

# DVHA Routing Form

Revision Date 5/1/12

Type of Agreement: Contract      Agreement #: 23099      Form of Agreement: New      Amendment #: \_\_\_\_\_

Name of Recipient: University of Vermont and State Agriculture College      Vendor #: 42844

Program Manager : Kelly Gordon      Phone #: 802-879-5905

Agreement Manager: Sawyer Joecks      Phone #: 802-879-5922

Brief Explanation of Agreement: **Recruitment of State Medicaid Medical Director and CMO and other special projects**

Start Date: October 1, 2012      End Date: September 30, 2014      Maximum Amount: \$1,132,085.00

Amendments Only: \_\_\_\_\_ Maximum Prior Amount: \_\_\_\_\_ Percentage of Change: \_\_\_\_\_

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

Funding Source			
<b>Global Commitment 93.778</b>	<b>\$1,332,085.00</b>		

- 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	K.J.	
DVHA BO	Jill Gould	J.G.	
DVHA Commissioner or Designee	Mark Larson, Commissioner	M.L.	
AHS Attorney General	Seth Steinzor, AAG	S.S.	
Following Approvals for Contracts Only:			
AHS CIO	Angela Rouelle	A.R.	
AHS Central Office	Martha Giglio	M.G.	
AHS Secretary	Doug Racine, Sec	D.R.	

Vision Account Codes:

**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 #: 23099 Amendment #:   
 Vendor Name: University of Vermont and State Agriculture College VISION Vendor No: 42844  
 Vendor Address: College of Medicine; St. Josephs 7, UHC Campus, 1 So. Prospect Street, Burlington, VT 05401  
 Starting Date: 10/1/2012 Ending Date: 9/30/2014 Amendment Date:  
 Summary of agreement or amendment: Recruitment of State Medicaid Medical Director and CMO and other special projects

**II. FINANCIAL INFORMATION**

Maximum Payable: \$1,332,085.00 Prior Maximum: \$ Prior Contract # (If Renewal): 13762  
 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: M.G.  
 E-SIGNED by Mark Larson on 2012-Sep-24 Date: Sep 24, 2012 Agency / Department Head E-SIGNED by Michael Clasen on 2012-Sep-28 Date: Sep 28, 2012 Agency Secretary or Other Department Head (if required)  
 E-SIGNED by Seth Steinzor on 2012-Sep-24 Date: Sep 24, 2012 Approval by Attorney General Approved by Commissioner of Human Resources  
 A.R. Date: Sep 27, 2012 E-SIGNED by Doug Racine on 2012-Sep-28 Date: Sep 28, 2012 Secretary of Administration  
 Date: CIO Date: CMO Date:

E-SIGNED by Emily Byrne on 2012-Sep-28

## MEMORANDUM

**TO:** Jeb Spaulding, Secretary of Administration  
**THROUGH:** Doug Racine, Secretary of Agency of Human Services D.R.  
**FROM:** Mark Larson; Commissioner, Department of Vermont Health Access  
**RE:** University of Vermont, Contract #23099, Sole Source Request

This sole source justification is for the University of Vermont to provide chief medical officer (CMO) and medical director support, as well as health services consultation and technical assistance, from October 1, 2012, through September 30, 2014. DVHA requires the services of a CMO and medical director to provide clinical leadership and to serve as administrative managers for all clinical activities within DVHA, including prior authorizations, grievance and appeals reviews, care management, utilization management and other activities as required by Medicaid or assigned by the Commissioner of DVHA. As Vermont's only academic medical center, UVM has the unique capacity to recruit medical professionals who will both fulfill DVHA's need for CMO and medical director services and expertise, and who will also hold faculty appointments at the University within their appropriate medical specialties. This arrangement benefits both entities through ongoing learning and information exchange and facilitates continuous professional development for the CMO and medical director.

