

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and the University of Massachusetts Medical School, with a principal place of business in Worcester, Massachusetts (hereafter called "Contractor"). The Contractor's form of business organization is an institution of higher education. The Contractor's local address is 55 Lake Ave North, Worcester, MA 01655. 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 customer satisfaction and experience evaluations. 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 \$229,128.00.
4. **Contract Term.** The period of Contractor's performance shall begin on September 26, 2014 and end on December 31, 2014.
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 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 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 30 pages including the following attachments, which are incorporated herein:
 - Attachment A - Specifications of Work to be Performed
 - Attachment B - Payment Provisions
 - Attachment C - Customary Provisions for Contracts and Grants
 - Attachment D - Modifications to Customary State Contract Provisions
 - Attachment E - Business Associate Agreement
 - Attachment F - Customary Contract Provisions of the Agency of Human Services
 - Appendix I – Required Forms

The order of precedence of documents shall be as follows:

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

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

ROBERT SKOWRONSKI, DEPUTY COMMISSIONER DATE
312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Phone: 802-879-5901
Email: Robert.Skowronski@state.vt.us

GINA MARZILLI SHAUGHNESSY, ASSISTANT DIRECTOR, CONTRACTS DATE
55 Lake Avenue North
Worcester, MA 01655
Phone: 508-856-8126
Email: Gina.Shaughnessy@umassmed.edu

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

A. Overview

The Contractor, with feedback from the State, will provide a Customer Satisfaction and Experience Evaluation of Vermonters who began or completed an application for health insurance during the 2013-2014 open enrollment period through present day. The goal of this evaluation is to provide actionable information that will help the State refine and improve the Vermont Health Connect (VHC) customer service and enrollment experience.

The State has identified three sub-populations for the Customer Satisfaction and Experience Evaluation:

- **Sub-population #1:** Those who began but did not complete an application
- **Sub-population #2:** Those who completed an application but did not choose a health plan
- **Sub-population #3:** Those who chose a health plan and paid their premiums, and those who enrolled in Vermont's Medicaid Program

The Contractor shall meet the goal of both gathering high quality information for the State and providing the State with actionable information by December 31, 2014 by engaging with two main components: customer focus groups and a larger quantitative mixed-mode survey.

- **Customer Focus Groups:** The Contractor will conduct a separate focus group for each of the three sub-populations in order to provide the State with information and recommendations in order to inform the upcoming 2014/2015 open enrollment period by November 15, 2014. The findings from these focus groups will also help to inform the development of the mixed-mode survey. The focus groups will include a combined minimum total of 20 individuals.
- **Mixed-mode Survey:** The Contractor will conduct a mixed-mode survey using mail, telephone, and online modes. The Contractor will survey a total sample size of 8,000, which shall consist of 2,000 individuals for sub-population #1; 2,000 individuals for sub-population #2; and 4,000 individuals for sub-population #3. The Contractor shall assume a response rate of at least 30% for a targeted total of 2,400 completed surveys.

As a result of these two main components, the Contractor will conduct a Customer Satisfaction and Experience Evaluation that is both "mixed-methods" (using two methods of focus groups, followed by a quantitative survey) and "mixed-mode" (using mail, phone, and online methods).

B. Phase 1: Development of Evaluation Plan

The Contractor shall conduct information gathering sessions with stakeholders in order to fully understand the needs and goals of the Customer Satisfaction and Experience Evaluation. Stakeholders will include State staff and other stakeholders that the State and Contractor identify, which is expected to include members of Vermont's Medicaid and Exchange Advisory Board, Navigators (individuals contracted with the State who assist in enrollment to the VHC), and potentially other organizations representing customers, providers, and health plans.

The Contractor shall hold at least five (5) information gathering sessions. In order to include stakeholders throughout Vermont, these sessions will have the option of participation by phone or webinar. The structure of these sessions shall include an agenda prepared by the Contractor and previously approved by the State, with each session being thirty (30) to ninety (90) minutes in length.

