; and meeting organization, coordination, support, and management.
- Contract finalization: Execution of contracts using each state's contract format.
- Preferred drug list (PDL) development: Development of state specific PDLs.
- Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.
- Contract management: Management of the terms and conditions of each state's executed contracts.
- PDL management: Oversight of each state's PDL.
- Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.
- Rebate billing: State specific billing.

- Rebate dispute resolution: State specific rebate dispute management.
- Rebate collections and reporting: State specific collections and reporting.

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

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

While extensive interaction and collaboration with all parties in all activities is necessary, all other components, other than the listed core collective services, are the responsibility of the individual Member States and their internal and contractual resources working independently and/or coordinating with other Member States and their resources.

The six **sole collective services** are the services to be provided under the terms and conditions of this contract. The Contractor shall be responsible for them as of April 1, 2011. The Contractor will be responsible for supporting rebate agreements for calendar year 2010 including those negotiated prior to April 1, 2011 and for all agreements for calendar year 2012 and later through the term of the contract.

A. Member States' Utilization Data Compilation

For each rebate calendar year bid year, Member States shall provide the Contractor with drug utilization data for a prescribed period of time for Medicaid eligibles. That may be as little as three months of data or as much as twelve months of data. Minimum general data elements would be:

- National Drug Code (NDC)
- Drug name
- Number of units by age
- Number of scripts by age
- Preferred Drug List category
- PDL preferred status (tiers, etc.) to the extent that it is available from Member States

The Contractor shall be responsible for the compilation of all data used in the bid procurement process. During any period Member States may require the Contractor to do a comparative compilation for their individual program operations' purposes or for presentation to others including potential Member States. The SSDC shall require the Contractor to compile utilization data of potential Member States in the course of expanding SSDC membership.

B. Rebate Bid Solicitation

Prior to rebate bid solicitation, it is required that the Contractor meet with the SSDC Member States to discuss the strategy for the upcoming year. This includes the policy and process approved by the SSDC Member States and any planned changes to either. These meetings can be telephonic, web-based, and/or electronic. These meetings are not required at the physical location of any Member State.

For each rebate calendar year bid year, the Contractor shall communicate with all manufacturers to

notify them that the bid procurement process is beginning and what is being requested. The drafting of any manufacturer notifications shall be the responsibility of the Contractor. The language of this notification shall be subject to the approval of the SSDC Member States.

The Contractor shall provide a website for manufacturers to submit bids and the instructions for the use of the vehicle. The Contractor shall provide an alternative vehicle (for example, written means) of accepting a bid should a manufacturer require it.

Generally, the SSDC does not entertain bids between annual bid procurement periods though some exceptions may occur; for example, with the release of new products. Any resulting related activities shall be supported by the Contractor.

C. Bid Presentation

For each rebate calendar year bid year, the Contractor shall present bids solicited to SSDC Member States for individual review and for review at the SSDC's annual meeting. The presentation shall be in manner that is agreed upon by the Member States and that facilitates the review by Member States and their staff to the extent that they require. It shall be expected that the presentation requires the inclusion of information other that the actual bid details on any factors and/or conditions known to Member States that may have an impact on a bid over the course of the Rebate Calendar Year; for example, anticipated federal law/rule changes; generic and/or brand drug developments; known litigation; etc.

The Contractor shall be responsible for presentations that may also be necessary during bid years. Examples include:

- Providing aggregate, non-bid specific data to potential Member States to allow them to assess the viability of the multi-state pooling approach in their operations;
- Facilitating new Member States' review of current year bids in their initial year of membership; or
- Presenting new product offerings to Member States.

D. Rebate Bid Negotiation

In the process of bid procurement, the terms and conditions of specifics bids may need to be clarified. In addition, Member States may request that the Contractor negotiate with a manufacturer or manufacturers to refine bid offerings. Such a negotiation might be on behalf of all states or on behalf of an individual Member State to meet their particular needs. The Contractor shall be responsible for such negotiations.

E. Bid Selection Notification

At the conclusion of any procurement process, rebate calendar bid year or mid-year, the Contractor shall notify manufacturers that their products have not been selected or have been selected. If the products have been selected, they shall be notified of what has been selected and any conditions that have been set in the negotiation process. They shall be notified that each Member State or the agent of the Member State shall complete the contracting and that all discussions thereafter are with the Member State or the State's agent.

F. General collective administrative functions

i. Contractor organization and staffing

The Contractor shall be responsible for providing all resources necessary to deliver the services as specified in this Contract.

The SSDC does not require dedicated staff to be assigned to this contract but does require a single point of contact. The Contractor shall designate a Project/Account Manager who shall serve as a single point of contract for the SSDC.

As of April 1, 2011 and as changes occur the Contractor shall provide the SSDC with a key contact list to include: name, area of expertise/responsibility, telephone/extension/cell phone number, and e-mail address.

ii. Contractor office

The Contractor may operate from the location of their choice. There is no expectation under this contract that the Contractor secure office space in Vermont or in any SSDC Member State.

iii. SSDC web page

The Contractor shall be responsible for the creation and maintenance of a dedicated SSDC web page to provide drug manufacturers, other states, CMS, insurers, the press, and other interested parties with pertinent information about the SSDC.

iv. Communications

The Contractor shall provide ready communication methods including but not limited to telephone, fax, mail services, electronic mail, telephone conferences, electronic meetings, and "fax blasts".

The Contractor shall be the point of contact for SSDC general communications. These communications may involve telephones, fax machines, e-mail, and mail involving the U.S. Postal Service and other vendors; e.g., FedEx, UPS, etc.

The Contractor shall be able to manage general inquiries from interested parties about the SSDC. This shall include providing verbal and written information and assessing when inquiries must be managed by a SSDC agent or a Member State. At a minimum, this shall require a dedicated e-mail address.

The Contractor shall handle all inquiries from manufacturers requesting information on the SSDC and its supplemental rebate negotiations. This shall require a point person to be the contact and a dedicated e-mail address. It also shall require that the web page described above be interactive.

The Contractor shall be responsible for notifying manufacturers of Member State participation during agreement year(s). This shall include announcements of changes and management of the Addendums to Member State manufacturer agreements that officially document participation in the SSDC.

v. Printed and internet posted materials

The Contractor shall request and receive approval from the SSDC Member States or its agent(s) in advance of distribution or internet posting of any materials in support of the SSDC.

vi. SSDC Member State internal and contracted resources

The Contractor shall be willing to work with Member States and their agent(s) and staff. Extensive interaction and collaboration between the Contractor and its staff and the Member States and their agent(s) and staff in all activities shall be necessary. The staff of any individual Member State may consist of both state employees and contract employees. SSDC Member States may designate their agents in support of their supplemental rebate activities who shall work with the Contractor. All agents shall receive the same services as all representatives of the Member State. When such agents are employees of other contractors, the Contractor may require a non-disclosure agreement to protect any Contractor proprietary methods, systems, and/or information. The content of such agreements shall be subject to the approval of the Member States.

The Contractor shall understand that due to the nature of the SSDC, it is of the utmost importance that all communication to all Member States be both timely and accurate.

All Member States' needs to access information shall be met equally. It is expected that each Member State and its staff shall have equal access to the Contractor for the six Medicaid supplemental drug rebate bid procurement services identified in this RFP.

vii. Training

The Contractor shall be responsible for training Member States and their agent(s) and staff in the contracted supplemental rebate procurement process. The Contractor shall produce a SSDC User Manual, a Business Rules Document, and/or like instrument(s) that describes the process. The users for this shall be the Member States and their agent(s) and staff. It shall be an operations resource that can be referred to and that can be updated when and if subsequent changes need to occur. It shall include but not be limited to:

a. The schedule for activities and how it shall be agreed upon.
b. Steps taken to procure bids.
c. Bid option alternatives offered.
d. Steps taken in presenting to Member States.
e. Steps taken in following up with manufacturers.
f. Steps taken in finalizing bids.
g. Circumstances when interim bids should be considered.
h. Reports used.
i. Information in reports.
j. Methodologies to assure accuracy.
k. Methodologies to assure timeliness.

As part of this, access to necessary screens in any on-line system shall be made available to Member States and their agent(s) and staff. A description of those screens and how to access them shall be included in a user resource instrument.

viii. Electronic and data requirements

The Contractor shall develop SSDC data for analysis and reporting using standard and decision support capabilities. The Contractor shall compile such data to produce paper and/or electronic reports.

The Contractor shall have the ability to provide reports for all or select Member States and their agents and/or staff.

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

- The Contractor shall accept non-beneficiary specific claims' utilization data in a mutually acceptable electronic format. Data sources include the SSDC Member States and their specified contractors.
- The Contractor shall capture and maintain other data that shall include:
  - Information on manufacturers (e.g., name, products, contact address/e-mail/phone number, labeler number, etc.).
  - Data on manufacturer outreach activities at the manufacturer level (e.g., subject, date contacted, etc.).
  - Documented steps in each level of rebate procurement manufacturer contact (e.g., offers, counteroffers, final offers, etc.).
  - Documented steps in each Member State contact regarding rebate bids (e.g., offers, counteroffers, final offers, etc.).
  - Reason(s) for manufacturer non-participation (e.g., unable to contact, mail returned to sender, refused to participate, etc.), at each level of contact.
- The Contractor shall consult with the SSDC Member States on the creation of appropriate data collection instruments. Comprehensive report formats, data dictionaries, file specifications and code books shall be provided to the SSDC Member States as soon as they are available and in advance of any related data transfer.
- Data shall be provided upon request and/or at regular, agreed-upon intervals.
- The Contractor shall provide data in a timely manner to the SSDC Member States in compliance with the performance standards outlined in this section and in Appendix I of this Attachment.

The Member States of the SSDC require standard reports and ad-hoc reports that support decision making. At a minimum, the Contractor shall provide or have available:

1. Manufacturer contact list
   - Identifies all manufacturers/labelers and for each:
     a. The designated point of contact and his/her:
        i. Phone number and
        ii. E-mail address,
     b. The designated mailing address, and
     c. Any alternative contact information.
   - Produced at time of rebate calendar year bid year solicitation.
   - Produced upon request.
   - Produced at termination of rebate bid procurement contract.
2. Manufacturer and product list

- Identifies manufacturers with SSDC agreements and their products by:
  a. Manufacturer name,
  b. Labeler, and
  c. Drug NDC and name.
- Produced upon request.
- Produced at termination of rebate bid procurement contract.

3. Manufacturer outreach report
   - Identifies contacts related to the SSDC outside the bid process:
     a. Type; e.g., complaint, etc.,
     b. Subject,
     c. Date, and
     d. Any resolution.
   - Produced semiannually: prior to or on April 1st of each calendar year and prior to or on October 1st of each calendar year.
   - Produced upon request.
4. Member State comparative utilization report
   - Compares utilization in Member States for the period of time prescribed for data compilation.
   - At a minimum, identifies drugs by:
     a. Therapeutic class,
     b. National Drug Code (NDC),
     c. Drug name,
     d. Drug strength,
     e. Total number of unique recipients using a given drug,
     f. Units dispensed, and
     g. Total payment for the drug for the period.
   - Produced at the time of rebate calendar year bid year solicitation.
5. Bid proposal report
   - Identifies individual and collective proposals as received.
     a. Presents the bids by PDL class sorted in alphabetical order and includes:
        i. Drug name,
        ii. All National Drug Codes (NDCs),
        iii. Therapeutic class,
        iv. Drug strengths,
        v. Period of bid (year, multi-year, etc.),
        vi. The Wholesale Acquisition Cost (WAC) or other agreed upon price,
        vii. The Centers for Medicare and Medicaid Services (CMS) rebate,
        viii. The current supplemental rebate if there is one,
        ix. The current state net price, and
        x. The previous past period bid(s).
     b. Presents the formula showing a percent of WAC or a guaranteed net price.
     c. Provides projected state savings using the sample quarter's utilization on the best offer tier.
   - Produced to provide Member States and their agents and/or staff with notice of bids as received.
   - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel spreadsheet. Must be available electronically; for example, via access to the bid solicitation vehicle, a database capturing and compiling bids, a

secure electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.

- Produced no less than weekly during the rebate calendar year bid year procurement period unless otherwise approved by the Member States.
- Produced no less than weekly if mid-year bids procured unless otherwise approved by the Member States.