DVHA also requires health services consultation and technical assistance in various and emerging programmatic, clinical management and evaluation for a number of improvement projects. These projects help DVHA meet state and federal requirements as a public managed care entity and enhance DVHA's effectiveness by helping identify needs, implement appropriate improvements and evaluate performance improvement initiatives. The University employs and has access to a breadth of medical, research and analytic resources that can be drawn upon at short notice to fulfill DVHA's needs in such areas as program evaluations, mental health and substance abuse reviews, and quality improvement initiatives, to name a few. As projects arise, UVM is able to quickly identify and deploy the appropriate personnel and resources needed to successfully plan and complete various projects. No other entity within Vermont provides the same breadth and depth of professional expertise and resources as are available through UVM.

UVM has done an exemplary job providing medical director support, consultation and technical assistance to DVHA for the past four years. Examples of completed or ongoing projects include children's developmental screening in physician offices, evaluation of the Vermont Chronic Care Initiative's Challenges for Change project, consultation and secondary reviews of psychiatric inpatient stays, and evaluation of office-based opioid dependence treatment. UVM has successfully planned and executed all projects and fulfilled a number of requests on very short notice. The staff's professionalism, vast experience and expertise in a variety of fields are clearly evident.

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 Vermont, with a principal place of business in Burlington, Vermont (hereafter called "Contractor"). The Contractor's form of business organization is a public not-for-profit institution of higher education. 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 special programs and Medicaid clinical management. 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 \$1,332,085.00
4. **Contract Term.** The period of Contractor's performance shall begin on October 1, 2012 and end on September 30, 2014. The contract may be extended up to two additional years subject to the agreement of both parties.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.  
  
Approval by the Attorney General's Office is required.  
Approval by the Secretary of Administration is required.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by 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 31 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 C

**ATTACHMENT A  
SPECIFICATIONS OF WORK TO BE PERFORMED**

**I. CONTRACTOR DUTIES**

**A. Contract Liaison**

The Contractor will assign one liaison for the State to contact to ensure the assignment of necessary personnel and resources, and to coordinate and manage the activities related to the implementation and management of this contract.

**B. State Chief Medical Officer and State Medical Director**

**1. Responsibilities**

Contractor will recruit, hire, and employ two qualified physicians subject to the approval of the Department of Vermont Health Access (State): one to serve as State's Chief Medical Officer (CMO), and the other to serve as State's Medical Director. Responsibilities for each position are outlined in the Project #1 description.

**C. Consultation and Technical Assistance**

Consultation and Technical Assistance provided under this section will be defined in terms of individual projects. The Contractor will provide qualified personnel matched to the specific requirements of each approved project.

**1. Ongoing Projects**

In addition to Project #1 governing CMO and Medical Director services, the State has identified and will continue Project #2, as follows:

Consultation and technical assistance regarding psychiatric and substance abuse treatment, including but not limited to concurrent reviews, discharge planning, care management, and psychotropic medications.

This project is described on page 12 of this contract.

The State also has identified and will continue no-cost Project #3, as follows:

Use of DVHA pharmacy claims data to evaluate the Vermont Academic Detailing (VTAD) Program, with the goal of determining the impact of the VTAD Program on local prescribing practices.

This project is described on page 13 of this contract.

**2. Initiation of New Projects**

- a. The State may initiate the process leading to a new project assignment by requesting a proposal from the Contractor. The request will be prepared by the State and will include the following:

- vii. Compilation and analysis of data from the State-provided business datasets, including compiling and manipulating large and varied datasets to perform complex utilization tracking, utilization and financial trending, and other administrative data exercises.
- viii. Clinical program design, development, implementation, and evaluation.
- ix. Identifying and assessing new developments and emerging trends in program management and clinical practices and research that would have an impact on program and medical policy and/or costs.
- x. Consultation and assistance with reviewing procedural and drug formulary claims coding and reimbursement.
- xi. Consultation and assistance with reviewing and determining requests for covered and uncovered medical services.

