

DVHA Routing Form

Revision Date 5/1/12

Type of Agreement: Contract Agreement #: 23423 Form of Agreement: New Amendment #: _____

Name of Recipient: Capitol Health Associates, LLC Vendor #: 226060

Program Manager: Lisa Dulsky Watkins Phone #: 802-872-7535

Agreement Manager: Kate Jones Phone #: 802-879-8256

Brief Explanation of Agreement: **Personal services on the subject of demonstrating and refining a clinician-centered approach to building the Health Information infrastructure.**

Start Date: 11/15/2012 End Date: 11/14/2013 Maximum Amount: \$165,600.00

Amendments Only: Maximum Prior Amount: _____ Percentage of Change: _____

Bid Process (Contracts Only): Standard Simplified Sole Source Statutory Master Contract SOW

Funding Source

Global Commitment 93.778	\$165,600.00		

Contents of Attached Packet

- AA-14 Attachments A, B, C & F Attachment G - Academic Research
- Sole Source Memo Attachment D - Modifications to C & F MOU
- Qualitative/Justification Memo Attachment E - Business Associate Agreement Other:

Reviewer	Reviewer Initials	Date In	Date Out
DVHA Grant & Contract Administrator	Kate Jones		11/7
DVHA BO	Jill Gould	11/8	11/8/12
DVHA Commissioner or Designee	Mark Larson, Commissioner	11.10.12	10.13.12
AHS Attorney General	Seth Steinzor, AAG		11/21/12
Following Approvals for Contracts Only:			
AHS CIO			
AHS Central Office	Martha Giglio		
AHS Secretary	Doug Racine, Sec		

Vision Account Codes: \$165,000: 03410010000/20405/507600/41692 \$165,600 *Key*
(PURCHASED GC)

FFATA Entry Grant Tracking Module Vision PO #: _____ Initials & Date: _____ Approval & B/C: _____

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION ----- Form AA-14 (8/22/11)

Note: All sections are required. Incomplete forms will be returned to department.

I. CONTRACT INFORMATION:

Agency/Department: AHS/ DVHA Contract #: 23423 Amendment #:
 Vendor Name: Capitol Health Associates, LLC VISION Vendor No: 226060
 Vendor Address: 400 North Capitol Street, NW, Suite 585, Washington, DC 20001
 Starting Date: 11/15/2012 Ending Date: 11/14/2013 Amendment Date:
 Summary of agreement or amendment: Personal services on the subject of demonstrating and refining a clinical-centered approach to building the Health Information Infrastructure.

II. FINANCIAL INFORMATION

Maximum Payable: \$165,600.00 Prior Maximum: \$ Prior Contract # (If Renewal):
 Current Amendment: \$ Cumulative amendments: \$ % Cumulative Change: %
 Business Unit(s): 3410; ; - [notes:] VISION Account(s): 507600;

III. PERFORMANCE INFORMATION

Does this Agreement include Performance Measures tied to Outcomes and/or financial reward/penalties? Yes No
 Estimated Funding Split: G-Fund % S-Fund % F-Fund % GC-Fund 100.00 % Other %

III. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract or procurement grant and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:
 Standard bid or RFP Simplified Bid Sole Sourced Qualification Based Selection Statutory

IV. TYPE OF AGREEMENT & PERFORMANCE INFORMATION

Check all that apply: Service Personal Service Architect/Engineer Construction Marketing
 Information Technology Other, describe:

V. SUITABILITY FOR CONTRACT FOR SERVICE

Yes No n/a If this is a Personal Service contract, does this agreement meet all 3 parts of the "ABC" definition of independent contractor? (See Bulletin 3.5) If NO, then contractor must be paid through Payroll

VI. CONTRACTING PLAN APPLICABLE:

Are one or more contract or terms & conditions provisions waived under a pre-approved Contracting Plan? Yes No

VII. CONFLICT OF INTEREST

By signing below, I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.