6. Bid presentation report
   - Identifies individual and collective proposals as received.
     a. Presents the bids by PDL class sorted in alphabetical order and includes:
        i. Drug name,
        ii. All National Drug Codes (NDCs),
        iii. Therapeutic class,
        iv. Drug strengths,
        v. Period of bid (year, multi-year, etc.),
        vi. The Wholesale Acquisition Cost (WAC) or other agreed upon price,
        vii. The Centers for Medicare and Medicaid Services (CMS) rebate,
        viii. The current supplemental rebate if there is one,
        ix. The current state net price, and
        x. The previous past period bid(s).
     b. Presents the formula showing a percent of WAC or a guaranteed net price.
     c. Reports factors and/or conditions and any identified related impact during the Rebate Calendar Year on the individual bid proposals.
     d. Provides projected state savings using the sample quarter's utilization on the best offer tier.
   - Produced for Member States and their agents and/or staff.
   - Produced for Member States decisions.
   - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via access to an electronic bid solicitation vehicle, a database capturing and compiling bids, a secure electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
   - Produced no less than two weeks prior to the SSDC annual meeting to review bids unless otherwise approved by the Member States. May be limited to the bid information available at that time
   - Produced in presentation form no less than one week prior to the SSDC annual meeting to review bids unless otherwise approved by the Member States.
   - Produced no less than ten (10) days after receipt if mid-year bids made unless otherwise approved by the Member States.
7. Bid status report
   - Identifies individual and collective proposals as received.
     a. Presents the bids by PDL class sorted in alphabetical order and includes:
        i. Drug name,
        ii. All National Drug Codes (NDCs),
        iii. Therapeutic class,
        iv. Drug strengths,
        v. Period of bid (year, multi-year, etc.),
        vi. The Wholesale Acquisition Cost (WAC) or other agreed upon price,
        vii. The Centers for Medicare and Medicaid Services (CMS) rebate,
        viii. The current supplemental rebate if there is one,

ix. The current state net price, and
x. The previous past period bid(s).

b. Presents the formula showing a percent of WAC or a guaranteed net price.
c. Reports factors and/or conditions and any identified related impact during the Rebate Calendar Year on the individual bid proposals.
d. Provide projected state savings using the sample quarter's utilization on the best offer tier.
e. Captures state comments.

- Produced for Member States and their agents and/or staff.
- Produced for Member States' program planning purposes.
- Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via access to an electronic solicitation vehicle, a database capturing and compiling bids, a secure electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
- Produced no less than weekly during the rebate calendar year bid year negotiations unless otherwise approved by the Member States.
- Produced no less than weekly if mid-year bids made unless otherwise approved by the Member States.

8. Bid selection report
   - Identifies proposals as rejected or accepted by each Member State. If approved by the Member States, may include proposals where the final determination has not been made.
     a. Presents the bids by PDL class sorted in alphabetical order and includes:
        i. Drug name,
        ii. All National Drug Code (NDC),
        iii. Therapeutic class,
        iv. Drug strengths,
        v. Period of bid (year, multi-year, etc.),
        vi. The Wholesale Acquisition Cost (WAC) or other agreed upon price,
        vii. The Centers for Medicare and Medicaid Services (CMS) rebate,
        viii. The current supplemental rebate if there is one,
        ix. The current state net price, and
        x. The previous past period bid(s).
     b. Presents the formula showing a percent of WAC or a guaranteed net price.
     c. Identifies the best and final offer (BAFO).
     d. Reports factors and/or conditions and any identified related impact during the Rebate Calendar Year on the individual bid proposals.
     e. Provides projected state savings using the sample quarter's utilization on the best offer tier.
   - Produced for Member States and their agents and/or staff.
   - Produced for rebate calendar year bid year.
   - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via access to an electronic solicitation vehicle, a database capturing and compiling bids, a secure electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
   - Produced no later than two (2) weeks after the close of bidding negotiations unless otherwise approved by the Member States.

- Produced if mid-year bids received and rejected/accepted.
- Produced no later than two (2) weeks after the close of bidding negotiations unless otherwise approved by the Member States.

9. Member States' activity report
   - Documents dates and steps taken on individual and collective proposals (e.g., offers, counter offers, final offers, etc.).
   - Produced for Member States and their agents and/or staff.
   - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via access to an electronic solicitation vehicle, a database capturing and compiling bids, a secure electronic bulletin board to provide access to data files, a secure electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
   - Produced for bid year no more than one month after the conclusion of bidding negotiations.
   - Produced if mid-year bids made no more than one month after the conclusion of bidding negotiations.
10. Bid summary report
    - Documents steps taken on individual and collective proposals (e.g., offers, counter offers, final offers, etc.).
    - Produced for Member States and their agents and/or staff.
    - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via access to an electronic solicitation vehicle, a database capturing and compiling bids, a secure electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
    - Produced for bid year no more than one month after the conclusion of bidding negotiations.
    - Produced if mid-year bids made no more than one month after the conclusion of bidding negotiations.
11. Manufacturer non-participation report
    - Identifies contacts attempted where manufacturers opted not to participate.
    - Documents steps taken and results (e.g., unable to contact, mail returned to sender, refused to participate, etc.).
    - Produced for Member States and their agents and/or staff.
    - Produced no more than one month after the conclusion of any bidding negotiations.
12. New drug tracking report:
    - Identifies new drugs available:
      a. Drug name,
      b. Date drug available,
      c. Therapeutic class and if class is managed,
      d. Manufacturer name,
      e. Supplemental rebate agreement(s) with the manufacturer,
      f. If and when manufacturer contacted,
      g. Manufacturer response,
      h. Date any rebate offered,
      i. Date any rebate offered to Member States, and
      j. State responses.
    - Produced for Member States and their agents and/or staff.

- Produced upon request.

Some reports may be requested more frequently than specified. Additional reports shall be expected. Reports shall be produced using Microsoft Office Word or Excel unless otherwise specified here or approved by the Member States. Reports shall be formatted for printing. Reports shall be supplied via e-mail or through a secure electronic bulletin board unless otherwise specified.

The Contractor shall make available to individual Member States enhanced reporting services support to provide customized state-specific reporting over and above the reporting described here. No state is obligated to choose this. A fee may apply if a state selects this option. See Attachment B, V, 2.

ix. Meetings

The Contractor shall organize, coordinate, support, and manage meetings of all types including annual bid year, mid-year, periodic, and as needed meetings. Generally, it is not expected that the Contractor will be required to meet at the location of any Member State. However, the Contractor shall be expected to host the annual meeting for bid presentation. At the discretion of the Member States, this meeting may be in the state where the Contractor is located or in one of the Member States. The Contractor shall be responsible for necessary meeting costs: facility, communications, connectivity, materials, etc. The Contractor shall also be responsible for all of its staff's expenses for attending that meeting. It is expected that no more than three members of the Contractor's staff shall need to attend a meeting.

x. Other SSDC rebate pool management activities

The Contractor will be responsible for tracking and monitoring manufacturer/drug participation in the SSDC in relationship to drugs represented in the SSDC Member States' PDLs.

The Contractor will be responsible for identifying the detailed impact of factors and/or conditions that apply to SSDC Member State rebate programs that become known to Member States at any point in the course of a Rebate Calendar Year; for example, anticipated federal law/rule changes; generic and/or brand drug developments; known litigation; etc. In doing so, the Contractor will be responsible for researching the conditions of the event(s) to report known elements: what is happening, to whom it applies, where it applies, when it is likely to be effective, and what is known about how it is likely to occur. Ultimately, the Contractor will be responsible for determining, to the extent possible, the per unit/per NDC effect of any event and reporting it to the Member States so that they are able to apply the per unit/per NDC effect to their individual utilization data.

In particular, the Contractor is asked to monitor, and keep the Member States apprised of impacts relative to the Patient Care and Affordable Care Act as it addresses Medicaid drug rebate issues.

The Contractor may be asked to do other related duties of this type during the term of the Contract.

xi. Confidentiality of manufacturer agreement information

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

xii. Ownership of data, deliverables, and reports

The Contractor shall agree that any and all data provided to it by the SSDC or any of its Member States and/or collected, created, summarized, and/or aggregated for the SSDC or any of its Member States; deliverables submitted to the SSDC or any of its Member States; and reports created under this contract, are the property of the SSDC and its Member States, intended solely for the purpose of supporting the SSDC in any manner deemed appropriate by the SSDC. None of these data or materials may be used by the Contractor at any time or in any manner without the express approval of the SSDC.

xiii. Disaster recovery

In the event of a natural disaster and unnatural disasters, including but not limited to hacking and acts of terrorism, the Contractor shall have a procedure for assuring that all pieces of work related to this contract are stored in multiple manners so that it may be accessed in the event of such a disaster For example, backup files should be created on such things as Member State utilization compilations; rebate calendar year bid histories; contract details; factor/condition compilations; etc. as well as letter template files; spreadsheets; web page source files; etc. The Contractor shall provide a disaster recovery and business continuity plan for review of the SSDC Member States no later than thirty (30) days after the effective date of this contract. The Contractor shall provide a final disaster recovery and business continuity plan for the approval of the SSDC Member States no later than thirty (30) days following transmittal of the SSDC's review comments.

xiv. Post implementation

The Contractor shall be responsible for routine procedure and system maintenance in support of all aspects of operations described in the Work Statement. Changes in operations that impact on the General Deliverables of this contract are subject to the review and approval of the SSDC Member States.

xv. Termination of contract

It shall be expected that in the final year of this contract, the SSDC shall release a request for proposals (RFP) to secure a new contract for rebate procurement. In the event that a new contractor is selected, the SSDC shall require that **all** notebooks, plans, working papers, documents, materials, records, data, documentation, other work, and other items developed and produced under this contract that are related to deliverables described in this contract, be transitioned to the new contractor.

To the extent possible, the details of the known terms and conditions of this transition will be established with the execution of the contract. These terms and conditions may be amended over the period of the contract. At a minimum, no less than thirty days prior to the end of this contract, the Contractor will provide the following related to the final rebate calendar year negotiated by the Contractor:

- A copy of the schedule of events in the procurement of rebates for the last rebate calendar year.
- A copy of the last approved request for rebate proposals.
- Any authorization required for the use of the SSDC web page address of www.rxssdc.org or any SSDC specific web page developed during the term of the Contract established by this contract.
- An electronic copy of the last approved version of the contents of each page of the SSDC web page.
- A binder including a copy of the last version of the reports found in Section III, F, viii of this Attachment and as otherwise agreed during the term of this contract.

With notification of the selection of a new contractor, this contract's Contractor will be notified of the SSDC expectations regarding final document and data disposition including the SSDC's expectations regard any retention period.

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

V. CONTRACT MONITORING REQUIREMENTS

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

All records or information captured and compiled in this contract must be maintained for inspection and evaluation as described in Attachment C, #10.

VI. AFFILIATIONS

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

In addition, at the execution of this contract and annually on the anniversary of this contract, the Contractor shall submit a declaration regarding Title 33 V.S.A § 2001. In connection with Vermont's pharmacy best practices and cost containment program, this requires that DVHA shall not enter into a contract with a contractor where the contractor has entered into an agreement or engaged in a practice described here unless the Commissioner of DVHA determines and certifies in a required fiscal report to the Vermont General Assembly, that such agreement or practice furthers the financial interests of Vermont, and does not adversely affect the medical interests of Vermont beneficiaries. This requirement applies to any contractor that provides pharmacy benefit manager related services.

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

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

VII. STATE RESPONSIBILITIES

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

A. Designate a Contract Administrator to represent the State and the SSDC in all matters pertaining to the contract, including monitoring Contractor compliance with contract terms, monitoring Contractor's progress, resolving issues between the Contractor and SSDC Member States and/or their contracted resources, and resolving issues related to program implementation and operation.

B. Notify the Contractor in a timely manner of all pertinent changes in DVHA and SSDC policy, procedures or operational systems that affect or depend upon Contractor operations or activities.

C. Provide the Contractor, in a timely manner, any information regarding SSDC Member State or federal regulations, policies or statues, or changes thereof, which are relevant to the Contractor's performance.

D. Provide Contractor with information and otherwise assist Contractor in responding to complex inquiries regarding SSDC Member State policies.

E. Provide coordination services between the Contractor and the SSDC Member States and/or their contracted resources related to electronic data exchanges and their frequency schedules, transmission methods, and file formats and specifications as defined by the SSDC Member States and the Contractor.