Phase 1 Deliverable

The Contractor shall synthesize the data obtained from these information gathering sessions and develop a draft evaluation plan as the deliverable of Phase 1. The final evaluation plan will include the following elements:

- Finalized list of objectives that the qualitative and quantitative research must address
- Project timeline, including key dates and responsibilities for the State and Contractor with steps scheduled at critical junctures to gain stakeholder input
- Detailed sample plan identifying the sub-populations of interest and the associated sample design to obtain reliable estimates within each sub-population
- Agreed upon methodology, including the design of the qualitative research (number and make-up of focus groups) and the design of the quantitative research (such as study protocols and specification of modes of survey administration)
- Draft outline of focus group guide (for qualitative research) and survey instrument (for quantitative research)
- Clear delineation of State and Contractor responsibilities, including planning the execution of data use agreements and specification of data elements required by the State

C. Phase 2: Execution of Evaluation Plan

After presenting and finalizing the evaluation plan in Phase 1, the Contractor will execute the plan through the methods described below. Implementation of the evaluation plan shall not commence until the State has approved the evaluation plan that is developed and presented to the State in Phase 1.

The Contractor shall conduct a study that will use focus groups to accomplish two objectives:

- Deliver initial customer experience findings by November 15, 2014, in order to provide actionable information for the upcoming 2014/2015 open enrollment period
- Inform the design of the customer experience survey instrument

The Contractor shall conduct a total of three (3) focus groups, one for each of the three sub-populations described in Section A. After obtaining State approval of the evaluation plan, the focus group sample will be selected from the customer sub-populations of interest. The Contractor will work with the State to define the sample selection method and the geographic locations for the focus groups. The Contractor shall develop all focus group data collection materials and protocols, including participant consent forms, screening and demographic forms, and focus group guides. Information on focus group participants' experiences with the State will be gathered in relevant domains. The focus group domains will be determined based on stakeholder interests gathered during the evaluation planning, pre-existing State surveys, and the Centers for Medicare & Medicaid Services (CMS) Marketplace Survey and Qualified Health Plans (QHP) Enrollee Survey.

The Contractor will conduct three focus groups that will include a combined minimum total of 20 individuals. The duration of each group shall be ninety (90) minutes. Groups will be held in accessible locations, to be previously approved by the State, and led by the Contractor. The Contractor will coordinate and plan the focus groups. The discussions will also be digitally audio-recorded. All procedures shall be designed to protect participant confidentiality. Focus Group participants will be given a small incentive for their participation that will be in the form of a gift card. Gift cards will be given to approximately 30 to 45 focus group participants and to approximately nine (9) participants of cognitive testing for the mixed-mode survey for a total of 39-54 gift cards, with each gift card being approximately \$35 to \$50 each not to exceed a total amount of \$2,700. The gift cards will be purchased by the Contractor. The Contractor is responsible for ensuring compliance with IRS regulations in regard to the release of gift cards to participants.

The Contractor will use qualitative techniques to analyze the data. Detailed notes will be transcribed immediately from the audio recordings following each group and a thematic analysis will be conducted on the detailed notes. The Contractor will compare initial themes across the focus group facilitators.

Mid-term Report and Presentation

The Contractor will analyze the results of the focus groups and produce a mid-term report with an accompanying presentation to the State that shall provide the findings from the consumer focus groups and provide recommended mechanisms for improving the VHC customer service and enrollment experience.

Survey Design

The survey instrument will be developed based on the outline agreed upon during the evaluation planning phase and shall include the information gained from the focus groups. The survey will leverage the draft Marketplace Survey and QHP Enrollee Survey that have been developed by CMS. The survey will be cognitively tested by the Contractor to ensure that the questions are measuring the intended constructs. The Contractor will conduct cognitive interviews with three (3) participants for each of the three sub-populations of interest, for a total of nine (9) participants. During the cognitive interviews, the Contractor will collect information on how the participants interpret the questions and responses, how the participants decide on their response, and the participants' difficulties when answering the questions. The survey questions will be modified to address problems identified by the cognitive interviews.

The survey shall include three (3) sections in order to capture information on each of the different sub-populations. The survey will be designed such that core questions will be asked of all survey respondents, while other questions will be asked that are specific to each sub-population. The maximum length of the survey shall be no longer than sixteen (16) minutes.

