

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Action Mill LLC, with a principal place of business in 319A N 11th St, 4th Floor, Philadelphia, PA 19107 (hereafter called "Contractor"). The Contractor's form of business organization is a Limited Liability Corporation. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of consulting services for IT systems and business processes for State health care reform initiatives. 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 \$1,179,900.
4. **Contract Term.** The period of Contractor's performance shall begin on September 12, 2011 and end on August 30, 2012. By mutual agreement, this contract may be extended for a period or periods totaling up to two additional years beyond above stated end date.
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.
8. **Attachments.** This contract consists of 20 pages including the following attachments, which are incorporated herein:
 - Attachment A - Specifications of Work to be Performed
 - Attachment B - Payment Provisions
 - Attachment C - Customary State Contract provisions
 - Attachment D - Modifications of Insurance
 - Attachment E - Business Associate Agreement
 - Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D (if any)
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E (if any)
- 7). Attachment F

8) Other Attachments (if any)

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

HUNT BLAIR, DEPUTY COMMISSIONER DATE
DEPARTMENT OF VERMONT HEALTH ACCESS

JETHRO HEIKO, PARTNER DATE
ACTION MILL, LLC

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

SECTION 1

Pursuant to 18 V.S.A. Chapter 219 § 9351 and Section 10 of Act 48 of 2011, the State is engaging the services of the Contractor to help enable the Department of Vermont Health Access (hereafter called “DVHA”) to support the design and implementation of comprehensively integrated coverage reforms, delivery system and process reforms, administrative simplification, and financing and payment reforms that, in combination, are intended to lead the state to a single system of care and eventually to a single-payer health care system. Such transformational change requires a sustained and deliberate process for change management and communication.

The Contractor will work with the State to understand and make explicit its goals, benchmarks, and steps to create the new system processes and business processes necessary to implement the digital infrastructure for a learning health system in Vermont required to meet the goals of Act 48.

To do this, the Contractor will work with key State staff, associated agencies and organizations utilizing the Action Mill’s Observe, Orient, Design, Act (OODA) Loop framework. This is an iterative approach that starts with an initial limited scope of participants and expands through iterations to include multiple layers of, and relationships between, multiple individuals inside and outside of State government. The Contractor will, at the direction of DVHA staff, in coordination with the Agency Secretary and the Director of Health Care Reform of the Agency of Administration, work with leadership, management, supervisory and general staff of the Agency of Human Services and its six Departments and their Divisions to address cross-cutting issues related to health reform systems change. The Contractor will also work as directed with other State Agencies and Departments for that same purpose, as well as with other State contractors, grantees, beneficiaries, partners, and stakeholders.

The Contractor will complete multiple iterations of these activities which will themselves be designed and refined on an iterative basis. The Contractor will develop a rolling Six Month Plan and Monthly Statements of Work to detail the near term, month-by-month implementation steps of that plan, through the process detailed in Section 2. The activities outlined in the OODA Framework are provided as examples of the types of work Action Mill may perform in carrying out their work.

The objective of these activities and workshops is to create alignment among and between State staff and external stakeholders and clarity of a shared vision for transformation of State and health care system processes that will support the planning of new ways of doing business, associated systems and processes, and the hiring of vendors for assisting in creating and implementing those systems and processes.

The Contractor will also assist in identifying and supporting the networks of people who are necessary to ensure unity of purpose for this work. The Contractor will propose, and with the State will establish, benchmarks and measure progress toward these goals through the Monthly Statement of Work process. The Contractor will act as a consultant to the State to assist the State to achieve the following goals, including assisting the state in development of metrics to objectively measure its achievements:

- Improve decision-making and governance processes
- Improve internal communication and alignment
- Improve external communication
- Identify established social networks within the State and between the State and external contractors, grantees, beneficiaries, partners, and stakeholders

- Identify potential social networks within the State and between the State and external contractors, grantees, beneficiaries, partners, and stakeholders
- Increase innovative and effective use of information, systems, and data for knowledge management and collaboration
- Help diffuse a culture of knowledge management and collaboration into the core and extended organization.
- Design processes for ongoing learning and adaptation to support the implementation of health reform in its many dimensions.

Each party's requests to schedule meetings, requests for existing information in the form of documents or other formats will be responded to promptly. A lack of responsiveness on the part of either party will impact the ability of the parties to meet the objectives of this contract.