F. Provide technical assistance in resolving problems associated with data exchanges between the Contractor and the SSDC Member States or their contracted resources.

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

H. Reimburse the Contractor on a monthly basis in accordance with procedures defined in the contract, upon receipt of a properly completed invoice.

Attachment A - Specifications of Work to be Performed
Appendix I: Performance Standards & Operational Metrics: SSDC Collective Services

	Requirement	Standard	Report
1.	Appropriately represent the SSDC as a state administered supplemental rebate pool and not represent in any way or manner that the SSDC is owned by the Contractor.	The Contractor shall assure that the SSDC supplemental rebate pool is represented in all oral and written presentations as the SSDC's pool, not the Contractor's pool. All public presentations and materials have to be approved in advance by the Contract Administrator. Materials requiring approval must be submitted at least 7 days in advance of presentations.	As specified in the standard.
2.	Accept no compensation of any type from manufacturers or their representatives in the course of SSDC dealings.	Annually, the Contractor shall provide a written disclosure statement as required by the State of Vermont under V.S.A Title 33, Chapter 19, Subchapter V, § 2001regarding its corporation, its employees, and/or any subcontractor providing services under this contract.	Statement due as of the effective date of this contract and as of April 1st of each contract year, thereafter.
3.	Establish and maintain good working relations with manufacturers and their representatives.	The Contractor shall report to the Contract Administrator any manufacturer participating in any year of this contract that subsequently refuses to participate and the reasons for the non-participation. The Contractor shall report to the Contract Administrator on a semi-annual basis regarding significant complaints from manufacturers and the Contractor's response to those complaints. Significant is defined as any complaint that may jeopardize an existing or potential manufacturer rebate agreement.	Report due as of the effective date of this contract regarding past relations. Thereafter, due as of April 1st of each calendar year prior to the onset of negotiations for the next bid calendar year and as of February 1st of each calendar year, one month after the implementation of that bid calendar year's agreements.
4.	Comply with requirements for SSDC approval of policy, process, strategy, documents, materials, and/or content.	All materials proposed for distribution or internet posting must be approved by the Contract Administrator. Materials requiring approval must be submitted at least 7 days in advance of distribution or posting.	As specified in standard.
5.	Work with any agent designated by a Member State.	As specified in the requirement.	Upon notice of a perceived event by the Contract Administrator, report details from perspective of the Contractor including any

			justification. Report steps taken to resolve any issues identified by the Contract Administrator within 7 days of notice.
6.	Support Member States in the SSDC equally in the requirements of this Contract.	As specified in the requirement.	Upon notice of a perceived event by the Contract Administrator, report details from perspective of the Contractor including any justification. Report steps taken to resolve any issues identified by the Contract Administrator within 7 days of notice.
7.	Maintain a SSDC specific web page.	The SSDC web page must be maintained in compliance with requirements for SSDC approval of policy, process, strategy, documents, materials, and/or content. All materials proposed for internet posting must be approved by the Contract Administrator. Materials requiring approval must be submitted at least 7 days in advance of posting.	As specified in standard.
8.	Assure web page is available for general purposes during agreed upon normal business hours on normal business days. The web page may be unavailable while being serviced for agreed upon periods of time.	The SSDC web page shall be available from 8 a.m. until 4:30 p.m. Eastern Time Monday through Friday except for federal holidays and Maine state holidays. The Contract Administrator shall be notified 7 days in advance if the web page will be unavailable due to scheduled servicing for a period of more than 15 minutes.	Report due monthly of web page downtime and reason(s).
9.	Manage all incoming and outgoing communications for the SSDC by telephone, electronically, and/or with varied "mailing" options.	The Contractor shall maintain the capacity to manage incoming and outgoing communications through customer orientated telephone response systems, mass mailings, fax blasts to identified audiences, fax responses, email groups, and web-based communications. Any report generated from data warehouses listing recipients shall be reviewed for accuracy and intended audience. The Contractor shall spot check any mass communication for possible errors. Any significant error identified in a mass communication subsequent to distribution shall be reported to the Contract Administrator within 1 hour of it being identified.	As specified in standard.
10.	Provide single point of contact to all Member States during agreed upon normal business hours on normal business days.	The Contractor shall designate a telephone contact and provide an email address to the Contract Administrator prior to the effective date of the contract. The Contractor shall identify any changes in contact 2 weeks	Designation due as of the effective date of this contract and as required

		prior to change. The Contractor shall assure the availability of a backup contact at all times. If a backup is necessary for more than 2 working days, the Contractor shall notify the Contract Administrator of the backup plan. The Contractor must assure that the contact or a backup shall be available from 8 a.m. until 4:30 p.m. Eastern Time Monday through Friday except for federal holidays and Maine state holidays.	thereafter.
11.	Provide timely response to Member States and their staffs within 2 business days.	The Contractor shall provide a telephone/email monthly response report that identifies any occasion where a timely response has not occurred within 2 business days. The report shall identify the date of initial Member State contact, the date of the actual response, and the justification for the delay.	Report due no later than 15 days after the end of the report month.
12.	Provide telephone and e-mail point of contact for manufacturers during agreed upon normal business hours on normal business days.	The Contractor shall designate a telephone contact and provide an email address to the Contract Administrator prior to the effective date of the contract. The Contractor shall identify any changes in contact 2 weeks prior to change. The Contractor shall assure the availability of a backup contact at all times. If a backup is necessary for more than 2 working days, the Contractor shall notify the Contract Administrator of the backup plan. The Contractor must assure that the contact or a backup shall be available from 8 a.m. until 4:30 p.m. Eastern Time Monday through Friday except for federal holidays and Maine state holidays.	Designation due as of the effective date of this contract and as required thereafter.
13.	Provide timely response to manufacturer contacts within 2 business days.	The Contractor shall provide a telephone/email monthly response report that identifies any manufacturer where a timely response has not occurred within 2 business days. The report shall identify the date of initial manufacturer contact, the date of the actual response, and the justification for the delay.	Report due no later than 15 days after the end of the report month.
14.	Provide process training to the staff and agents of Member States.	Provide process training to the staff and agents of Member States new to the SSDC and staff and agents new to Member States. Provide yearly update training to existing staff and agents of Member States. Necessary training must occur no less than 30 days prior to the SSDC Annual Meeting.	As specified in standard.
15.	Produce Member State utilization report for bid year solicitation.	Provide the utilization report as identified in Attachment A, III, F, viii to compare Member State utilization for bid year proposal review.	As specified in Attachment A, III, F, viii.
16.	Produce compilations of potential member states utilization data for purposes of evaluating rebate opportunities.	Provide data in a Microsoft Excel format.	Data must be provided within 2 work weeks of request.
17.	Initiate rebate year/bid year rebate solicitation no later than April 1 of the previous calendar year.	The Contractor shall create a bid year schedule annually with solicitation to begin no later than April 1.	Provide bid year schedule no later than the effective

			of the contract and March 15th of each calendar year thereafter.
18.	Provide a vehicle to allow manufacturers to submit bids in a minimum 30-day time frame.	Manufacturers must be provided with a minimum of a 30-day time frame to bid. The Contractor shall: a. Contact the major manufacturers' negotiators each calendar year to start the bidding process for the bid year; that is, the next calendar year. b. Conduct pre-bid meetings with active manufacturers where requested. c. Use all methods available to solicit bids, including invitation to bid letters, contact database information to generate notifications via email, and website User Guides. d. Mail solicitations out to all drug manufacturing companies as listed on the current quarter's CMS Participating Manufacturer Contact file. Notices shall be sent to all three contacts listed; legal, technical and invoicing. Manufacturers who have registered with the SSDC for either of the past two review periods shall also be sent notifications. e. Provide the invitation to bid letter to Member States should states wish to post it on their websites. f. Send an information notice to manufacturers three business days after the initial request for contact information informing them they can begin entering rebate offers on the SSDC website. g. Continuously compare submitters from prior bid years and those of the current bid year procurement to identify any past participants who have not yet accessed the website to identify reasons; e.g., due to personnel changes, departmental movement, etc. h. Identify manufacturers with current agreements who have not yet submitted a bid for the current bid year procurement.	Report any manufacturer participating in current rebate calendar year who does not submit a proposal for the bid year within the 30-day time frame.
19.	Compile bid proposals during the bid year procurement period and make them available to Member States as referenced in Attachment A, III, F, viii.	The Contractor shall: a. Prepare a presentation that shows the bids distributed with all other drugs in the same PDL class, including without supplemental rebate offers, such as generics. b. Prepare a second presentation limited to those drugs with valid offers. The Contractor shall manage the SSDC website to allow Member State designated users to review real time bids as they are submitted to the database. The Contractor shall provide a Member State User Manual for the website.	Real time access to individual drugs through the SSDC website. Report produced as specified in A, III, F, viii.

		The Contractor shall present the bids as specified in A, III, F, viii.	
20.	Compile complete bid proposals at the end of the bid year procurement period and make them available to Member States as referenced in Attachment A, III, F, viii.	The Contractor shall present the bids as specified in A, III, F, viii.	Real time access to individual drugs through the SSDC website. Report produced as specified in A, III, F, viii.
21.	Compile bid proposals made mid-year and make them available to Member States as referenced in Attachment A, II, F, iii.	The Contractor shall notify the Contract Administrator of bid proposals made mid-year within two business days of receipt. The Contractor shall manage the SSDC website to allow Member State designated users to review real time bids as they are submitted to the database. The Contractor shall provide a Member State User Manual for the website. The Contractor shall present the bids as specified in A, III, F, viii.	Report produced as specified in A, III, F, viii.
22.	Compile bids for formal presentation to Member States as referenced in Attachment A, III, F, viii.	The Contract Administrator shall determine the schedule for the compilation of bids for formal presentation to Member States based on the final date for submission of bids by manufacturers. This schedule will be set in consultation with the Contractor. The Contractor shall present the bids as specified in A, III, F, viii.	Real time access to individual drugs through the SSDC website. Report produced as specified in A, III, F, viii.
23.	Complete negotiations after formal presentation and review by the Member States.	The Contractor shall: a. Contact manufacturers where a Member State or Member States require drug specific negotiations. b. Negotiate the drug specific requests at the direction of the state(s). The Contractor shall present the bids as specified in A, III, F, viii.	Report 14 days after the Member State formal presentation unless otherwise specified.
24.	Compile bid selections for Member States and their staff.	The Contractor shall provide a website database to include: a. the initial bid submitted on each NDC, b. any manufacturer's counteroffer response, and c. any BAFO responses. The Contractor shall also provide a summary spreadsheet as referenced in Attachment A, III, F, viii of all accepted offers and rebate formulas, including the final status of either "accepted" or "rejected" for every	Report as agreed but no more than one month after the conclusion of bidding negotiations.

		submitted bid in the database. The schedule for the compilation of bid selections for Member States and their staff shall be set by the Contract Administrator in consultation with the Contractor.	
25.	Notify manufacturers of the final disposition of their supplemental rebate offers.	The Contractor shall provide manufacturers email notification on each of their offers. The Contractor shall provide a mechanism to assure that the manufacturer agrees with the notification. Notifications must be completed no later than 7 days after the final disposition determination.	As specified in standard.
26.	Produce administrative reports within agreed upon time frames.	Provide the following standardized administrative reports identified in Attachment A, III, F, viii in the time frames designated: a. Manufacturer contact list produced as specified in A, III, F, viii., upon request, and/or at termination of the contract. b. Manufacturer outreach report produced as specified in A, III, F, viii and upon request. c. List of manufacturers with agreements and their product lists produced upon request. d. Member States' activity report produced as specified in A, III, F, viii. e. Manufacturer participation report produced as specified in A, III, F, viii.	As specified in standards.
27.	Assure that manufacturer bid details are not disclosed to any individual/organization/company/manufacturer without the express permission of the Member States.	Contractor shall submit an information/data security plan to the Contract Administrator prior to the effective date of this contract and shall annually or upon request notify the Contract Administrator of any amendments to that plan. The plan shall include: a. Assurances that manufacturer bid details are not disclosed to any individual/organization/company/manufacturer without the express permission of the Member States, b. Description of how only properly trained staff members have access to manufacturer bid details, c. Requirements for property (servers, tapes, etc.) to be locked and secured, and d. A requirement for maintenance of the Contractor's required levels of	As specified in standards.