- Section 1 of the survey will address the experiences of those who began but did not complete an application. This section will answer research questions such as but not limited to:
 - What motivated customers to try to apply for coverage?
 - What were customers' perceptions of the application process? What were the aspects of the process that they liked or disliked?
 - Were customer service representatives used? If so, how effective were they in helping customers?
 - What were the reasons that customers did not complete an application?
 - How would customers rate the overall application process?
- Section 2 of the survey will address the experiences of those who completed an application but did not choose a health plan. This section will answer research such as but not limited to:
 - What were the reasons for not choosing a health plan?
 - What is the current insurance status of those who did not choose a health plan?
 - What would have helped customers choose a health plan?
- Section 3 of the survey will address the experiences of those who chose a health plan and paid their premiums and those who enrolled in Medicaid. This section will answer research questions such as but not limited to:
 - What has been customers' experience with the health plan that they selected?
 - How do they rate the quality of care that they are receiving under their health plan?
 - Even with health coverage, have customers encountered barriers to accessing care?
 - Do customers intend to renew their current plan?
 - What resources would customers like to see in order to help them in their future decision making process?

In addition to the above survey sections, the survey will capture certain background information, such as demographics, current health care status, length of time in current plan, etc. All survey questions will be pre-approved by the State.

The final survey instrument will be translated into Spanish to accommodate Spanish language dominant respondents. Although the majority of Vermonters do not speak Spanish, the Contractor will include the survey in Spanish for the minority of Vermont respondents who use Spanish as their primary language.

Survey Materials

The Contractor will prepare the surveys in both English and Spanish for completion by three modes: mail, telephone, and online (via PC and mobile devices such as smart phones and tablets). The surveys will be programmed, and full quality control procedures will be implemented for the data entry of the mail surveys, computer-assisted telephone interviewing (CATI), and online/web administration. The Contractor's survey platform, Conformat, allows for seamless integration of all three modes of data collection.

The mail survey materials shall include the following:

- **Cover Letter:** A personalized cover letter to introduce the respondent to the research, explain their selection based on their interaction with the State, and encourage participation. The letter will be customized to include appropriate VHC and State logos and the signature of the Authorized State Program Manager. The Contractor shall provide a toll-free number to be included for respondents to call if they need more information or wish to complete the survey over the phone. The cover letter will be printed two-sided (English on the front and Spanish on the back).
- **Questionnaire:** The mail questionnaire will include the following elements:
 - Instructions on how to complete the survey
 - Two-column format as recommended by the Consumer Assessment of Healthcare Providers and Systems (CAHPS) Consortium to maximize readability
 - Printed in booklet form, using a two-sided black and white printing process
 - A unique identification number for each respondent printed on each page of the questionnaire
 - A survey packet that includes two survey booklets, one in English and one in Spanish
- **Reply Envelope:** Pre-addressed, business permit postage-paid

Methods of Sampling

The Contractor will design the sample frame to include adult Vermonters (ages 18 or over) from each of the three sub-populations of interest:

- **Sub-population #1:** Those who began but did not complete an application
 - This sub-population will be targeted to include 600 completed surveys
- **Sub-population #2:** Those who completed an application but did not choose a health plan
 - This sub-population will be targeted to include 600 surveys and shall include those who chose a health plan but never paid their first premium
- **Sub-population #3:** Those who chose a health plan and paid their premiums and those who enrolled in Medicaid
 - This sub-population will include both people who continued to pay premiums and those who did not
 - This sub-population will include both Medicaid and QHP enrollees
 - This sub-population can be divided into subgroups, in order for this sub-population to target 1,200 completed surveys.

In total, the survey is targeted to include a total of approximately 2,400 completed surveys when the three sub-populations are combined.

The Contractor will survey a total sample size of 8,000, which shall consist of 2,000 individuals for sub-population #1; 2,000 individuals for sub-population #2; and 4,000 individuals for sub-population #3. The Contractor shall assume a response rate of at least 30% for a targeted total of 2,400 completed surveys. The Contractor will use the data files provided by the State to create the list of the eligible population and draw from it the sample of respondents. The Contractor's key process steps shall include:

- Determining the eligibility requirements to ensure data files are generated according to specifications
- Standardizing each customer address to facilitate the sample de-duplication process to ensure that no more than one customer is sampled from any given household. In order to enhance the ability of identifying Vermonters living in the same household, the Contractor shall standardize address data fields into a common format
- Performing a matching algorithm on all Vermonters in the sampling frame once the addresses have been standardized and assigning them to a given household. The Contractor will use the matching criterion that yields the highest number of household matches to assign the household identifier variable
- Working with the State to ensure de-duplication of the sample against other external surveys, as relevant.