### **3. Review and Finalization of New Projects**

Proposals for new projects under this contract shall be presented to and reviewed by the State. After review by the State, and after incorporation of any modifications following negotiations necessary between the parties, the Contractor will finalize the project assignment document. The finalized document will be submitted to the State for final approval and be signed by both the Contractor and the State, indicating payment provisions, ownership of data and any applicable data use agreement, and acceptance of the project specifics before any work can begin.

Changes to the project assignment shall be accomplished by written modification to the project assignment as agreed to by both parties.

### **4. Project Deliverables**

At the conclusion of a project assignment, the final deliverables/products prepared in accordance with what was agreed upon in the executed Project Assignment document will be submitted to the State. Acceptance of the deliverables/products by the State shall represent the Contractor's fulfillment of the project assignment. The State will have sixty days to acknowledge the final deliverables/products or to reject them. Rejection of the final deliverable regarding research projects will not be based on the failure to achieve particular results.

### **5. Work Product Ownership and Data Use**

Notwithstanding the provisions in Attachment F, paragraphs 10 and 12, the parties agree to discuss in the context of each project assignment the ownership and use of the data, research, and other material (to be referred to as "data") collected or produced in connection with the Contract. Before the approval of a consultation or technical assistance project, the parties will agree on how the Contractor will use or disclose the data and whether the Contractor will be permitted to retain the data for use at a later date or for other purposes. The parties acknowledge the principles of academic freedom, the Contractor's general obligation to publish the results of its research, and the need to adhere to state and federal laws and maintain the confidentiality of individually identifiable information.

## **II. STATE DUTIES**

The State shall operate a Medicaid program that is in compliance with applicable State and federal requirements.

The State retains responsibility for maintaining and managing the records of State and for responding to public records requests pertaining to such records.

#### **F. Actions against Contractor Personnel**

The Secretary and the Commissioner of State shall be immediately notified if any personnel working under this contract have a license revoked, suspended or restricted by any state; or the provider loses board certification or eligibility status.

#### **G. Institutional Review Board Approval**

Research may include designs for which informed consent must be obtained by participants. Any such proposal must be approved by the Commissioner of State, if applicable, by Contractor's institutional review board, and, if applicable, by the Agency of Human Service's institutional review board.

### **IV. POINT OF CONTACT**

State of Vermont State Agency of Human Services  
Mark Larson, Commissioner  
Department of Vermont Health Access  
312 Hurricane Lane, Suite 201  
Williston, VT 05495  
Tel: 802-879-5952

Contractor's Technical Lead  
Richard "Mort" C. Wasserman, MD, MPH  
Professor, Department of Pediatrics  
Vermont Child Health Improvement Program  
University of Vermont, College of Medicine  
1 South Prospect St.  
Burlington, VT 05401  
Tel: 802-656-3046

Contractor's Administrative Lead  
Nicholas Brightman  
Research Administrator  
Sponsored Project Administration  
217 Waterman Building  
85 South Prospect Street  
University of Vermont  
Burlington, Vermont 05405-0160  
Phone: (802) 656-3360  
Fax: (802) 656-8604

The Medical Director shall:

- a. Be directly supervised by the Chief Medical Officer (CMO) and participate as requested by the CMO in policy development, planning, and implementation, including development of methods to achieve ongoing improvement in managed care operations and programs.
- b. Collaborate with the CMO and State staff to identify areas of opportunity and/or concern in the clinical programs.
- c. Support the pre-admission, concurrent review and retrospective review processes, commonly referred to as utilization review. Specifically, render a professional opinion regarding medical necessity using evidence-based literature when available, accepted local standards, and/or Contractor's expert medical opinion.
- d. Request/seek additional clinical information necessary from the treating and/or referring provider in order to complete reviews in a timely manner.
- e. Assure completion of medical necessity reviews in accordance with all applicable state and federal laws.
- f. When evidence-based national criteria for medical necessity are unavailable, research, recommend and/or review any clinical criteria that have been developed by State. If necessary, seek out subject matter experts for consultation.
- g. Assist the Chief Medical Officer as requested.
- h. Contractor will hire support staff and reimburse for related time and travel as reflected in the budget on page 16. This support is specific to the current Medical Director.