		security.	
28.	Prepare a disaster recovery plan and business continuity plan.	The Contractor shall: a. Provide an implementation disaster recovery and business continuity plan for review of the SSDC Member States no later than thirty (30) days after the effective date of this contract. b. Provide a final disaster recovery and business continuity plan for the approval of the SSDC Member States no later than thirty (30) days following transmittal of the SSDC's review comments. c. Report annually or upon request any amendments to that plan.	As specified in the standards.
29.	Assure backups of SSDC information and data no less than weekly.	The Contractor shall include in its disaster recovery plan and business continuity plan: a. Assurances of backups of SSDC information and data at least weekly. b. All policy related to backup and restoration of data, backup power supplies, redundant systems, offsite facilities, potential scenarios, and the procedures to follow in the event of a disaster.	As specified in the standards for #28.
30.	Recognize that all notebooks, plans, working papers, documents, materials, records, data, documentation, other work, and other items developed and produced under this contract that are related to specific deliverables under this contract are owned by the SSDC.	The Contractor shall provide a signed statement: a. Indicating that it is understood that these materials are related to the services provided under this contract and that the requirement does not apply to any tools developed by the Contractor to provide the services to the SSDC. b. Agreeing to the requirement as understood in a. c. Agreeing that all identified materials must be turned over to the SSDC upon request at any time.	Agreement due as of the effective date of this contract.
31.	Comply with the terms and conditions of the end of contract transition plan.	The Contractor shall: a. Provide a signed statement agreeing to the requirement as specified in A, III, F, xiv. No later than the effective date of this contract. b. Provide a proposed Transition Plan Table of Contents template for review of the SSDC Member States no later than thirty (30) days after the effective date of this contract. c. Provide a final Transition Plan Table of Contents template for the approval of the SSDC Member States no later than thirty (30) days following transmittal of the SSDC's review comments. d. Report annually or upon request any amendments to that template.	As specified in the standards.

ATTACHMENT B
PAYMENT PROVISIONS

I. SERVICES PROVIDED TO THE SSDC

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

- Member States' utilization data compilation: Compilation of Member States' produced drug utilization data for Member State information and use and for presentation to manufacturers as part of the annual bid procurement.
- Rebate bid solicitation for annual review and as needed: Creation of a bid solicitation process including the provision of the vehicles(s) for manufacturers to submit bids. Communication with manufacturers throughout the process including but not limited to the web posting of general requests for proposals, manufacturer specific requests for proposals, and responses to manufacturers' questions.
- Bid presentation at the SSDC annual meeting and as needed: Provision for state review of a compilation of offered bids with any pertinent related factors and/or conditions.
- Bid review: Review of offered bids by states collectively and individually to determine what best meets the needs of the select and/or individual states.
- Rebate bid negotiation annually and as needed: Negotiation that may occur at the request of a state or states after bid review.
- Bid selection: State specific selection(s) within drug classes.
- Bid selection notification: Notification to manufacturer.
- General collective administrative functions: Including but not limited to the creation and maintenance of a web page to provide manufacturers and others with pertinent information about the SSDC; general communications with participating states, manufacturers, and others; notification to manufacturers of changes in Member State participation during agreement year(s); data development, analysis and reporting; data compilation and distribution; manufacturer participation tracking; drug representation tracking; and meeting organization, coordination, support, and management.
- Contract finalization: Execution of contracts using each state's contract format.
- Preferred drug list (PDL) development: Development of state specific PDLs.
- Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.
- Contract management: Management of the terms and conditions of each state's executed contracts.
- PDL management: Oversight of each state's PDL.
- Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.
- Rebate billing: State specific billing.
- Rebate dispute resolution: State specific rebate dispute management.
- Rebate collections and reporting: State specific collections and reporting.

The SSDC believes that the **sole collective services** shared by all Member States are supplemental

drug rebate bid procurement and the services necessary to support it. These are:

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

These six **sole collective services** are services to be provided under the terms and conditions of this contract.

Additional components of Member States supplemental drug rebate programs are provided under this contract. As of the effective date of the contract they included:

1. Services necessary to incorporate a new state into SSDC operations.
2. Optional state-specific enhanced reporting services support.

Future services may be allowed subject to mutual agreement by all parties.

The Contractor shall be responsible for services to the SSDC under State of Vermont contract #11883 through April 30, 2011 and shall be responsible for them under this contract as of May 1, 2011. The Contractor will be responsible for supporting rebate agreements for calendar year 2011 including those negotiated prior to May 1, 2011 and for all agreements beginning rebate calendar year 2012 and later.

II. SERVICE COST PRICE AMOUNTS

The prices are effective through the initial two (2) contract year base Contract period and the two (2) extension contract years should that option for extension apply. Amounts referenced apply for a period of up to four (4) contract years from the date that the Contract becomes effective. Contract year 1 is an eleven month contract period, from May 1, 2011 through March 31, 2012. Each contract year thereafter is a twelve (12) month period.

III. PAYMENTS FOR COLLECTIVE SERVICES

Payments for the cost of SSDC collective services apply monthly as identified in the gird in this section.

The monthly reimbursement for the collective services is reflected in the identified service types. While the service activity varies over the course of the contract year, the costs are distributed throughout the year resulting in a single fee per service type per month regardless of the level of activity in any specific month.

The monthly amounts listed do not change regardless of the number of Member States that may join the Sovereign States Drug Consortium over the course of the Contract. Member States share

in the monthly Contract costs in relation to the twelve months of Contract activity that generates rebates for a rebate calendar bid year. Members share equally in the costs for the number of months for which the State received rebates. For example, if a state receives rebates for all twelve months of the rebate calendar year, they share in all twelve months of the Contract costs but if a state only receives rebates for the last six months of the rebate calendar year, they share in the last six months of the Contract year's costs.

For services related to calendar year bid year 2012, the Contractor shall be responsible for services to the SSDC under State of Vermont contract #11883 through April 30, 2011 and shall be responsible for them under this contract beginning May 1, 2011.

The fee per service type per month listed in this section applies for services beginning May 1, 2011.

SSDC Collective Service Payment Grid

Service Type	*Total SSDC Monthly Cost*
Member States' utilization data compilation	$ 1,105.85
Rebate bid solicitation for annual review and as needed	$ 552.93
Bid presentation at an annual meeting and as needed	$ 552.93
Rebate bid negotiation annually and as needed	$ 1,105.85
Bid selection notification	$ 276.46
Administration functions: web page creation and maintenance	$ 552.93
Administrative functions: general communications (mail, e-mail, fax, and telephone) with participating states, manufacturers, and others	$ 552.93
Administrative functions: staff process training and support	$ 276.46
Administrative functions: manufacturer communications on the SSDC, the rebate process, manufacturer participation and drugs, changes in Member State participation during agreement year(s), and other related subjects	$ 829.39
Administrative functions: data development, analysis and reporting with standard and decision support capabilities	$ 1,105.85
Administrative functions: data compilation and distribution by paper and/or electronically including preparation and production	$ 552.93
Administrative functions: identifying, researching, analyzing, and reporting on factors and/or conditions impacting on specific rebates	$ 1,382.31
Administrative functions: drug representation tracking by state and collectively	$ 552.93
Administrative functions: meeting organization, coordination, support, and management	$ 1,658.75
Total	$11,058.50

Monthly services may be billed on or after the first of the month following the month of service. The Contract Administrator shall review bills and authorize payments.

Under this Contract, the total maximum amount payable for collective services for the two (2) contract year base Contract period is $254,345.50.

IV. RETAINAGE AGAINST PAYMENTS FOR COLLECTIVE SERVICES

The Contractor agrees to a retainage of ten percent (10%) of the total contract amount. Retainage is intended to assure the complete and timely delivery of services under this contract.

Retainage only applies against costs for collective services. It does not apply to costs for additional components.

The retainage amount applies to each year of the initial two (2) contract year base Contract period and the two (2) extension contract years should the option for extension apply.

The retainage will be withheld against monthly bills.

A bill to recover retainage amounts through September in a contract year will be accepted as of October 1st of that calendar year or upon satisfactory completion of the activities through September 30th, whichever is later. A bill to recover retainage through March in a contract year will be accept as of April 1st of that calendar year or upon satisfactory completion of activities through March 31st, whichever is later.

Payments may be reduced by penalties for performance standards' failures as described in section VI of this Attachment.

V. PAYMENTS FOR ADDITIONAL COMPONENTS

Reimbursement for SSDC additional components are as follows:

1. A payment is allowable for membership accretion. It is due only as new states join the SSDC beginning May 1, 2011. An accretion fee is to cover costs for incorporating each state into operations. This accretion fee is a one-time charge per additional member. It is payable for each state other than Iowa, Maine, Oregon, Utah, Vermont, West Virginia, and Wyoming as it joins the SSDC beginning May 1, 2011. The allowable accretion fee is $12,000. The Contractor may opt to waive it.
2. A one-time payment is allowable if a Member State opts for enhanced reporting services support. This is to provide customized state-specific reporting over and above the SSDC reporting described in Attachment A, F, viii. No state is obligated to choose this. An existing state or new Member State may opt for it. The allowable one-time fee is $4,200.

The reimbursement for these components is not subject to retainage.

Under this Contract, the total maximum amount payable for membership accretion is $36,000. This is for the two (2) contract year base Contract period and the two (2) extension contract years should the option for extension apply. The maximum amount is premised on three (3) additional members. Any additional membership shall require a contract amendment.

Under this Contract, the total maximum amount payable for enhanced reporting services support is $25,200. This is for the two (2) contract year base Contract period and the two (2) extension contract years should the option for extension apply. The maximum amount is premised on six (6) existing and/or future members opting for this service. A contract amendment shall be required if more than six (6) members opt for enhanced reporting services support over the term of the contract.

VI. PENALTIES FOR FAILURES TO PERFORMANCE STANDARDS

The Contractor agrees to abide by the Performance Standards as set forth in Attachment A, Appendix I, of this Contract.

The Contractor shall be at risk a total of 10% of the contract amount by putting at risk a total of 10% of the administrative fee for the monthly service cost. The Contractor agrees to the guarantees and penalties outlined in the grid found in this section.

At the discretion of the Contract Administrator, penalties may be imposed for each instance of failure by the Contractor to meet the identified performance standard.

Performance Standards	Guarantee	Description of Penalty/Liquidated Damages and Frequency
1. Member States' utilization data compilation	Produce compilations: • By April 1 of the year prior to the rebate calendar year bid year unless otherwise approved by the Member States • Within 2 work weeks of request in the case of potential Member State	GHS proposes penalties/liquidated damages equal to 1% of that month's administrative fee to GHS if found to be out of compliance with these performance guarantees.
2. Rebate bid solicitation	• Initiate solicitation no later than April 1 of the year prior to the rebate calendar year bid year unless otherwise approved by the Member States • Provide a vehicle to allow manufacturers to submit bids in a minimum 30-day time frame	GHS proposes penalties/liquidated damages equal to 1% of that month's administrative fee to GHS if found to be out of compliance with these performance guarantees.
3. Rebate bid presentation	Provide Member States with a bid presentation no later than: • Weekly unless otherwise approved during rebate calendar year bid year cycle • 10 days after the close of the bid	GHS proposes penalties/liquidated damages equal to 1% of that month's administrative fee to GHS if found to be out of compliance with these performance guarantees.

	solicitation • 10 days after receipt for mid-year proposals	
4. Rebate bid negotiation	Complete negotiations no later than 14 days after the Member State bid presentation	GHS proposes penalties/liquidated damages equal to 1% of that month's administrative fee to GHS if found to be out of compliance with these performance guarantees.
5. Bid selection notification	Notify manufacturers of the final disposition of their supplemental rebate offers no later than 7 days after the Member State acceptance/rejection	GHS proposes penalties/liquidated damages equal to 1% of that month's administrative fee to GHS if found to be out of compliance with these performance guarantees.
6. General Administrative Functions	• Establish and maintain a SSDC specific web page subject to the approval of the Member States or their agent • Provide timely response to Member State contacts within 2 business days • Provide timely response to manufacturers contacts within 2 business days • Provide necessary process training to Member State staff and agents no less than 30 days prior to the SSDC Annual Meeting • Produce Member State SSDC supplemental rebate program reports within agreed upon time frames • Provide a disaster recovery and business continuity plan during the implementation phase of the contract • Perform weekly information and data backups • Comply with the terms and conditions of the agreed upon end of contract transition plan	GHS proposes penalties/liquidated damages equal to 5% of that month's administrative fee to GHS if found to be out of compliance with these performance guarantees.