PERFORMANCE EXPECTATIONS

Deliverables and Monthly Statement of Work

To accomplish this work, the Contractor will facilitate an organizational change management process to create the systems, work flow, business, communications and decision making processes, and organizational culture required to enable participation in transformative health reform, both across State government and with external stakeholders. Deliverables for each iteration of the Monthly Statement of Work (SOW) will include the following. (This list of deliverables may be changed through the written acceptance by both parties of the SOW and Project Plans.)

General Deliverables:

1. Detailed Six Month Rolling Work Plan, describing the Contractor's anticipated work activities, subject to State review and approval. The Rolling Work Plan will be updated on a monthly basis to project updated anticipated work for the successive sixth month.
2. After six months, a comprehensive revision to the Six Month Rolling Work Plan, describing both the Contractor's anticipated work activities and a retrospective summary of work activities, subject to State review and approval.
3. Multiple iterations of the OODA method outlined below, of varying length and scope, are to be completed with following deliverables each iteration of the OODA cycle
 - i. Inventory of existing knowledge sharing methods, collaboration, communication processes, materials, and tools
 - ii. Social Network Maps
 - iii. Observations Document
 - iv. Challenges Document
 - v. Analysis of Prototype Report
 - vi. Design Recommendations
 - vii. Prototype Plan
 - viii. Conduct Prototyping Exercise
4. Completion of OODA iteration report, subject to State review and approval.
5. Monthly Progress Reporting and Recommendations for revisions to the SOW describing the Contractor's completed and forecast work activities, subject to State review and approval

Monthly deliverables

- Three to five days of on-site work with the State staff or such on-site time as agreed to by both parties
 - o preparation and planning for on-site work (activity planning, scheduling, logistics, etc.)

- facilitation of review and planning meetings
 - interviews and facilitation of workshops to identify potential opportunities and problems with State staff internal and external communication helping or hindering implementation of health reform
 - coaching staff on the use of new processes for communication, information sharing, decision making, work flow, business process, systems development and other opportunities for reinforcing clarity and alignment of purpose relative to the goals of health reform and the establishment of a learning health system,
 - in collaboration with State staff other State contractors, establishing sequences and timelines for implementation of new processes and initiatives for communication, information sharing, decision making, work flow, business process, systems development and other opportunities for reinforcing clarity and alignment of purpose relative to the goals of health reform and the establishment of a learning health system.
- Management of this project
 - Phone or conference call meetings with DVHA Health Reform team and Action Mill principals to review goals and progress, scheduled in consultation with the State on a bi-weekly or more frequent basis.
 - Knowledge management activities, including ongoing narrative and quantitative electronic documentation by Contractor of currently active and planned projects, online collaboration and communication activities
 - Ongoing review of State and federal documents pertinent to the implementation of health reform, including but not limited to proposed or enacted legislation, State grant application and reporting documents, legislative reports, and relevant materials produced by the Institutes of Medicine, HHS, CMS, ONC, AHRQ, CDC, and other federal partners
 - Monthly Progress Reporting and Recommendations recast of the SOW subject to State review and approval.

Monthly Statement of Work Contents

The Contractor and the State shall meet monthly to discuss the needs of the State and key achievements for the course of the subsequent month. The parties will identify deliverables that align with the needs of the State and will outline the Contractor's plan to accomplish those deliverables. The Contractor shall then develop a monthly outline which identifies and prioritizes those deliverables in a detailed statement of work. The Statement of Work (SOW) will also include all costs associated with achievement of identified deliverables up to the maximum allowable amount of this contract. The Contractor shall reduce the SOW to writing and submit it to the State for approval and inclusion in the official contract file maintained by the State. State approval of the SOW shall include review and approval of the dollar amount. SOW drafts shall be submitted by Jethro Heiko, the Contractor's Project Manager. The State employee in charge of approval of the SOW and the associated dollar amount shall be Hunt Blair, the State's Deputy Commissioner. In the event of unforeseeable absences for either employee, each party may designate a substitute for SOW submission and approval.

The Contractor shall also develop a rolling, six-month project plan with significant mile stones (site visits, other activities) projected for upcoming periods work. This project plan shall be included with the first SOW and updated monthly to include percentage of completion of the activities included.

SECTION 2

The Contractor will develop and the State shall review and approve a set of activities to be specified as deliverables in the Monthly Statement of Work.

These activities will be drawn from the list of OODA Loop activities provided by the Contractor, but the list may be expanded by mutual agreement of the parties without the need to amend this contract.