The Contractor shall use a stratified, probability-based sampling algorithm to draw the sample of eligible respondents for participation into the study. The samples drawn for each stratum will follow the above guidelines for sampling.

Survey Administration

The Contractor will design and finalize the survey administration protocols in collaboration with the State. The Contractor shall use the following mixed-mode approach for data collection:

- Launch field with the mailing of survey packets to all sampled customers (see Survey Materials section)
- At the same time, send email invitations to all sampled customers for whom an email address is available. The email invitations will include a web link to the survey along with a unique respondent ID and password. Online surveys will be enabled on PCs and mobile devices (smartphones/tablets).
- Approximately seven (7) days after the first email invitation, send reminder emails to non-respondents. Reminder emails to non-respondents will be continued during the survey fielding period at a frequency to be determined by the State, at a minimum of every two weeks, and up to a maximum of five email reminders.
- Approximately ten (10) days after the first mailing/email invitation, begin telephone follow-up with non-respondents, making at least four (4) attempts per non-respondent to complete the survey by phone employing computer-assisted telephone interviewing (CATI)
- At any point during the fielding period, receive inbound telephone calls to answer respondent questions and/or complete the survey over the telephone
- For surveys completed by mail, the Contractor shall use a two-stage, double-blind, data entry process to ensure data accuracy
- Note that all three modalities (mail, online, phone) will be integrated in real time utilizing the Contractor's survey platform Conformat, which will capture and track results of all contact attempts via each modality and prohibit more than one completion per sample piece

Mid-term Data Set

The Contractor will deliver a mid-term data set from the mixed-mode survey so that the State can see preliminary results in advance of receiving the final data set and final report.

D. Phase 3: Evaluation

Post-survey, the Contractor will generate final data sets upon completion of data collection and begin the analysis to produce a final report of actionable findings by each sub-population of interest. Data will be delivered to the State within six weeks of the culmination of surveying. The Contractor shall deliver final raw data and clean data from the survey in a format requested by the State (i.e. SPSS, SAS, Excel, or tab delimited text file). The Contractor shall deliver a final narrative report and an accompanying in-person presentation that analyzes the results from the consumer survey instrument and presents the evaluation findings and recommendations at a location to be determined by the State.

E. Deliverables

In accordance with the scope described within this Attachment A, the Contractor shall provide the State with the deliverables outlined below. The evaluation plan, reports, and presentations will be presented in-person, in Vermont, by the Contractor at a location to be determined by the State. The completion of a deliverable assumes that the Contractor has met all targets and expectations as outlined in Attachment A. Upon completion of a deliverable, the Contractor shall submit the signed Deliverable Approval form (Appendix I) to the State for acceptance. If the deliverable meets the acceptance criteria established within this Attachment A, the State Authorized Representative will sign the form and email it back to the Contractor. Acceptance of the deliverables/products by the State via Deliverable Approval form shall represent the Contractor's fulfillment of the project assignment. The State will have thirty days to acknowledge the final deliverables/products or to reject them. If the deliverable does not meet the criteria of acceptance by the State, the State shall provide feedback and comments to the Contractor. The Contractor shall provide documentation of accepted deliverables with submission of monthly invoices.

1. Conduct stakeholder meetings and produce final evaluation plan: the final evaluation plan will feature the proposed mechanism and timeline for refining the research questions, gaining stakeholder feedback, and conducting the focus groups and mixed-method survey. The final evaluation plan shall incorporate input from State staff and Vermont Stakeholders.
2. Design and conduct three focus groups and produce a mid-term report and presentation based on the findings from the focus group. The mid-term report shall be a narrative document and an accompanying presentation by November 15, 2014 that provides the results and analysis from the three consumer focus groups and initial recommendations for improving the VHC customer service and enrollment experience.
3. Design, program, and launch the mixed-mode survey. Success of the mixed-mode survey includes sampling a population of 8,000.
4. Deliver the mid-term data set from the mixed-mode survey in order for the State to see preliminary results in advance of receiving the final data set and final report
5. Produce a final report and presentation on the analysis of the evaluation. The final report will provide an analysis of the evaluation findings and an accompanying final presentation to the State that presents the analysis of the consumer survey instrument and provides recommendations for Vermont as it seeks to ensure high quality customer experience. The final report will be delivered no later than December 31, 2014.