VII. GENERAL PAYMENT TERMS AND CONDITIONS

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, or 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. Contractor invoices shall be submitted no more frequently than monthly, but no later than

quarterly, and shall include the service detail identified in this Attachment delivered during the specified billing period and the total amount billed.

2. No benefits or insurance will be reimbursed by the State.

3. Invoices should reference this contract number and be submitted to:

   Department of Vermont Health Access
   312 Hurricane Lane, Suite 201
   Williston, VT 054953

4. The total maximum amount payable under this contract shall not exceed $315,545.50.

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

   Luc Pepin, Accounting Manager
   Goold Health Systems, Inc.
   PO Box 1090
   Augusta, ME 04332-1090
   800.832.9672
   lpepin@ghsinc.com

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 ***$1,000,000*** per occurrence, and ***$1,000,000*** 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 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 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 **GOOLD HEALTH SYSTEMS, INC.** ("Business Associate") as of **MAY 1, 2011** ("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, 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. 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.

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 G
IOWA SPECIFIC CONTRACT PROVISIONS

These terms are standard State of Iowa contract requirements. They are agreed to by Goold Health Systems Inc. (GHS), ("Business Associate") as of May 1, 2011 ("Effective Date") as a condition this Contract. These terms supplement and are made a part of this Contract to which they are an attachment.

Contractor Initials: JAC *Vermont State Initials:* SWB

STATE OF IOWA GENERAL TERMS

Section 1. Compensation

1.1 Pricing. **The Contractor will be paid for the services described in the Scope of Work in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work.**

The Contractor shall submit, on a frequency established on the Contract Declarations & Execution page(s) an invoice for services rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code § 8A.514.The Department may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any goods or services provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

1.2 Payment Clause. The Contractor will be paid for the services described in the Scope of Work in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work.

1.3 Delay of Payment Due to Contractor's Failure. **If the Department in good faith determines that the Contractor has failed to perform or deliver any service or product as required by this Contract, the Contractor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Department may withhold that portion of the Contractor's compensation, which represents payment for service or product that was not performed or delivered.**

1.4 Set-Off Against Sums Owed by the Contractor. **In the event that the Contractor owes the State any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any other debt subject to the law of set off, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.**

Section 2. Termination.

2.1 Immediate Termination by the Department. **The Department may terminate this Contract for any of the following reasons effective immediately without advance notice:**

2.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

2.1.2 The Department determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized;

2.1.3 The Contractor fails to comply with confidentiality laws or provisions;

2.1.4 The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP that is materially false, deceptive, incorrect or incomplete.

2.2 Termination for Cause. **The occurrence of any one or more of the following events shall constitute cause for the Department to declare the Contractor in default of its obligations under this Contract:**

2.2.1 The Contractor fails to perform, to the Department's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor,

2.2.2 The Department determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

2.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract,

2.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Department reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law,

2.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract, or

2.2.6 The Contractor has engaged in conduct that has or may expose the State or the Department to liability, as determined in the Department's sole discretion,

2.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right,

2.2.8 The Contractor fails to comply with any provision of Iowa Code chapter 8F, or

2.2.9 The Contractor has failed to comply with a material term of any Business Associate Agreement, if included as an Addendum hereto.

2.3 Notice of Default. **If there is a default event caused by the Contractor, the Department shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Department's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Department may either:**

2.3.1 Immediately terminate the Contract without additional written notice; or,

2.3.2 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

2.4 Termination Upon Notice. **Following 30 days' written notice, the Department may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Department up to and including the date of termination.**

2.5 Termination Due to Lack of Funds or Change in Law. **The Department shall have the right to terminate this Contract without penalty by giving sixty (60) days' written notice to the Contractor as a result of any of the following:**

2.5.1 Adequate funds are not appropriated or granted to allow the Department to operate as required and to fulfill its obligations under this Contract;

2.5.2 Funds are de-appropriated or not allocated or if funds needed by the Department, at the Department's sole discretion, are insufficient for any reason;

2.5.3 The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Department;

2.5.4 The Department's duties are substantially modified.

2.6 Remedies of the Contractor in Event of Termination by the Department. **In the event of termination of this Contract for any reason by the Department, the Department shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which the Department is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Department under this Contract in the event of termination. However, the Department shall not be liable for any of the following costs:**

2.6.1 The payment of unemployment compensation to the Contractor's employees;

2.6.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

2.6.3 Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

2.6.4 Any taxes that may be owed by the Contractor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

2.7 The Contractor's Termination Duties. **The Contractor upon receipt of notice of termination or upon request of the Department, shall:**

2.7.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Department may require.

2.7.2 Immediately cease using and return to the Department any personal property or materials, whether tangible or intangible, provided by the Department to the Contractor.

2.7.3 Comply with the Department's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

2.7.4 Cooperate in good faith with the Department, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

2.7.5 Immediately return to the Department any payments made by the Department for services that were not rendered by the Contractor.

Section 3. Confidential Information.

3.1 Access to Confidential Data. **The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the Department to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Department. The Contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of the Department at all times.**

3.2 No Dissemination of Confidential Data. **No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Department, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Department. The Contractor may be held civilly or criminally liable for improper disclosure of confidential data.**

3.3 Subpoena. **In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information.**

3.4 Reporting of Unauthorized Disclosure. **The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.**

3.5 Survives Termination. **The Contractor's obligation under this Contract shall survive termination of this Contract.**

Section 4. Indemnification.

4.1 By the Contractor. **The Contractor agrees to indemnify and hold harmless the State of Iowa and the Department, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and**

expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the Department, related to or arising from:

4.1.1 Any breach of this Contract;

4.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;

4.1.3 The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

4.1.4 Any failure by the Contractor to comply with the compliance with the Law provision of this Contract;

4.1.5 Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;

4.1.6 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or

4.1.7 Any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

4.2 Survives Termination. **Indemnification obligation of the Contractor shall survive termination of this Contract.**

Section 5. Insurance.

5.1 Insurance Requirements. **The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Department shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.**

5.2 Types and Amounts of Insurance Required. **Unless otherwise requested by the Department in writing, the Contractor shall cause to be issued the insurance coverages set forth below:**

TYPE OF INSURANCE	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	$2 Million
	Product/Completed Operations Aggregate	$1 Million
	Personal Injury	$1 Million
	Each Occurrence	$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	$1 Million
Excess Liability, Umbrella Form	Each Occurrence	$1 Million
	Aggregate	$1 Million
Workers Compensation and Employer Liability	As required by Iowa law	As required by Iowa law
Property Damage	Each Occurrence	$1 Million
	Aggregate	$1 Million

5.3 Certificates of Coverage. **All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the Department. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Department upon execution of this Contract. The certificates shall be subject to approval by the Department. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Department. Approval of the insurance certificates by the Department shall not relieve the Contractor of any obligation**

under this Contract.

Section 6. Project Management & Reporting.

6.1 Project Manager. **At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the services being provided under this Contract.**

6.2 Review Meetings. **During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.**

6.3 Reports. **At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:**

6.3.1 Any event not within the control of the Contractor or the Department that accounts for the problem;

6.3.2 Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;

6.3.3 Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

6.3.4 Any request or demand for services by one party that another party believes are not included within the terms of this Contract.

6.4 Problem Reporting Omissions. **The Department's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.**

6.5 Change Order Procedure. **The Department may at any time request a modification to the Scope of Work using a Change Order. The following procedures for a change order shall be followed:**

6.5.1 Written Request. The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.

6.5.2 The Contractor's Response. The Contractor shall submit to the Department a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.

6.5.3 Acceptance of the Contractor Estimate. If the Department accepts the estimate presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.

6.5.4 Adjustment to Compensation. The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

Section 7. Limitation of Liability.

The Contractor expressly acknowledges that the contracted services and underlying program are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project the Contractor shall not hold the Department liable in any manner for the resulting changes. The Department shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Department's right

to terminate the Contract pursuant to the termination provisions.

Section 8. Intellectual Property, Patent & Copyright.

8.1 Rights in Data. The Department shall be and shall remain the owner of all data and records provided to the contractor. The Contractor will not use the Department's data and records for any purpose other than providing services under the contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed to third parties or commercially exploited by or on behalf of the Contractor.

8.2 Ownership of Work Product. The Department shall own all work products developed or furnished in connection with the Contract by the Contractor or any subcontractor (the "Work Product"). The Contractor shall require that all agreements with subcontractors provide for the irrevocable assignment of rights to the Department, without additional consideration of all Work Products of the subcontractors. The Contractor shall give the Department all assistance reasonably requested by the Department to perfect the Department's ownership of all Work Products, including the execution and delivery of documents assigning title to such Work Product to the Department. All applicable rights to patents, copyrights, trademarks, trade secrets and other property rights in the Work Product shall be the property of the Department. The Department shall grant the Contractor a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the Work Product for the purposes of complying with this Agreement or any relevant provision of state or federal law.

8.3 Publications. Prior to completion of all services required by this Contract, Contractor shall not publish in any format any final or interim report, document, form or other material developed as a result of this Contract without the express written consent of the Department. Upon completion of all services required by this Contract, Contractor may publish or use materials developed as a result of this Contract, subject to confidentiality restrictions, and only after the Department has had an opportunity to review and comment upon the publication. Any such publication shall contain a statement that the work was done pursuant to a contract with the Department and that it does not necessarily reflect the opinions, findings and conclusions of the Department.

Section 9. Warranties.

9.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law. All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

9.2 Concepts, Materials, and Works Produced. Contractor represents and warrants that all the concepts, materials and Works produced, or provided to the Department pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and Works. The Contractor represents and warrants that the concepts, materials and Works and the Department's use of same and the exercise by the Department of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Contractor and any other materials, Works and methodologies used in connection with providing the services contemplated by this Contract.

9.3 Professional Practices. The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and

professional manner by knowledgeable, trained and qualified personnel.

9.4 Conformity with Contractual Requirements. The Contractor represents and warrants that the Works will appear and operate in conformance with the terms and conditions of this Contract.

9.5 Obligations Owed to Third Parties. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Department will not have any obligations with respect thereto.

9.6 Title to Property. The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the Department is good and that transfer of title or license to the Department is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

9.7 Industry Standards. The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the applicable industry standards in the performance of this Contract.

9.8 Technology Updates. The Contractor represents and warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

Section 10. Contract Administration.

10.1 Independent Contractor. The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the Department or the State of Iowa for federal or state tax purposes. The Department will not withhold taxes on behalf of the Contractor (unless required by law).

10.2 Incorporation of Documents. To the extent this Contract arises out of an RFP, the RFP, RFP amendments and written responses to bidders' questions (collectively RFP) and the Contractor's Proposal submitted in response to the RFP, and this Contract form the Contract between the Contractor and the Department and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.

10.3 Order of Priority. In the event of a conflict between the Contract, the RFP and the Contractor's Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) Proposal.

10.4 Compliance with the Law. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

10.5 Industry Standards. Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the relevant industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

10.6 Procurement and Subcontracting. Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations. All obligations imposed on Contractor through the terms of this Contract apply to any and all subcontractors and shall be included in all subcontracts.

10.7 Non-Exclusive Rights. This Contract is not exclusive. The Department reserves the right to select other contractors to provide services similar or identical to the Scope of Work described in this Contract during

the term of this Contract.

10.8 Non-Supplanting Requirement. To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

10.9 Compliance with Iowa Code ch. 8F. The Contractor shall comply with Iowa Code ch. 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Department.

10.10 Amendments. This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties. The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, the same shall be deemed incorporated herein by reference. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

10.11 Third Party Beneficiaries. There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Department and the Contractor.

10.12 Use of Third Parties. The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Department in writing of all subcontracts relating to services to be performed under this contract prior to the time the subcontract(s) become effective. The Department reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Department shall have the right to request the removal of a subcontractor from the Contract for good cause.

10.13 Choice of Law and Forum. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commended in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Department or the State of Iowa.

10.14 Assignment and Delegation. This Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

10.15 Integration. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

10.16 Headings or Captions. The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

10.17 Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

10.18 Joint and Several Liability. If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of

activities and obligations.

10.19 Supersedes Former Contracts or Agreements. This Contract supersedes all prior Contracts or Agreements between the Department and the Contractor for the services provided in connection with this Contract.