While the general focus of the work to be performed by the Contractor is, like health reform itself, broad, the specific focus articulated in the Detailed Work Plan and its revision, shall include but not be limited to:

- Establishment of communication processes and change management strategies to ensure that DVHA and AHS IT staff implement a comprehensive Health Information Technology and Health Reform Portfolio Planning and Management process in collaboration with Technology Integration contractors and other vendors;
- Establishment of communication processes and change management strategies to put in place across State government to facilitate the implementation of health reform;
- Establishment of communication processes and change management strategies for State government to utilize with external stakeholders to facilitate the implementation of health reform;
- Mapping and documentation of the change process requirements embedded in Vermont health reform and establishment of an ontology and shared lexicon of reform's component parts to support the communication and change management process; and
- Establishment of a value-based pricing structure for the Contractor more suitable to the nature of these activities, in the event that the contract is to be renewed.

Additional specific focus objectives defined by mutual agreement of the parties may be added to the Detailed Work Plan and its revisions without the need to amend this contract.

The following is a list of OODA activities that may be included in the Monthly Scope of Work:

OBSERVE: COLLECTING INFORMATION AND FOSTERING ENGAGEMENT

Review of current structures and processes

- Review existing Vermont Blueprint For Health program structure and pilots
- Review existing Agency and Health Reform structure, initiatives, and programs
- Review existing DVHA, Agency, and Health Reform work plans, relevant documents and literature, process, and organizational layout (physical and operational)
- Create an inventory of existing knowledge sharing methods, collaboration, communication processes, materials, and tools
- Review decision making processes
- Review governance processes

Interviews and ethnographic research

- Interview leadership teams
- Determine key stakeholders (health care, government, provider, community)
- Interviews with key stake-holder groups
- Lead cross-silo roundtables
- Observation of current work practices

Data gathering and documentation from field tests

- Interviews, self-reporting and observation of field test users and participants
- Video recording of field tests
- Social Network data gathering
- Determine Social Network Survey approach, objectives, and scope

- Develop protocols for collecting Social Network data (Network Centric Questioning)
- Communications plan and materials to prepare participants in the Social Network Analysis
- Develop and test Social Network Survey tools
- Conduct and manage Social Network Survey
- Update list of people to be surveyed
- On-site social network mapping
- Deliver Observations Document

ORIENT: MAKING SENSE OF INFORMATION

Initiative Mapping (an evolving map of the current state of the initiative)

- Examine current processes for communication and collaboration
- Conduct interviews across organizations, stakeholder groups, levels to develop map of initiative
- Design the initiative map in a shared, dynamic format
- Ongoing revision of map to reflect changes

Organizational and Social Network Analysis

- Create preliminary Social Network Analysis report
- Prepare organizational networking maps for sense making workshop
- Review of interviews for findings on potential intentional networks
- Analysis of communication flows and blocks, key participants, and outliers

Sense making

- Introductory workshop on Meaningful Action processes (OODA loop, meaningful action, sense-making)
- Conduct sense making workshop with key stakeholder groups
- Synthesize sense making data
- Visualizations of sense making data
- Conduct stakeholder mapping workshop
- Develop personas (representative users for use in rapid testing and refining of design field tests)
- Video recording of field tests
- Create a guide identifying DVHA, AHS, Health Reform norms and vocabulary,
- Identify potential challenges (misalignment of vision, confusion about values)

Identification of needs and opportunities

- Identify existing boundary objects
- Identify key opportunities for new boundary objects
- Identify additional stakeholders
- Identify key technology touch points for stakeholder communication and engagement
- Create a report analyzing field test results

DESIGN: DECISION POINTS AND DESIGN OF TANGIBLE TOOLS AND ACTIONS

Collaborative decision making with leadership team

- Development and review of objectives and goals
- Training on decision making frameworks and processes
- Document negotiated metrics and measurements
- Develop plan documenting points of intervention to improve communications and processes

Network recommendations

- Identify and document key formal and informal social networks
- Identify areas for intentional networks and determine participants
- Identify additional audiences that should be connected to networks
- Design of playbook (dynamic document for sharing effective practices)
- Recommendations for new communication tools

Design communication and innovation tools

- Design session with key stakeholder groups

- Design and refine place-based prototypes
- Design and refine boundary objects (tools designed to communicate across boundaries to multiple stakeholder groups)
- Design Innovation Incubator session
- Design and update communication tools

Metrics

- Determine standard quality and social metrics in collaboration with stakeholders, health care providers, and/or consumers
- Create phase-one metric document
- Vet metrics with stakeholder groups
- Pilot metrics
- Evaluate, adapt, and revise metrics

