

AMENDMENT

It is agreed by and between the State of Vermont, Department of Vermont Health Access (hereafter called the "State") and MedSolutions, Inc. (hereafter called the "Contractor") that the contract on the subject of Utilization Management Services for evidence based case and utilization management of diagnostic radiology imaging services and providing assistance to Medicaid plans in the evidence-based review and improvement of patient safety, effective August 1, 2013, is hereby amended effective April 30, 2014 as follows:

1. By deleting Section 3 (Maximum Amount) on page 1 of 30 of the base agreement and substituting in lieu thereof the following Section 3:

- 3. Maximum Amount.** In consideration of the services to be performed by the Contractor, the State agrees to pay the Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$810,000.00.

2. By deleting Section 4 (Contract Term) on page 1 of 30 of the base agreement and substituting in lieu thereof the following Section 4:

- 4. Contract Term.** The period of the Contractor's performance shall begin on August 1, 2013 and end on June 30, 2015 with the option to renew for two (2) additional one-year terms as mutually agreed upon between the State and Contractor.

2. By deleting Section B.1.b on page 8 of 30, and substituting in lieu thereof the following Section B.1.b:

- b) Delegation for communication of medical necessity determinations.

3. By deleting Section B.2.e on page 9 of 30, and substituting in lieu thereof the following Section B.2.e:

- e) Contractor's UM Program decisions shall follow the timeframes set below. Contractor's UM Program policies and procedures shall clearly define the maximum time frames for UM program decisions. All UM Program decisions shall be completed within the timeframes outlined herein or such shorter time as required to meet all applicable State requirements.
- i) Contractor shall implement an appropriate mechanism to monitor and document timeliness of decisions that shall include:
- (1) Fax/Mail: Documentation to show urgent requests are responded to within one (1) business day.
 - (2) Web Portal: The web portal must be available 7 days a week 24 hours per day and should be easily navigated. Where all information has been provided to demonstrate that the request meets clinical appropriateness guidelines, an approval will be instantaneous with the provider seeing an approval within 4-5 minutes, unless evidence based guidelines indicate that further review is required. Documentation to show seventy-five percent (75%) of routine requests are responded to within two (2) working days.

- (3) Telephone: Where all information has been provided to demonstrate that the request meets clinical appropriateness guidelines, an approval will be instantaneous with the provider receiving an approval within 4-5 minutes, unless evidence based guidelines indicate that further review is required. Documentation to show ninety-eight percent (98%) of routine requests are responded to within three (3) business days.
- ii) Contractor will monitor and analyze its compliance with timeliness requirements and take action to meet or improve adherence to such requirements as the circumstances may require.

4. By deleting Section C on page 11 of 30, and substituting in lieu thereof the following Section C:

C. PERFORMANCE GUARANTEES

Contractor agrees to comply with Performance Standards related to performance of its duties and obligations under this Agreement.

- 1) Telephone Answer Speed.
 - (a) Guarantee: The telephone answer speed will result in eighty percent (80%) or more of calls being answered in thirty (30) seconds or less. If the telephone answer speed results in less than 80% of all calls being answered within 30 seconds, the total MSI Service Fee for the subsequent month(s) will face liquidated damages in the amount of \$1,000. The State shall reinstate full payment of the MSI Service Fee in the subsequent month after 80% or more of calls are answered by the Contractor within 30 seconds or less.
 - (b) Measure: The telephone answer speed for Covered Health Services and related customer service calls will be monitored by Contractor and reported to the State quarterly by month. The answer speed will be based on Covered Health Services and related customer service calls received Monday through Friday during normal business hours and will measure the time between the selection of an option from the Contractor's automated attendant options until the phone is answered by a Contractor employee.
- 2) Telephone Abandon Rate.
 - a) Guarantee: The telephone abandon rate will not exceed five percent (5%). If the telephone abandon rate exceeds 5%, the MSI Service Fee for the subsequent month(s) will face liquidated damages in the amount of \$1,000. The State shall reinstate payment of the full MSI Service Fee in the subsequent month after the Contractor's telephone abandon rate drops to 5% or less.
 - b) Measure: The telephone abandon rate will be monitored by Contractor and reported to the State quarterly by month. The telephone abandon rate shall be calculated as the percentage of total Covered Health Services and related customer service calls made during normal business hours that hang up before the call is answered.

5. By adding to the end of Attachment A, Scope of Work to be Performed, beginning on page 3 of 30, the following:

Authorized Representative of the State:

Kelly Gordon
Project and Operations Director
802-879-5905
Kelly.Gordon@state.vt.us

Daljit Clark
Director, Clinical Operations
802-879-5915
Daljit.Clark@state.v.us

Authorized Representative of the Contractor:

Sondra Martin
Client Service Specialist
615-468-4304
Clientservices@medsolutions.com

6. By deleting item number 4 from Attachment B, Payment Provisions, on page 12 of 30, and substituting in lieu thereof the following number 4:

4. If the telephone abandon rate exceeds five percent (5%), the MSI Service Fee for the subsequent month(s) will face liquidated damages in the amount of \$1,000. The State shall reinstate payment of the full MSI Service Fee in the subsequent month after the Contractor's telephone abandon rate drops to 5% or less.