10.20 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

10.21 Notice. Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth on the Contract Declarations & Execution page(s). Each such notice shall be deemed to have been provided:

10.21.1 At the time it is actually received; or,

10.21.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

10.21.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

10.22 Cumulative Rights. **The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.**

10.23 Severability. **If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.**

10.24 Time is of the Essence. **Time is of the essence with respect to the performance of the terms of this Contract.**

10.25 Authorization. **Each party to this Contract represents and warrants to the other parties that:**

10.25.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

10.25.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

10.26 Successors in Interest. **All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.**

10.27 Records Retention and Access

10.27.1 The Contractor shall maintain accurate, current, and complete records of the financial activity of this contract, including records that adequately identify the source and application of funds throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. Cash contributions made by the Contractor and third party in-kind (property or service) contributions shall be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.

10.27.2 The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.

10.27.3 The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or

compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Department.

10.27.4 The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.

10.27.5 The Contractor shall permit the Department of Human Services, the Auditor of the State of Iowa or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Department reserves the right to address the board or other managing entity regarding performance and expenditures.

10.27.6 The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

10.28 Audits. **Local governments and non-profit subrecipient entities that expend $500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Department if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Department that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. Contractor shall provide the Department with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.**

10.29 Qualifications of Staff. The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Iowa Administrative Code.

10.30 Solicitation. The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

10.31 Obligations Beyond Contract Term. This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the Department and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

10.32 Counterparts. The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

10.33 Delays or Impossibility of Performance. Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided.

Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the goods or services contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Department. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of services not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

10.34 Suspensions and Debarment. **The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency. The Contractor shall execute the certification regarding debarment, which is attached to this Contract.**

10.35 Lobbying Restrictions. **The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. § 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements. The Contractor shall execute the certification regarding lobbying restrictions, which is attached to this Contract.**

10.36 Tobacco Smoke Prohibited. **The Contractor certifies that it and its subcontractors will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The Contractor shall execute the Certification of Compliance with the Pro-Children Act of 1994, attached to this Contract.**

10.37 Conflict of Interest. **No relationship exists or will exist during the contract period between the contractor and the Department that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Contract. In the event a conflict of interest is proven to the Department, the Department shall terminate the contract, and the Contractor shall be liable for any excess costs to the Department as a result of contract default. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any related party transaction to the Department. Written approval from the Department shall be required prior to such transaction.**

10.38 Drug Free Work Place. **The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.**

10.39 Certification regarding sales and use tax. **By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the Department may declare**

the contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Department or its representative filing for damages for breach of contract.

10.40 Right to Address the Board of Directors or Other Managing Entity. **The Department reserves the right to address the board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Department determines appropriateness.**

10.41 Repayment Obligation. **In the event that any state and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Department for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.**

Revised: December 12, 2006

Contractor Initials: JAC

Vermont State Initials: SWB

ATTACHMENT H
STATE OF MAINE SPECIFIC CONTRACT PROVISIONS

Terms found in the following State of Maine, Rider B-IT Contract Terms are standard State of Maine contract requirements. They are agreed to by Goold Health Systems Inc. (GHS), ("Business Associate") as of May 1, 2011 ("Effective Date") as a condition this Contract. The State of Maine, Rider B-IT Contract Terms does not need to be executed as part of this Contract. The terms supplement and are made a part of this Contract to which they are an attachment.

Contractor Initials: JAC *Vermont State Initials:* SWB

MAINE RIDER B-IT CONTRACT TERMS

METHOD OF PAYMENT AND OTHER PROVISIONS

1. AGREEMENT AMOUNT $315,545.50

2. INVOICES AND PAYMENTS The Department will pay the Provider as follows:

See Attachment B – page 26

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Agreement Administrator. All invoices require the following:

All invoices must include the Vendor Code number assigned when registering as a vendor with the State of Maine. This number appears on all Contracts and Purchase Orders and can be acquired from the agency contact.

All invoices must include the vendor's Federal ID Number.

All invoices must include either the Purchase Order number or the Contract number relating to the commodities/services provided.

In cases where hourly rates of contracted resources are concerned, invoices must contain a copy or copies of time sheets associated with that invoice. Time sheets will need to be reviewed and approved by the State's contract administrator.

Payments are subject to the Provider's compliance with all items set forth in this Agreement. The Department will pay the Provider within thirty (30) days following the receipt of an approved invoice.

The Department may withhold a Retainage for project-based services in the following manner:

The allowable payment amount from each project milestone payment will be multiplied by ten (10) percent, giving the amount that will be withheld from payment. Ninety (90) percent of the allowable project milestone payment amount will be paid to the Provider.

The Retainage will be held by the Department until the end of the warranty period.

The charges described in this Agreement are the only charges to be levied by the Provider for the products and services to be delivered by it. There are no other charges to be made by the Provider to the Department, unless they are performed in accordance with the provisions of Section 5, Changes in the Work. The Provider shall maintain documentation for all charges against the Department under this Agreement.

3. INDEPENDENT CAPACITY In the performance of this Agreement, the Provider shall act in the capacity of an independent contractor and not as an employee or agent of the State.

4. AGREEMENT ADMINISTRATOR The Agreement Administrator is the Department's representative for this Agreement. S/he is the single authority to act on behalf of the Department for this Agreement. S/he shall approve all invoices for payment. S/he shall make decisions on all claims of the Provider. The Provider shall address all contract correspondence and invoices to the Agreement Administrator. The following person is the Agreement Administrator for this Agreement:

Name: _____

Title: _____

Address: _____

Telephone: _____

E-mail address: _____

The following individual is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement. All project status reports, day to day operational issues and project program material and issues shall be directed to this individual.

Name: _____

Title: _____

Address: _____

Telephone: _____

E-mail address: _____

5. CHANGES IN THE WORK The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to the execution of the changed work.

6. SUBCONTRATORS The Provider may not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees.

The Provider is solely responsible for the performance of work under this Agreement. The approval of the Department for the Provider to subcontract for work under this Agreement shall not relieve the Provider in any way of its responsibility for performance of the work.

All Subcontractors shall be bound by the terms and conditions set forth in this Agreement. The Provider shall give the State immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement. The Provider shall indemnify and hold harmless the Department from and against any such claim, loss, damage, or liability as set forth in Section 16, State held Harmless.

7. SUBLETTING, ASSIGNMENT OR TRANSFER The Provider shall not sublet, sell, transfer, assign, or otherwise dispose of this Agreement, or any portion thereof, or of its right, title, or interest therein, without the written approval of the Department. Such approval shall not in any case relieve the Provider of its responsibility for performance of work under this Agreement.

8. EQUAL EMPLOYMENT OPPORTUNITY During the performance of this Agreement, the Provider certifies as follows:

The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a *bona fide* occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The Provider shall, in all solicitations or advertising for employees placed by, or on behalf of, the Provider, relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

The Provider shall send to each labor union, or representative of the workers, with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section, and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.

The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against itself by any individual, as well as any lawsuit regarding alleged

discriminatory practice.

The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment, and in the provision of service, to include accessibility and reasonable accommodations for employees and clients.

Contractors and Subcontractors with contracts in excess of $50,000 shall also pursue in good faith affirmative action programs.

The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. EMPLOYMENT AND PERSONNEL The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Provider shall not engage on a full-time, part-time, or any other basis, during the period of this Agreement, any personnel who are, or have been, at any time during the period of this Agreement, in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time, or any other basis, during the period of this Agreement, any retired employee of the Department, who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement, so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

10. STATE EMPLOYEES NOT TO BENEFIT No individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, due to his employment by, or financial interest in, the Provider, or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. NO SOLICITATION The Provider certifies that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, any company or person, other than a *bona fide* employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from, the award of this Agreement. For breach or violation of this provision, the Department shall have the right to terminate this Agreement without liability or, at its discretion, to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

12. ACCOUNTING, RECORDS, AND AUDIT

The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.

Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.

Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.

Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.

The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.

Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under this Agreement are being performed, to inspect, monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

ACCESS TO PUBLIC RECORDS: As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or

after October 1, 2009.

13. TERMINATION The performance of work under this Agreement may be terminated by the Department in whole or in part, whenever, for any reason the Agreement Administrator shall determine that such termination is in the best interests of the Department. Any such termination shall be effected by the delivery to the Provider of a Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated, and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

Upon receipt of the Notice of Termination, the Provider shall:

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;
2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval of the Agreement Administrator, settle all outstanding liabilities and claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement;
6. Transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Agreement Administrator, equipment and products purchased pursuant to this Agreement, and all files, source code, data manuals, or other documentation, in any form, that relate to all the work completed, or in progress, prior to the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

Notwithstanding the above, nothing herein shall limit the right of the Department to pursue any other legal remedies against the Provider.

14. GOVERNMENTAL REQUIREMENTS The Provider shall comply with all applicable governmental ordinances, laws, and regulations.

15. GOVERNING LAW This Agreement shall be governed by, interpreted, and enforced in accordance with the laws, statutes, and regulations of the State of Maine, without regard to conflicts of law provisions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and of the Uniform Computer Information Transactions Act shall not apply to this Agreement. Any legal proceeding against the Department regarding this Agreement shall be brought in the State of Maine in a court of competent jurisdiction.

16. STATE HELD HARMLESS The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.

17. LIMITATION OF LIABILITY The Provider's liability for damages sustained by the Department as the result of Provider's default or acts or omissions in the performance of work under this Agreement, whether such damages arise out of breach, negligence, misrepresentation, or otherwise, shall be no greater than:

1. Damages for violation or infringement of any copyright or trademark;
2. Damages for bodily injury (including death) to persons, and damages for physical injury to tangible personal property or real property; and
3. The amount of any other actual direct damages up to the greater of $500,000 or three times the value of the Product or Service that is the subject of the claim, up to a maximum of $25,000,000. For example, if the Product or Service that is the subject of the claim was valued at $15,000,000, then the Provider would be liable for no more than $25,000,000. For purposes of this subsection, the term "Product" would typically include the following, but not be limited to, Materials, Source Code, Machine Code, and Licenses.

Notwithstanding the above, Provider shall not be liable for any indirect or consequential damages.

18. NOTICE OF CLAIMS The Provider shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed related in any way to this Agreement, or which may affect the performance of duties under this Agreement, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement.

19. APPROVAL This Agreement must be approved by the State Controller and the State Purchases Review Committee before it can be considered a valid enforceable document.

20. INSURANCE REQUIREMENTS The Provider shall procure and maintain, for the duration of the Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection with, the fulfillment of this Agreement by the Provider, its agents, representatives, employees, or Subcontractors.

1. **Minimum Coverage**

- Workers' Compensation and employer's liability: as required by law;
- Professional liability: $1,000,000; and
- Property (including contents coverage for all records maintained pursuant to this Agreement): $1,000,000 per occurrence.
- Commercial general liability (including products, completed operations, and broad-form contractual): $1,000,000 per occurrence;

2. **Other Provisions**

Unless explicitly waived by the Department, the insurance policies should contain, or be endorsed to contain, the following provisions:

- The Provider's insurance coverage shall be the primary insurance. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.
- The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- The Provider shall furnish the Department with certificates of insurance and with those endorsements, if any, effecting coverage required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.

All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason including nonpayment.

21. NON-APPROPRIATION Notwithstanding any other provision of this Agreement, if the Department does not receive sufficient funds to pay for the work to be performed under this Agreement, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

22. SEVERABILITY The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the remainder of said provision, or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

23. INTEGRATION All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B-IT (except for expressed exceptions to Rider B-IT included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

24. FORCE MAJEURE Either party may be excused from the performance of an obligation under this

Agreement in the event that performance of that obligation by a party is prevented by an act of God, act of war, riot, fire, explosion, flood, or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, strike or labor dispute, provided that any such event, and the delay caused thereby, is beyond the control of, and could not reasonably be avoided by that party. Upon the occurrence of an event of force majeure, the time period for performance of the obligation excused under this section shall be extended by the period of the excused delay, together with a reasonable period, to reinstate compliance with the terms of this Agreement.