ACT: IMPLEMENTATION

Network building

- Create invite list for convening intentional network working groups
- Team building for specific communication responsibilities
- Training in new communication tools and processes
- Training in collaborative tools (e.g. playbook)

Implementation of designs

- Create plan for implementation of new tools
- Produce tools and infrastructure to support actions
- Implement and field test prototypes
- Implement and test boundary objects
- Create secure collaborative workspace
- Conduct Innovation Incubator sessions with stakeholders
- Implement tools

Knowledge management and collaboration infrastructure

- Proposal for using knowledge management with key stakeholders
- Refine knowledge management and collaboration proposal
- Design collaboration and knowledge sharing infrastructure
- Run pilots of new knowledge management tools
- Develop training and deployment plan
- Conduct facilitation and training for knowledge management tools and processes
- Design and implement train-the-trainer program for facilitators

Develop innovation capabilities for quality and critical problem solving

- Assess current innovation methods
- Design approaches and methodologies for improving and expanding innovation capabilities
- Run workshop on creative thinking and innovation
- Develop tools and processes to support innovation

Ongoing work with staff

- weekly check-ins (including review)
- Monthly or as needed on-site work with State staff
- Monthly reports including synthesis and recommendations. These are brief, factual, engaging and action oriented.
- Implement decision making process and decision making tools
- Identify projects and processes that will help State staff function more effectively
- Identify key communication and collaboration processes and materials for creation or improvement
 - Work with the State to create or improve these processes
 - Work with the State to evaluate progress

Because this project's goals and processes will become clearer as part of the ongoing work, this list will be reviewed and amended on an ongoing basis by agreement between the Contractor and the State. Any changes to this document shall be reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

The point of contact for each party in this agreement shall be:

Contractor

Jethro Heiko
Project Manager
jethro@actionmill.com
(267)984-3493

State

Hunt Blair
Deputy Commissioner
hunt.blair@state.vt.us
(802)879-5901

Work done "on-site" at State offices:

Any of the Contractor's staff performing work at State offices will be provided workspace via conference rooms. No individual desk or workspace is guaranteed for Contractor staff while performing their duties at State offices. The State will collaborate with contractor to secure additional space if needed, contingent upon the State's spatial resources.

Use of Subcontractors:

The Contractor may, under its discretion, engage in assistance in carrying out tasks and duties relating to the scope of this contract. Solely for the purpose of this contract the following list of subcontractor may be engaged at no further cost to the State:

- Barbara Kivowitz,
- Salvatore Rasa,
- Patti Anklam,
- Jessica Oski,
- Eileen Elliott,
- Richard Weissberg,
- Ken Citarella,
- Michael Krigsman,
- Cognitive Edge, Pte, Ltd,
- Siegel + Gale

**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 services specified in Attachment A, for services actually performed, up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice, payments against this contract will comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

1. The maximum amount payable under this contract for service and expenses shall not exceed \$1,179,900 and shall be subdivided based on the submitted deliverables specified in Attachment A, and as approved within the monthly Statement of Work revisions.
2. As follows, according to the invoicing schedule below, payment for final deliverables will not be issued until a deliverable has been reviewed and accepted by State, and upon submission of an invoice.