Yes No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

VIII. PRIOR APPROVALS REQUIRED OR REQUESTED

Yes No Agreement must be approved by the Attorney General under 3 VSA §311(a)(10) (personal service)
 Yes No I request the Attorney General review this agreement as to form
 No, already performed by in-house AAG or counsel: _____ (initial)
 Yes No Agreement must be approved by the Comm. of DII; for IT hardware, software or services and Telecommunications over \$100,000
 Yes No Agreement must be approved by the CMO; for Marketing services over \$15,000
 Yes No Agreement must be approved by Comm. Human Resources (privatization and retiree contracts)
 Yes No Agreement must be approved by the Secretary of Administration

IX. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information:

11.13.12 Date Agency / Department Head 12/10/12 Date Agency Secretary or Other Department Head (if required)
 11/21/12 Date Approval by Attorney General Date Approved by Commissioner of Human Resources
 Date CIO Date CMO Date Secretary of Administration



State of Vermont
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston VT 05495-2807
dvha.vermont.gov

Agency of Human Services
[Phone] 802-879-5900
[Fax] 802-879-5651

MEMORANDUM

TO: Douglas Racine, Secretary – Agency of Human Services

FROM: Lisa Dulsky Watkins, Associate Director - Vermont Blueprint for Health,
DVHA 

DATE: October 18, 2012

RE: Capitol Health Associates, LLC (CHA)
New Contract for End-to-End Transmission (“Sprint”) Facilitation

This one-year contract is for the facilitation of an end-to-end transmission of accurate information from an original source, such as a primary care practice, through the Vermont Health Information Exchange, to the Vermont Clinical Registry (Covisint DocSite), resulting in useful and reliable reporting back to the clinical sites. This critical element of Health Care Reform has been a rate-limiting step in its progress.

As a result of a RFP issued July 27, 2012 and a review of the resulting two bids, Capitol Health Associates was chosen after scoring the highest on a quantitative evaluation/scoring tool completed by both DVHA and external reviewers. There was a unanimous agreement amongst the reviewers for choosing CHA. Extensive experience, professional contacts, and demonstrated successful track record made CHA an obvious choice. The cost of the contract will be far exceeded by the completed demonstrations in the contract period.

Payments to Capitol Health Associates, LLC are tied to performance-based tasks outlined in Attachment A beginning on page 3 of the contract agreement.

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

DVHA looks forward to approval of this contract.

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Capitol Health Associates, LLC (hereafter called "Contractor"), with a principal place of business in Washington, DC. The Contractor's form of business organization is a corporation. The Contractor's local address is 400 North Capitol Street, NW, Suite 585, Washington, DC 20001. 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 demonstrating and refining a clinician-centered approach to building the Health Information infrastructure. 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 the Contractor, the State agrees to pay the Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$165,600.
4. **Contract Term.** The period of Contractor's performance shall begin on December 7, 2012 and end on November 14, 2013.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.
Approval by the Secretary of Administration is not required.
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 both the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies, the State may terminate this contract immediately and will notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.
8. **Attachments.** This contract consists of 20 pages including the following attachments, which are incorporated herein:
Attachment A - Specifications of Work to be Performed
Attachment B - Payment Provisions
Attachment C - Customary State Contract provisions
Attachment E - Business Associate Agreement
Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D (if any)

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

The purpose of this contract is to deliver intensive project management for the Blueprint's efforts to establish reliable transmission of accurate healthcare information from electronic medical records (EMRs) and other health information sources, through Vermont Information Technology Leaders (VITL) Vermont Health Information Exchange (VHIE) or directly into the Blueprint (Covisint/DocSite) registry. The measure of success of these complex "Sprint" processes is the achievement of near flawless transmission and reporting of actionable information as demonstrated through a specific attestation by the local end users.

The Contractor agrees to complete the following tasks:

Task 1: Project Management of Current Blueprint Sprints

This task covers those activities related to the Contractor's management of current Sprint projects, including those in Bennington, Northern Tier Centers for Health (NOTCH), Northern Counties Health Care, and The Health Center at Plainfield. The Contractor will commit the necessary resources and time allotments required to perform work and continue current project management on Sprint projects to completion.