25. SET-OFF RIGHTS The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement, up to any amounts due and owing to the State with regard to this Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

26. INTERPRETATION OF THE AGREEMENT

Reliance on Policy Determinations: The Department shall determine all program policy. The Provider may, from time to time, request the Department to make policy determinations, or to issue operating guidelines required for the proper performance of this Agreement, and the Agreement Administrator shall respond in writing in a timely manner. The Provider shall be entitled to rely upon, and act in accordance with, such written policy determinations and operating guidelines, unless subsequently amended, modified, or changed in writing by the Department, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Agreement, or in any agreement, determination, operating guideline, or other communication from the Department shall relieve the Provider of its obligation to keep itself informed of applicable State and Federal laws, regulations, policies, procedure, and guidelines, to be in complete compliance and conformity therewith.

Titles Not Controlling: Titles of sections and paragraphs used in this Agreement are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of the language.

No Rule of Construction: This is a negotiated Agreement and no rule of construction shall apply that construes ambiguous or unclear language in favor of or against any party.

27. PERIOD OF WORK under this Agreement shall begin no sooner than the date on which this Agreement has been fully executed by the parties and approved by the Controller and the State Purchases Review Committee. Unless terminated earlier, this Agreement shall expire on the date set out on the first page of this Agreement, or at the completion and acceptance of all specified tasks, and delivery of all contracted products and services as defined in this Agreement, including performance of any warranty and/or maintenance agreements, whichever is the later date.

28. NOTICES All notices under this Agreement shall be deemed duly given: 1) upon delivery, if

delivered by hand against receipt, or 2) five (5) business days following posting, if sent by registered or certified mail, return receipt requested. Either party may change its address for notification purposes by giving written notice of the change and setting forth the new address and an effective date.

29. ADVERTISING AND PUBLICATIONS The Provider shall not publish any statement, news release, or advertisement pertaining to this Agreement without the prior written approval of the Agreement Administrator. Should this Agreement be funded, in whole or in part, by Federal funds, then in compliance with the Steven's Amendment, it will be clearly stated when issuing statements, press releases, and requests for proposals, bid solicitations, and other documents: (1) the percentage of the total cost that was financed with Federal moneys; and (2) the dollar amount of Federal funds.

30. CONFLICT OF INTEREST The Provider certifies that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of its services hereunder. The Provider further certifies that in the performance of this Agreement, no person having any such known interests shall be employed.

31. LOBBYING

Public Funds: No Federal or State-appropriated funds shall be expended by the Provider for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress or State Legislature, an officer or employee of Congress or State Legislature, or an employee of a member of Congress or State Legislature, in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. Signing this Agreement fulfills the requirement that Providers receiving over $100,000 in Federal or State funds file with the Department on this provision.

Federal Certification: Section 1352 of Title 31 of the US Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Provider or grantee (such as the Department) certifies that no Federal funds will be used to lobby or influence a Federal officer or member of Congress.

The certification: the Department has been required to sign provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of $10,000 to $100,000 for failing to make a required report. As a sub-recipient, the Provider understands and agrees to the Federal requirements for certification and disclosure.

Other Funds: If any non-Federal or State funds have been or will be paid to any person in connection with any of the covered actions in this section, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form to the Department.

32. PROVIDER PERSONNEL

The parties recognize that the primary value of the Provider to the Department derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals

whose résumés were offered by the Provider in the Proposal. Therefore, the parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.

The Department shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Department's judgment, are not appropriate for the performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Department shall act reasonably and in good faith.

During the course of this Agreement, the Department reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Department. In considering the Provider's employees' acceptability, the Department shall act reasonably and in good faith.

In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Agreement, including any Subcontractors, including persons or corporations who have critical influence on or control over this Agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal or State department or agency.

During the course of this Agreement, the Department reserves the right to require a background check on any of the Provider's personnel (employees and Subcontractors) that are in any way involved in the performance of this Agreement.

33. STATE PROPERTY The Provider shall be responsible for the proper custody and care of any Department or State owned property furnished for the Provider's use in connection with the performance of this Agreement, and the Provider will reimburse the Department for its loss or damage, normal wear and tear excepted.

34. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS

The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider, at its expense, shall defend, indemnify, and hold harmless the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees.

The Provider may not publish or copyright any data without the prior approval of the Department. The State and the Federal Government, if applicable, shall have the right to publish, duplicate, use, and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

35. PRODUCT BV The Provider expressly warrants its products and services for one full year from their final written acceptance by the Department. The responsibility of the Provider with respect to this warranty is limited to correcting deficiencies in any deliverable using all the diligence and dispatch at its command, at no additional

cost to the Department. The Provider is also responsible for correcting and/or updating any documentation affected by any operational support performed under this warranty provision.

36. OPPORTUNITY TO CURE The Agreement Administrator may notify the Provider in writing about the Department's concerns regarding the quality or timeliness of a deliverable. Within five (5) business days of receipt of such a notice, the Provider shall submit a corrective action plan, which may include the commitment of additional Provider resources, to remedy the deliverable to the satisfaction of the Agreement Administrator, without affecting other project schedules. The Department's exercise of its rights under this provision is not and shall be not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 13, Termination.

37. COVER If, in the reasonable judgment of the Agreement Administrator, a breach or default by the Provider is not so substantial as to require termination, and reasonable efforts to induce the Provider to cure the breach or default are unavailing, and the breach or default is capable of being cured by the Department or by another contractor without unduly interfering with the continued performance by the Provider, then the Department may provide or procure the services necessary to cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

38. ACCESSIBILITY All IT products must be accessible to persons with disabilities, and must comply with the State Accessibility Policy and the Americans with Disabilities Act. All IT applications must comply with the Computer Application Program Accessibility Standard (www.Maine.gov/oit/accessiblesoftware). All IT applications and contents delivered through web browsers must comply with the Website Standards (Maine.Gov/oit/webstandard) and the Website Accessibility Policy (Maine.Gov/oit/accessibleweb).

39. STATE IT POLICIES All IT products and services delivered as part of this Agreement must conform to the State IT Policies, Standards, and Procedures (Maine.Gov/oit/oitpolicies) effective at the time this Agreement is executed

40. CONFIDENTIALITY

All materials and information given to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information.

In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and the Department shall take all necessary steps to protect confidential information regarding all persons served by the Department, including the proper care, custody, use, and preservation of records, papers, files, communications, and any such items that may reveal confidential information about persons served by the Department, or whose information is utilized in order to accomplish the purposes of this Agreement.

In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately.

The Provider shall comply with Maine Public Law 10 MRSA §1347 (Notice of Risk to Personal Data Act).

41. OWNERSHIP

All data (including Geographical Information Systems data), notebooks, plans, working papers, intellectual property and other works produced, and equipment and products purchased in the performance of this Agreement are the property of the Department, or the joint property of the Department and the Federal Government, if Federal funds are involved. The State (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement, or equipment and products purchased pursuant to this Agreement. The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable Federal and State laws.

Upon termination of this Agreement for any reason, or upon request of the Department, the Provider agrees to convey to the Department good titles to purchased items free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

42. CUSTOM SOFTWARE For all custom software furnished by the Provider as part of this agreement, the following terms and conditions shall apply:

The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.

A fundamental obligation of the Provider is the delivery to the Department of all ownership rights to the complete system, free of any claim or retention of rights thereto by the Provider. The Provider acknowledges that this system shall henceforth remain the sole and exclusive property of the Department, and the Provider shall not use or describe such software and materials without the written permission of the Department. This obligation to transfer all ownership rights to the Department on the part of the Provider is not subject to any limitation in any respect.

43. OFF-THE-SHELF (OTS) SOFTWARE For all OTS software purchased by the Provider as part of this Agreement, the following terms and conditions shall apply.

This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the OTS software supplied by the Provider, installed at the Department's site, at mutually agreed upon times. In the event that a separate license agreement accompanies the OTS software, then the terms of that separate license agreement supersede the above license granted for that OTS software.

This Agreement does not transfer to the Department the title to any intellectual property contained in any OTS software. The Department will not decompile or disassemble any OTS software provided under this Agreement, or modify any OTS software that bears the copyright notice of a third party. The Department will make and maintain no more than one archival copy (for back-up purpose) of each OTS software, and each copy will contain all legends and notices, and will be subject to the same conditions and restrictions as the original.

If the CPU on which any OTS software is licensed becomes temporarily unavailable, use of such OTS software may be temporarily transferred to an alternative CPU until the original CPU becomes available.

44. SOFTWARE AS SERVICE When the software is fully owned, hosted, and operated by the Provider, and the Department uses said software remotely over the Internet, the following terms and conditions shall apply:

The Provider, as depositor, shall enter into an escrow contract, upon terms acceptable to the Department, with a recognized software Escrow Agent. The escrow contract must provide for the Department to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of the Department's data, and all updates thereof (the "Deposit Materials"), in electronic format. Deposits will occur no less frequently than once a month.

The escrow contract shall provide for the retention, administration, and controlled access of the Deposit Materials, and the release of the Deposit Materials to the Department, upon receipt of a joint written instruction from the Department and the Provider, or upon receipt of written notice from the Department that:

The Provider has failed to carry out its obligations set forth in the this Agreement; or

A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or

The Provider has filed a voluntary petition in bankruptcy, or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or becomes subject to an involuntary petition in bankruptcy, which petition or proceeding is not dismissed or unstayed within sixty (60) days from the date of filing; or

The Provider is in material breach of its maintenance and support obligations and has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or

A condition has occurred that materially and adversely impacts the Provider's ability to support the software and the Provider has failed to cure such condition within thirty (30) days from the date of receipt by the Provider of written notice of such condition.

The Provider is responsible for all fees to be paid to the Escrow Agent.

The Escrow Agent may resign by providing advance written notice to both the Department and the Provider at least thirty (30) calendar days prior to the date of resignation. In such an event, it is the obligation of the Provider to establish a new escrow account with a new Escrow Agent.

45. PRICE PROTECTION

The Provider shall ensure that all prices, terms, and warranties included in this Agreement are comparable to, or better than, the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements as the Department. If, during the term of this Agreement, the Provider enters into agreement(s) that provide more favorable terms to other comparable customer(s), the Provider shall provide the same terms to the Department.

If Federal funding is used for the acquisition of products and/or services under this Agreement, interest cannot be paid under any installment purchase or lease-purchase agreement entered into as a part of this Agreement.

46. IRREVOCABLE LETTER OF CREDIT In order to assure the Provider's faithful adherence to the terms and conditions of this Agreement, the Provider shall submit an irrevocable letter of credit, acceptable to the Department, that is payable on demand. This letter of credit will be procured at the expense of the Provider, naming the Department as the beneficiary, in the entire Agreement amount. In lieu of this requirement, the Department will accept a commitment letter from a recognized financial institution or investment fund stating that the Provider has sufficient capital to fund the obligations, and has legally committed such capital to fund the obligations, in accordance with this Agreement. The letter of credit, or the equivalent commitment letter, shall specifically refer to this Agreement, and shall bind the parties to all the terms and conditions of this Agreement. The Provider shall have fifteen (15) calendar days from the date of execution of this Agreement to furnish the letter of credit or the equivalent commitment letter. Should the Provider fail to comply with this section, then the Department shall have the right to terminate this Agreement without liability.

47. ENTIRE AGREEMENT This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to this Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise an option or election under this Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, but the same shall continue in full force and effect. Use of one remedy shall not waive the Department's right to use other remedies. Failure of the Department to use a particular remedy for any breach shall not be deemed as a waiver for any subsequent breach. No waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies under this Agreement.

ATTACHMENT I
STATE OF MAINE SPECIFIC CONTRACT PROVISIONS

Terms found in the following State of Maine, Business Associate Agreement are standard State of Maine contract requirements. They are agreed to by Goold Health Systems Inc. (GHS), ("Business Associate") as of May 1, 2011 ("Effective Date") as a condition this Contract. The State of Maine, Business Associate Agreement does not need to be executed as part of this Contract. The terms supplement and are made a part of this Contract to which they are an attachment.

Contractor Initials: JAC *Vermont State Initials:* SWB

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is made this first day of May, 2011 by and between the State of Maine, Department of Health and Human Services and Goold Health Systems ("Business Associate") with an address at Augusta, ME.