Both the Chief Medical Officer and the Medical Director shall:

- a. Uphold State values and standards of conduct, including:
  - i. Demonstrating integrity, respect, and responsiveness when working with patients, families, community partners, and internal staff.
  - ii. Communicating a positive image about State to the public.
- b. Assure completion of medical necessity reviews in accordance with all applicable state and federal laws.
- c. Participate in and support fair hearings, grievances, appeals and other administrative or judicial matters relative to State's clinical operations.
- d. Provide legislative testimony or supporting materials as requested by the Commissioner of State.
- e. Represent the State at various national and regional conferences and meetings as authorized by the Commissioner of State.

### **3. Conditions of Employment**

- a. The CMO and Medical Director will each serve full-time as defined for University faculty with full-time appointments, unless otherwise approved by the State.
- b. When serving as the CMO and Medical Director, those persons will work on behalf of and under the direction and supervision of State. The CMO and Medical Director will arrange their work schedules, vacation days, and paid and unpaid holidays to coordinate with the daily business hours and calendar of State.
- c. Except in the case of unforeseeable emergencies, the CMO and Medical Director will arrange their work schedules, vacation days, and paid and unpaid holidays to ensure at least one of these positions is

- iii. Serve in a full-time capacity as defined for University faculty with full-time appointments, unless otherwise approved by the State.
- n. The Commissioner of State shall be entitled to interview all final candidates and, with the Secretary of the Agency of Human Services, shall have the ultimate decision whether to accept, reject, or retain any candidate.

#### **4. Gaps in Service Delivery**

Either party will notify the other if a gap in Chief Medical Officer or Medical Director services is anticipated or occurs.

The Contractor will timely meet with State to determine the type and extent of services that will be provided during the anticipated or actual absence. The obligation to notify and meet State will be triggered by either the CMO's or the Medical Director's resignation or by the CMO's or Medical Director's absence of more than three consecutive weeks.

#### **5. Medical Records**

The CMO and the Medical Director must:

- a. Maintain and update clinical documentation consistent with the State's records policies and procedures and relevant state and federal law, including Medicaid requirements as well as the documentation standards in place at State;
- b. Maintain records related to the clinical program only in the State office; and,
- c. Prepare any compliance reports or take any other action necessary to comply with HIPAA and its implementing regulations.

#### **6. State and Federal Programs**

The CMO and the Medical Director shall cooperate with the State's efforts to comply with applicable State and federal program requirements related to medical care (e.g., Medicaid and Medicare). If the CMO or Medical Director have questions regarding the applicability of a State or federal program requirement, the CMO or Medical Director shall inform the State of the question and the State and the Contractor, at the State's direction, will pursue resolution as necessary with the appropriate agency.

### Project #3

#### 1. Description

Contractor will use DVHA pharmacy claims data to evaluate the Vermont Academic Detailing (VTAD) Program.

The goal of the evaluation project is to determine the impact of the VTAD Program on local prescribing practices. The evaluation will compare observed prescribing to what may be considered ideal prescribing both before and after the AD intervention, and also between prescribers who have and have not received the intervention.

#### 2. Responsibilities

The data to be evaluated by the Contractor is pharmacy claims information that has been submitted to DVHA, and that DVHA or its pharmacy benefits manager has de-identified with respect to individually identifying patient information. This data will include the following elements:

- a. The data will be stored on a secure server at the Fletcher Allen Health Care/University of Vermont. The analyses will occur at the Office of Primary Care, the Contractor's School of Medicine, using STATA 10 (Stata Corporation, College Station, TX).
- b. The data will be used to evaluate the impact of the Vermont Academic Detailing (VTAD) Program on local prescribing behavior. Specifically, the evaluation will help assess whether the VTAD is helping Medicaid patients by improving the use of evidence-based prescribing approaches.
- c. The results of each evaluation project will be shared with the State in a written summary.
- d. The results of the evaluation may be published in a peer-reviewed medical journal and in the Vermont Academic Detailing Program's Annual Report.
- e. The data will not be used for any purposes other than those described above.
- f. The information will be retained for a period of no more than two months unless Contractor and State agree to other evaluation projects permitted by law.