Task 2: Sustainable and Replicable Project Plan for Statewide Blueprint Sprint Implementation

The Contractor will develop a comprehensive Statewide plan for Sprint implementation. The Contractor will establish a set of standard operating procedures for the integration of data from disparate sources into the Covisint/DocSite system that enable physicians and community health teams to deliver advanced patient care.

In addition to the Statewide Sprint Plan, the Contractor will collect outcomes and lessons learned and create a document for use by various sites that are installing new electronic medical records in order to assist with template development, provider management, and Master Provider Index issues.

The Contractor will document policies for upgrades regarding the adding and changing of data elements and the impact on translation and reporting for Provider Attribution, Management of Patient Panels, and BP Registry. Upon successful completion of Task 2, the Contractor may invoice the State up to an amount of \$10,000.

Task 3: Project Management of Statewide Sprints

As the Sprint Demonstration Project Manager, the Contractor has developed a set of key items to outline the high level project management tasks for each Sprint project. The Contractor will create a monitoring system that will ensure that each Sprint process contains the following components:

1. Blueprint Community Evaluation
2. Initial IT Evaluation
3. Initial Data Mapping Verification
4. Project Plan
5. First Sprint Meeting Defining Tasks and Issues
6. Weekly Progress Meetings on Continuing Work
7. Final Data Continuity and Validation
8. Sprint Completion
9. Ongoing Maintenance

ATTACHMENT B PAYMENT PROVISIONS

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

1. The Contractor's invoices shall be submitted no more frequently than monthly, but no later than quarterly, and shall include the number of hours worked during the specified billing period and the total amount billed. The State shall pay the Contractor at the rate of \$200 per hour for the Project Manager/Lead Consultant and \$150 per hour for an HIT Subject Matter Expert. The estimated budget for these services is \$8,333.33 per month in combined billable hours not to exceed the amount of \$100,000 total. The Contractor must produce a progress report by May 14, 2012 showing three (3) completed (100% complete) Sprint projects and at least three (3) in process ($\geq 50\%$ complete) Sprint projects. If the Contractor is unable to meet these requirements, the State will impose a 10% retainage penalty against the Contractor until the Contractor can provide evidence that they have met these requirements and each completed Sprint project is rated as satisfactory.

The estimated travel budget is set at \$1,000 per trip for a total not to exceed \$12,000 for the 12 month period. The State will be billed the actual documented cost of each trip. Reasonable expenses for State approved travel will be reimbursed on an as-incurred basis at the state required per diems and limits as outlined in Bulletin 3.4. The Contractor will not be reimbursed for other expenses, including supplies, benefits, or insurance.

The estimated budget for the completion of each Sprint is \$4,360, assuming ten Sprint projects within a 12-month period, totaling a maximum of \$43,600. Satisfactory completion of each Sprint project will be determined by the State using measures outlined in this agreement.

Upon State approved and successful completion of Task 2, the Contractor may invoice the State up to an amount of \$10,000. Successful completion of Task 2 will be determined by the State using measures outlined in this agreement.

2. Contractor shall demonstrate progress towards stated goals using a combination of performance measures as follows:
 - a. Schedule Performance Measure: Project schedule status will be tracked on a weekly basis. Actual progress will be tracked against the project baseline. The actual schedule will reflect tasks as completed (100% complete), in process (50% complete), and not yet started.
 - b. Earned Value Performance Measure: The Contractor will generate an earned value metric that reflects a combination of budget, schedule, and deliverable value. This metric will be updated on a bi-weekly basis with the project status report.
 - c. Weekly Meetings with Blueprint staff (as needed): The Contractor will meet on a regular basis with the State's Blueprint staff to review ongoing tasks, discuss issues with tasks, and recommend modifications to ongoing activities. These meetings will ensure that the tasks are meeting the State's needs.

**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.

These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, 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.
 - d. 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.

**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 (DVHA) (“Covered Entity”) and Capitol Health Associates, LLC (“Business Associate”) as of December 7, 2012 (“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

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.

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

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

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