F. Responsibilities of the Contractor

The Contractor is responsible for the activities and deliverables described below:

- Work with the State to establish dates, times, and locations for information gathering sessions with State staff and stakeholders

- Provide a draft evaluation plan that includes the proposed mechanism and timeline for refining research questions, conducting focus groups, and fielding the mixed-mode survey
- Deliver a final evaluation plan no later than November 1, 2014
- Recruit consumers for three focus groups and conduct the focus groups
- Cover the cost of stipends, postage and all aspects of the facilitation of the focus groups and other survey tools
- Synthesize the information gained from the focus group and deliver a mid-term report and presentation by November 15, 2014
- Develop the survey instrument, solicit feedback from the State and stakeholders, and finalize the survey instrument, including translating the survey for Spanish language administration
- Field the mixed-mode survey using mail, phone, and online methodologies
- Provide mid-term data from the mixed-mode survey mid-way through the data collection period so that the State has access to early results
- Perform all necessary data cleaning, preparation, and analysis of the survey data
- Provide final raw data and clean data to the State using secure HIPAA-compliant protocols
- Deliver a final report on the analysis of the evaluation findings and a final in-person presentation to the State

G. State Responsibilities

The State is responsible for the following:

- Provide the Contractor with phone, email, and mailing addresses of the individuals for potential focus group participants for each of the three sub-populations of interest. The number of individuals shall be sufficient in order for the Contractor to recruit the targeted 15 individuals per focus group.
- Provide the Contractor with phone, email, and mailing addresses of the individuals for potential participation in cognitive testing. The number of individuals shall be sufficient in order for the Contractor to recruit the targeted 9 individuals for cognitive testing.
- Provide the Contractor with useable lists of individuals in the three different sub-populations including phone, email, and mailing addresses. The quality of the contact information in the list, particularly the validity of the contact phone numbers, provided by the State impacts the survey response rate. The number of individuals in the list shall be sufficient in order for the Contractor to achieve the 8,000 sample size.
- Identify key stakeholders for participation in the stakeholder sessions with the assistance of the Contractor. Review the dates, time, location, and invitees that the Contractor proposes to include in the stakeholder sessions
- Provide feedback on the final evaluation plan that the Contractor presents to the State
- Provide feedback on the draft survey questionnaire that the Contractor presents to the State and stakeholders
- Provide feedback on the draft final report that the Contractor presents to the State
- Provide dates, time, location, and invitees for the final evaluation and presentation

H. Federal Requirements:

The Contractor warrants that they are aware of and shall comply with the following federal regulations as they pertain to straight or matched federal dollars received under its agreement(s) with the State:

- A-110: “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations” (OMB Circular A-110);
 - A-122: “Cost Principles for Non-Profit Organizations” (OMB Circular A-122);
 - A-133: “Audits of States, Local Governments and Non-Profit Organizations” (OMB Circular A-133);
- and

- 2 CFR Chapter I, Chapter II, Part 200, et al.: “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule” <http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf>.

The Contractor is responsible for compliance to any and all other applicable federal regulations or guidelines specific to supporting the funding defined in this agreement.

I. Authorized Representatives

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Meaghan Kelley	Sean Sheehan	Michael Chin, MD
Phone #:	802-871-3302	802-585-6339	508-856-1894
E-mail:	Meaghan.Kelley@state.vt.us	Sean.Sheehan@state.vt.us	Michael.Chin@umassmed.edu

J. Subcontractor Requirements: Per Attachment C, Section 15, if the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Request for Approval to Subcontract Form (Appendix I – Required Forms) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the Request for Approval to Subcontract Form, the State shall review and respond within five (5) business days. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Request for Approval to Subcontract Form to:

Meaghan Kelley, Grants Management Specialist Meaghan.Kelley@state.vt.us

Should the status of any third party or Subrecipient change, the Contractor is responsible for updating the State within fourteen (14) days of said change.