WHEREAS, the parties intend to protect the privacy and security of all individually identifiable health information and protected health information in accordance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), P.L. 104-91, codified at 42 U.S.C. §§ 1320 (d)(1)-(d)(8), and all regulations adopted pursuant thereto. Although this agreement is executed to comply with the provisions of HIPAA, the parties agree that certain state laws imposing confidentiality restrictions also apply to govern this business relationship. These may include all or some of the following state laws; this list is for informational purposes only, to illustrate the potential scope of state confidentiality provisions, and is not intended to be an all-inclusive list of the applicable statutes: 5 MRSA §19203; 5 MRSA §20047; 22 MRSA §§42, 261, 815, 824, 833, 1494, 1596, 1828, 3173, 3292, 4008, 5328, 7250, 7703, 8754; 34-B MRSA §1207.

NOW THEREFORE, the parties agree as follows:

Definitions:

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191.

"Protected Health Information" shall have the same meaning as the term "protected health information ("PHI") in 45 C.F.R.§1604.103, limited to information created or received by the Business Associate from or on behalf of the Department.

"Required by law" shall have the same meaning as the term "required by law" in 45 C.F.R.§164.103.

"Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services, or his or her designee.

1. Term of Agreement

This Agreement shall be effective May 1, 2011 and shall continue to March 31, 2013. This Agreement shall automatically renew itself for an additional twelve-month period unless otherwise terminated by either party. In the event that this Agreement is automatically renewed, the Business Associate agrees to be bound by the Terms and Conditions currently in effect. The confidentiality provisions of this Agreement shall **survive indefinitely**, even beyond the termination of this Agreement, or as defined under provisions of law.

2. Termination of Agreement

Upon termination of this agreement the Business Associate is required, if feasible, to return or destroy all PHI received from or created or received by the Business Associate on behalf of the Department and retain no copies. If returning or destroying PHI is not feasible, Business Associate agrees to protect the confidentiality of the PHI to the extent required by HIPAA and any regulations promulgated there under, and limit any further use or disclosure to those purposes that make the return or destruction of the information infeasible. Either party may terminate the Agreement by 30 day written notice to the other party.

3. Termination for Cause

Upon the Department's knowledge of a material breach by the Business Associate, the Department shall either, at its sole discretion:

- Provide the Business Associate an opportunity to cure the breach or end the violation within a time frame and upon such conditions as established by the Department;
- Immediately terminate this Agreement in the event the Business Associate has breeched a material term of this Agreement and cure is not possible; or
- In the event neither termination nor cure is feasible, the Department shall report the violation to the Secretary.

4. Permitted Uses and Disclosures

The only permitted uses and disclosure of PHI in this agreement are stated in attachment A. Except as otherwise limited by this agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of, the Department provided that such use and disclosure would not violate HIPAA, the regulations promulgated there under, or the HIPAA minimum necessary policy. The Business Associate will disclose protected health information only as permitted, or required by this Agreement, or as required by law.

5. Documentation and Availability

Business Associate is required to maintain and make available the information required to provide an accounting of disclosures in accordance with 45 CFR 164.528. Documentation will be made available as necessary for an accounting of disclosures of PHI to the individual and or the Department as permitted by 45 C.F.R. 164.528.

- The Business Associate will make PHI available to an individual to access and or copy his/her PHI as permitted by 45 C.F.R. 164.524, within 30 days from the time of request.

- The Business Associate will make available PHI for amendment as permitted by 45 C.F.R. 164.526, within 60 days from the time of request.
- The Business Associate will make its internal practices, books and records relating to the use or disclosure of PHI received from the Department or created or received by the Business Associate on behalf of the Department, available to either the Department or the HHS Secretary for the purposes of determining the compliance of either the Department or the Business Associate with the Medicaid Act and HIPAA Privacy Rule. 45 C.F.R. 164.504
- In the event Business Associate has PHI in a designated record set, the Business Associate agrees to make any amendments to the Designated Record Set as the Department directs or agrees to in accordance with 45 C.F.R. §164.526 in such time-period and in such manner as the Department may direct.

6. Inappropriate Use and Disclosure

The Business Associate is required to report to the Department any inappropriate use or disclosure of the PHI of which it becomes aware, i.e. use or disclosure not permitted in this agreement or permitted by law. Business Associate will make such report to the Department Privacy Officer or designee by the end of the following business day.

The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement.

7. Appropriate Safeguards

The Business Associate will implement, to the Department's satisfaction, all reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of PHI. Safeguards will be implemented for paper as well as electronic versions of PHI. Business Associate will ensure that any agent or subcontractor to whom it provides PHI received from, created or received by Business Associate on behalf of the Department agrees to the same restrictions and conditions which apply through this Agreement to the Business Associate with respect to such information.

8. Obligations of the Office of MaineCare Services

The Department shall notify Business Associate of any limitation in its Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate.

The Department shall notify the Business Associate of any changes, revocations, restrictions or permissions by an individual to the use and disclosure of his/her PHI.

The Department shall notify the Business Associate of any restriction to the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR §164.522, to the extent such restriction may affect the use or disclosure of PHI by the Business Associate. The HIPAA Privacy Rule allows covered entities, at their discretion, to accommodate requests for confidentiality by the subject of the PHI. If the Department has agreed to accommodate a confidentiality request, it has a duty to disclose such to its trading partners in order to allow

the trading partner to honor the confidentiality agreement.

9. Agents

The Business Associate agrees to ensure that any agent, including a subcontractor to whom it provides or entrusts PHI as defined in this Agreement, will agree to the same restrictions and conditions governing PHI which apply to the Business Associate with respect to such information under the terms and conditions of this Agreement.

10. Hold Harmless

Business Associate agrees to indemnify and hold harmless the Department, its directors, officers, agents, shareholders, and employees against any and all claims, demands, expenses, liabilities or causes of action which arise from any use or disclosure of PHI not specifically permitted by this agreement or applicable state and federal laws.

11. Miscellaneous

(a) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the Privacy Rule and HIPAA.

(b) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the Privacy Rule and HIPAA.

12. Priority of Agreement

If any portion of this Agreement is inconsistent with the confidentiality terms of any of the agreements listed in Attachment A, the terms of the agreements listed in Attachment A shall prevail.

IN WITNESS WHEREOF, the parties have executed this BUSINESS ASSOCIATE AGREEMENT the day and year first written above.

	Department		Business Associate
Signature:	James A. Clair	Signature:	Susan W Besio
Name:	James A. Clair	Name:	Susan W Besio
Title:	CEO	Title:	Commissioner
Date:	05-06-11	Date:	05-10-11

ATTACHMENT J
STATE OF WYOMING SPECIFIC CONTRACT PROVISIONS

Terms found in the following State of Wyoming General Provisions are standard State of Wyoming contract requirements. They are agreed to by Goold Health Systems Inc. (GHS), ("Business Associate") as of May 1, 2011 ("Effective Date") as a condition this Contract. The terms supplement and are made a part of this Contract to which they are an attachment.

Contractor Initials: JAC *Vermont State Initials:* SWB

WYOMING GENERAL PROVISIONS

1. INDEPENDENT CONTRACTOR

1.1 The Contractor shall function as an independent Contractor for the purposes of the Contract, and shall not be considered an employee of the State of Wyoming for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of the Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in the Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency, or to incur any obligation of any kind on the behalf of the State of Wyoming or the Agency. The Contractor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.

2. INSURANCE:

2.1 The Contractor shall indemnify and save harmless the State, its officers, and employees from all suits, actions, or claims of any character brought because of injuries or damage received or sustained by any person, persons, or property; on account of the operations of the said Contractor or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect, or misconduct of said Contractor or from any claims or amounts arising or recovered under the Workers' Compensation Act, or any other law, ordinance, order or decree.

3. LAWS TO BE OBSERVED:

3.1 The Contractor shall keep fully informed on all federal and state laws, all local bylaws, regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority which in any manner affect those engaged or employed on the work or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, bylaws, ordinances, regulations, orders and decrees in force at the time of award. The Contractor shall protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, bylaw, ordinance, regulation,

order or decree whether by himself or his/their employees. No extension of time or additional payment will be made for loss of time or disruption of work caused by any actions against the provider for any of the above reasons.

4. TAXES:

4.1 The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to federal and Social Security taxes, workers' compensation, unemployment insurance and sales taxes.

5. ASSIGNMENT/CONTRACTOR:

5.1 The Contract shall not be assigned by the Contractor. Third party participation is authorized only as a joint venture which shall be clearly stated with details on the original proposal, signed by all parties participating. Any alterations, variations, modifications or waivers of the provisions of this Contract shall be valid only if they have been reduced to writing, duly signed by the parties hereto and attached to the original Contract agreement.

5.2 The Contractor shall not enter into any subcontracts for any of the work contemplated under this Contract without prior written authorization of the State.

5.3 Claims for money due or to become due Contractor from the State under the Contract may be assigned to a bank, trust company, or other financial institution, or to a trustee in bankruptcy, without approval by the State. Notice of any assignment or transfer shall be furnished to the State.

5.4 The Contractor shall not use the Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Agency.

6. TERMINATION OF CONTRACT:

6.1 Termination of the Contract may be made by any party at any time with or without cause, upon no less than thirty (30) days written notice by telegram, or personal delivery of notice to the other parties. The Contract shall remain in full force and effect until terminated as provided herein.

6.2 The State may, upon ten days written notice to the Contractor, terminate the contract, in whole or in part, for just cause, which shall include failure of the Contractor to fulfill in a timely and proper manner the obligations under the Contract. In such event, all finished documents, data, models and reports prepared under this contract shall, at the option of the State become its property upon payment for services rendered through the termination of the Contract.

6.3 Should the Contractor fail to comply with the provisions of the Contract, payment for portions of the Contract will be withheld until such time as the Contract terms have been implemented. Administrative, contractual, and/or legal remedies as determined by the Wyoming Attorney General will be implemented if it appears the Contractor has breached or defaulted on the Contract.

7. ACCOUNT REPRESENTATIVE:

7.1 The successful proposer(s) shall appoint, by name, a company representative who shall be responsible for servicing this account. The appointed representative shall be responsible to provide the services required to insure that the account will be administered in an organized systematic manner.

8. RESPONSIVENESS:

8.1 Proposers are expected to examine specifications, schedules and instructions included in this package. Failure to do so will be at the proposer's risk.

9. EXTENSION AND AMENDMENT:

9.1 The proposer and the State covenant agree that this proposal or subsequent Contract may, with the mutual approval of the proposer and the State, be extended under the same terms and conditions of this proposal or Contract for a period of one (1) additional year, and said option to extend this proposal or Contract for a one year period shall be in effect for each year thereafter for a total period not to exceed three (3) additional years.

10. COMPLIANCE WITH LAWS:

10.1 In performing the Contract, both parties agree to comply with all applicable state, federal, and local laws, rules and regulations.

11. AUDIT:

11.1 The State or any of their duly authorized representatives shall have access to any books, documents, papers, and records of Contractor which are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, and transactions.

12. CONFLICT OF INTEREST:

12.1 The parties warrant that no kickbacks, gratuities, or contingency fees have been paid in connection with the Contract and none has been promised contingent upon the award of the contract. Consultant warrants that no one being paid pursuant to the Contract is engaged in any activities which would constitute a conflict of interest with respect to the purposes of the Contract.

13. OWNERSHIP OF DOCUMENTS/WORK PRODUCT:

13.1 It is agreed that all finished or unfinished documents, data, or reports, prepared by Contractor under the Contract shall be considered the property of the State, and upon completion of the services to be performed, or upon termination of the Contract for cause, or for the convenience of the State, will be turned over to the State.

14. CONFIDENTIALITY OF INFORMATION:

14.1 All documents, data compilations, reports, computer programs, photographs, and any other work

provided to or produced by the Contractor in the performance of the Contract shall be kept confidential by the Contractor unless written permission is granted by the State of Wyoming for its release.

14.2 In addition, the Contractor shall be required to enter into a signed Business Associate Agreement in compliance with the Standards for Electronic Transactions, the Security Standards, and the Standards for Privacy of Individually Identifiable Health Information issued by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health (HITECH) Act. HIPAA regulations are published at 45 CFR Parts 160, 162, and 164. This is an agreement to protect personal or sensitive information

15. SOVEREIGN IMMUNITY:

15.1 The State of Wyoming and the Agency do not waive Sovereign immunity by entering into the Contract, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyoming Statue 1-39-104(a) and all other state law.

16. INDEMNIFICATION:

16.1 The Contractor shall release, indemnify, and hold harmless the State, the Agency, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of Contractor's performance under the Contract SECTION 3: SPECIAL PROVISIONS INFORMATION.