<i>Deliverables</i>	<i>Contractor's Proposed Delivery Date</i>	<i>Total Payment</i>	<i>5% Retainage of Total</i>	<i>Rpt Payment 50% After Retainage</i>	<i>Deliverable Completion Due Date</i>	<i>Deliverable Payment 50% After Retainage</i>
Detailed Project Work Plan	9/30/2011	\$130,690.00	\$6,534.50	\$62,077.75	10/7/2011	\$62,077.75
Revised Project Work Plan	Within 6 months	\$55,350.00	\$2,767.50	\$26,291.12	3/8/2012	\$26,291.12
Oct. 2011 SOW	9/30/2011	\$53,585.46	\$2,679.27	\$25,453.10	10/31/2011	\$25,453.10
Nov. 2011 SOW	10/31/2011	\$53,585.46	\$2,679.27	\$25,453.10	11/30/2011	\$25,453.10
Dec. 2011 SOW	11/30/2011	\$53,585.46	\$2,679.27	\$25,453.10	1/2/2012	\$25,453.10
Jan. 2012 SOW	12/30/2011	\$53,585.46	\$2,679.27	\$25,453.10	1/31/2012	\$25,453.10
Feb. 2012 SOW	1/31/2012	\$53,585.46	\$2,679.27	\$25,453.10	2/29/2012	\$25,453.10
Mar. 2012 SOW	2/29/2012	\$53,585.46	\$2,679.27	\$25,453.10	3/1/2012	\$25,453.10
Apr. 2012 SOW	3/30/2012	\$53,585.46	\$2,679.27	\$25,453.10	4/30/2012	\$25,453.10
May 2012 SOW	4/30/2012	\$53,585.46	\$2,679.27	\$25,453.10	5/31/2012	\$25,453.10
June 2012 SOW	5/31/2012	\$53,585.46	\$2,679.27	\$25,453.10	7/2/2012	\$25,453.10
July 2012 SOW	6/29/2012	\$53,585.46	\$2,679.27	\$25,453.10	7/31/2012	\$25,453.10
Aug. 2012 SOW	7/31/2012	\$53,585.46	\$2,679.27	\$25,453.10	8/31/2012	\$25,453.10
OODA Activities	As within Plan and SOW paid per sub deliverable	\$353,850.00	\$17,692.50	\$168,078.75	As within Plan and SOW paid per sub deliverable	\$168,078.75
OODA Report	1/OODA iteration completed as indicated in Plan	\$50,568.00	\$2,528.40	\$24,019.80	1/OODA iteration completed as indicated in Plan	\$24,019.80
Total		\$1,179,898.06	\$58,994.87	\$560,451.52		\$560,451.52

Note: These dollars associated in the tables above are total not to exceed figures. Any deviations from the amounts and dates stated in the table above will be reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor by way of amendment to this contract.

Five percent (5%) retainage shall be deducted from each invoiced deliverable. Accumulated retainage may be released at the end of each year of the contract with the approval of the Contract Administrator and upon submission of an invoice. As identified in Attachment A of this document the Contractor must supply the State with a Monthly SOW. The State shall pay the Contractor 50% of amount due tied to

the SOWs upon report submission. The remaining 50% will be subject to completion by the contractor and approval by the State of contract deliverables identified in the SOW and will require a separate billing. The State must notify the Contractor within 10 business days from receipt of invoices if deliverables met are not found satisfactory. Should the contract be terminated for any reason related to the Contractor failure to perform duties to the satisfaction of the State, the withheld retainage shall revert to the State as liquidated damages.

The parties contemplate that delivery dates for deliverables, set forth in the table below, may need to be adjusted. Any adjustment shall require an amendment to this contract.

3. All identified fees included in this Contract and subsequent Statements of Work are all inclusive, no benefits or insurance or other expenses will be reimbursed by the State. The set rates also include any indirect rate that covers the administrative expenses, occupancy fees, utilities, repair and maintenance of equipment, office maintenance, audit and legal fees, insurance, travel, telephone, postage, supplies, etc. The State does not guarantee the assignment of any minimum number of hours or other work under this contract.
4. Payments for subcontractors are the responsibility of the Contractor and will be made upon approval (See Attachment C, #15) as per the deliverables schedule above. The State shall not be responsible for separate expenses of the Contractor.
5. The Contractor will submit an invoice on a monthly basis to the State for services provided under this contract #20436 during the previous month. The Contractor shall subdivide invoicing for tasks provided under the associated months SOW. Each invoice must include a unique invoice number, contract number, dates of service, and itemized billing must be documented to reflect linkage with the associated months SOW. Invoice amounts for deliverables must be pre-approved by the State prior to submission. The State reserves the right to withhold part or all of the contract funds if the State does not receive timely documentation of the successful completion of contract deliverables. All invoices must be preapproved by, and submitted to:

Hunt Blair, Deputy Commissioner
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 054953

4. State will remit all paper payments to:
Name: Action Mill, LLC
Address: 319A N 11th St, 4th Flr
City, State, and ZIP: Philadelphia, PA 19107

ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party

for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of *N/A* per occurrence, and *N/A* aggregate.

8. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.

9. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days.

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

- 10. Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
- 11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
- 12. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. Taxes Due to the State:

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

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

1. The insurance requirements contained in Attachment C, Section 7 are hereby modified:

N/A

2. Requirements of other Sections in Attachment C are hereby modified:

N/A

3. 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 or otherwise agreed to by the parties in writing.. 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 and tools 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 unless otherwise agreed to by the parties in writing.

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.

4. Reasons for Modifications:

This modification will allow the Contractor to release some of the tools and processes created and used during the term of this contract under a Creative Commons License held by the Contractor.

APPROVAL:

ASSISTANT ATTORNEY GENERAL

DATE: _____

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.