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. Contractor invoices shall be submitted no more frequently than monthly, but no later than quarterly, and shall include an individualized invoice number, invoice date, contract number, the project completed during the specified billing period, the total amount billed, and be signed by an authorized representative.
2. No benefits or insurance will be reimbursed by the State.
3. Invoices shall be submitted to:

Meaghan Kelley, Grants Management Specialist Meaghan.Kelley@state.vt.us
4. The total maximum amount payable under this contract shall not exceed \$229,128.
5. In accordance with Attachment A, upon the State's acceptance of the deliverables listed in the chart below, and as previously approved by the Authorized State Program Manager through the process described in Section E, the State shall pay the Contractor for the following deliverables:

#	Deliverable	Amount
1	Conduct stakeholder meetings and produce final evaluation plan	\$20,402
2	Design and conduct three focus groups, and produce a mid-term report and presentation based on the findings from the focus groups	\$23,714
3	Design, program and launch the mixed-mode survey	\$148,723
4	Deliver the mid-term data set, and deliver the final data from the mixed-mode survey	\$19,389
5	Produce a final report and presentation on the analysis of the evaluation	\$16,900
	Total:	\$229,128*

*The \$229,128 budget includes an expense of \$2,700 for gift card as outlined in Section C of Attachment A.

ATTACHMENT C
STANDARD STATE 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 this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient 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.

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 coverages are 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 coverages 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 contract, 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 **\$3,000,000** 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, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- 10. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law 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.
- 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.
 - 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.

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 this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
- 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.
- Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:
<http://bgs.vermont.gov/purchasing/debarment>
- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

**ATTACHMENT D
MODIFICATION OF CUSTOMARY PROVISIONS
OF
ATTACHMENT C OR ATTACHMENT F**

1. Requirements of Sections in Attachment C are hereby deleted and replaced:

6. Independence, Liability: The Party will act in an independent capacity and not as officers or employees of the State. Regarding the parties' responsibilities under this contract, both parties assume the risks of their own actions and inactions under this contract, with each reserving the right to seek compensation for the negligent or wrongful acts or omissions of the other.

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.

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.

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

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.

The State hereby acknowledges and grants to the Contractor a perpetual, non-exclusive, royalty-free license to reproduce, publish, use, copy and modify the intellectual property created or conceived pursuant to, or as a result of, performance of this Agreement; except that this license does not extend to any personally identifiable health information or any other personally identifiable data collected in connection with the focus groups, surveys, or other activities conducted pursuant to this agreement.

The parties also agree that the following clause will be included in all publications and any other material that are distributed in printed form or are posted or disseminated electronically:

Although this work product was funded in whole or in part with monies provided by or through the State of Vermont, the State does not necessarily endorse the researchers' findings and/or conclusions. The findings and/or conclusions may be inconsistent with the State's policies, programs and objective.

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.

3. Reasons for Modifications:

Modifications reflect the Contractor's institutional insurance coverage. The Contractor is an institution of higher education and therefor is self-insured for Worker's Compensation, does not insure owned automobiles, and does not carry professional liability insurance. The Contractor is an exception to the Intellectual Property statement when pertaining to academic work products produced by the Contractor.

Approval:

Assistant Attorney General: _____

Date:

State of Vermont – Attachment D
Revised AHS – 12-08-09

**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 **University of Massachusetts Medical School** (“Business Associate”) as of **September 26, 2014** (“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.

(Rev: 9/21/13)

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.

Appendix I – Required Forms Department of Vermont Health Access Request for Approval to Subcontract

Date of Request: _____

Original Grantee Name:	_____	Grantee #:	_____
Address:	_____		
Phone Number:	_____		
Contact Person:	_____		
Agreement #:	_____	Signature:	_____

Subcontractor Name: _____
Address: _____
Phone Number: _____
Contact Person: _____
Scope of Subcontracted Services: _____

Is any portion of the work being outsourced outside of the United States? **YES** **NO**
(Note to Business Office: If Yes, do not proceed further with approval until reviewed with Finance & Mgmt)

Dollar Amount of Subcontracted Services: \$ _____
Date Range for Subcontracted Services: Start: _____ End: _____

DVHA Program Manager:	_____	Signature:	_____
Phone Number:	_____		

Business Office Review

Comments: _____

Approval: _____ Title: _____ Date: _____

DELIVERABLE ACCEPTANCE

Deliverable#
Submission Date:

Description:

State Authorized Representative: *Program Manager, Sean Sheehan*

Acceptance of Deliverable	Comments
<input type="checkbox"/> Approved	
<input type="checkbox"/> Rejected	

APPROVER, NAME

DATE

APPROVER, SIGNATURE

DATE