This project is a no-cost project, i.e., the State is not required to reimburse Contractor or any team members for the activity they undertake in connection with this project.

If the State is unable to adhere to the requirements of state and federal laws due to a delay in the completion of medical necessity reviews by the CMO or Medical Director, the Contractor will forfeit \$2,000 for the first such delay, and \$5,000 for each instance of all subsequent delays (not \$5,000 aggregate.) Such assessment shall not be made to the extent that the failure, in the State's judgment, reasonably results from:

- Unforeseeable catastrophic events experienced at the Contractor local and corporate facilities,
- Unforeseeable catastrophic events experienced by State which have a material effect on the Contractor, or;
- Complying with any directions of the State or its employees regarding changes to the scope of work.

Reimbursement will be based on the full-time equivalency (FTE) of the CMO. The budget for this agreement assumes a 1.00 FTE for this position. In the event a CMO is hired to be available at any less than 1.00 FTE, the Contractor shall bill at rate based upon the following formula: the CMO's full time annual salary x the percent Full Time Equivalency.

For example, if the CMO's annual salary is \$160,000.00 and their FTE is 0.85, the Contractor will base their invoices on an annual salary of \$136,000.

### III. Consultation and Technical Assistance Projects

#### A. Project #2

Contractor will bill State quarterly for actual costs, the total of which cannot exceed \$15,033 during the two (2) year period covered by this Contract.

Contractor must provide State with a recommendation regarding appropriateness of requested services within one (1) business day of receiving all required information. If Contractor fails to provide a recommendation within this required period, Contractor will forfeit 10% of the quarterly payment associated with this project.

Such assessment shall not be made to the extent that the failure can be attributed to:

- Unforeseeable catastrophic events experienced at the Contractor's local and corporate facilities,
- Unforeseeable catastrophic events experienced by State which have a material effect on the Contractor, or;
- Complying with any directions of the State or its employees regarding changes to the scope of work.

#### B. All New Projects

Each individual project as defined in Attachment A, Section C, shall require a separate budget, payment provisions for funds needed to carry out the project, and performance measures and guarantees. All budget, specific payment provisions, and performance measures and penalties must be approved through a Contract amendment prior to the start of work. The budget will include direct and indirect costs as required for the project.

Payment provisions for individual projects may be either on a fixed-price per deliverable or cost reimbursement basis as mutually agreed.

The State will make payments to the Contractor upon receipt of quarterly signed bills/invoices to the State in accordance with the budget line items specified in the budgets for the individual projects as defined in the Detailed Work Plans described in Attachment A.

**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

primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at:

<http://finance.vermont.gov/forms>

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
12. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
13. **Taxes Due to the State:**
  - a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
  - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
  - c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
  - 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 (“Covered Entity”) and the University of Vermont (“Business Associate”) as of October 1, 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](http://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

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

## ATTACHMENT G

### MODIFICATIONS FOR ACADEMIC WORK PRODUCTS

1. Notwithstanding Attachment F, paragraph 10 is modified as follows:

*The parties agree that ownership of all data, papers, reports, forms, or other material collected or produced by the grantee, under this grant, (the "work product") shall belong to the grantee. Upon a request made by the State, the grantee shall provide, free of cost, copies of all such work product no later than 30 days from the date of the request. The State shall have a nonexclusive, nontransferable, irrevocable, royalty free paid-up license to use or have used the work product for or on behalf of the State during the pendency of the agreement and thereafter. The State may provide the work product to its contractors, grantees, community partners, and to other local, state, and federal governmental entities for their non-commercial use.*

2. 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 objectives.*

*AHS revised 8/31/10*