7. By deleting item number 5 from Attachment B, Payment Provisions, on page 12 of 30, and substituting in lieu thereof the following number 5:

5. If the telephone answer speed results in less than eighty percent (80%) of all calls being answered in thirty (30) seconds or less, the total MSI Service Fee for the subsequent month(s) will face liquidated damages in the amount of \$1,000. The State shall reinstate full payment of the MSI Service Fee in the subsequent month after 80% or more of calls are answered by the Contractor within 30 seconds or less.

8. By deleting Attachment E, Business Associate Agreement, beginning on page 19 of 30 of the base agreement, and substituting in lieu thereof Attachment E, Business Associate Agreement revised 9/21/13, which is an attachment to this amendment beginning on page 6.

9. By deleting Exhibit A, Reporting Requirements, beginning on page 29 of 30, and substituting in lieu thereof the following Exhibit A:

Contractor agrees to deliver requested reports to the State in the format designated by the State on the agreed upon schedule. Quarterly reports are due on the 15th day of the month following

the end of the quarter. Contractor shall include year-to-date cumulative amounts in each quarterly report submitted. Quarterly reports with month-to-month breakdowns must show the total amounts for each month. Annual reports are due at the end of the first month following the prior year. This list of reports may be updated from time to time as determined by Contractor and the State. Reports requested by the State not listed below will be delivered after the reports are built and tested for reporting accuracy. In addition, the Contractor agrees to deliver any reports required by State in the format required by the State.

Quarterly Reports with Month-to-Month Breakdown*
I. PA Requests received by intake method (internet, fax, phone)
II. PA Requests approved/denied
III. PA turnaround statistics (PA process rate) including outliers by intake method
IV. Number of PA Requests where additional clinical information was requested
V. Average time between the receipt of clinical information and the decision on the request
VI. Number of PA Requests where a professional requesting PA asked for a discussion with a health care professional peer, including the average number of contacts to engage in this discussion.
VII. Call center metrics (total calls received/call answer rate/call abandon rate)
VIII. PA requests processed via predictive modeling capability and outcomes
Quarterly Reports*
I. Predictive modeling Quality Control Audit Results (Monthly 10% review of all Pas processed via predictive modeling.)
II. Top referring doctors (studies requested/denial rate information)
III. Top performing providers (volume)
IV. PA denial rate results including rationales
Annual Reports
I. Utilization Savings and Trending Analysis
II. Gold Card Program evaluation, analysis, and eligibility reporting
As Requested by State
I. Ad Hoc reports
II. Origin of Request Report
Q1: July-September; Q2: October-December; Q3: January-March; Q4: April-June * CY 2013 only: Q1& Q2 combined, covering August-December

10. By deleting Exhibit B, Utilization Management Delegated Functions & Responsibilities, on page 30 of 30, and substituting in lieu thereof the following Exhibit B:

Responsibility	Contractor	State
Preauthorization of :		
• HiTech Radiology	X	
Communications of Authorization decisions to Members and Providers	X	
Communications of Adverse Determination decisions to Members and Providers	X	
First Level Appeals Process		X

Final Appeals Process		X
New Provider Orientation	X	
Oversight and Monitoring of Delegation		X
Gold Card evaluation, analysis, and eligibility reporting	X	
Gold Card eligibility criteria and notifications		X

This amendment consists of 12 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract, (#24486) dated August 1, 2013 shall remain unchanged and in full force and effect.

STATE OF VERMONT
DEPARTMENT OF VERMONT HEALTH ACCESS

CONTRACTOR
MEDSOLUTIONS, INC.

MARK LARSON, COMMISSIONER DATE
312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Phone: 802-879-5901
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AHS/DVHA

ALAN POENITSKE, SVP DATE
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Franklin, TN 37067
Phone: 615-468-4000
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CONTRACTOR

**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 **MedSolutions, Inc.** (“Business Associate”) as of **August 1, 2013** (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

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 (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

“Agent” means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

“Breach” means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

“Business Associate shall have the meaning given in 45 CFR § 160.103.

“Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“Protected Health Information” or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

“Security Incident” means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

“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.

“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA

Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. 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.

3.2 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 and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

4. 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 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 the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

5. Safeguards. Business Associate, its Agent(s) and Subcontractor(s) 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 or its Subcontractor(s) 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 or its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) 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.

6.2 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. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 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 probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

7. 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. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. Providing Notice of Breaches.

8.1 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 individual(s) whose PHI has been 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.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 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.

8.4 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).

8.5 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.

9. Agreements with Subcontractors. Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to 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 Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

10. 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.

11. 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.

12. 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.

13. 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, 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.

14. Termination.

14.1 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 18.7.

14.2 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 the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant 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 the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

15. Return/Destruction of PHI.

15.1 Business Associate in connection with the expiration or termination of the contract or grant 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 or grant 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.

15.2 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. This shall also apply to all Agents and Subcontractors of Business Associate.

16. 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.

17. 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.

17.1 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.

17.2 Business Associate shall ensure that any Agent and 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 or Subcontractor. 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 or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or 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 two (2) 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.

17.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

18.2 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.

18.3 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.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

18.5 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.

18.6 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 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.

18.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.

18.8 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.